

NIXON TO APPEAL DECISION ON TAPE

JUN 11 1974

St. Clair Tells Sirica That
Portion Is Not Relevant to
Grand Jury's Inquiry
NYTimes

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Special to The New York Times

WASHINGTON, June 10 —

President Nixon announced today that he would appeal Federal Judge John J. Sirica's decision to give a grand jury a portion of one of the disputed Presidential tape recordings.

Judge Sirica ruled last Friday that the conversation was "unquestionably relevant" to the special Watergate prosecution's investigation of alleged White House abuse of the Internal Revenue Service.

Mr. Nixon's chief defense counsel, James D. St. Clair, notified Judge Sirica today that Mr. Nixon "respectfully disagrees" that the portion "relates in any way to Watergate."

"He stands on his formal claim of privilege," Mr. St. Clair said in a letter to "My dear Judge Sirica" and delivered to the courthouse at midday.

Judge Sirica had issued his ruling on the tape recording in response to a request by Leon Jaworski, the special prosecutor.

In another Watergate development today, Mr. St. Clair joined with Mr. Jaworski to make a common request to the Supreme Court, asking it to unseal the court papers that describe Mr. Nixon as an unindicted co-conspirator in the Watergate cover-up.

To End Secrecy

Judge Sirica, who sealed the papers originally, had already cleared the way for their release when he lifted his protective order last Friday. He did so at the request of Mr. St. Clair, who had said that news reports of the grand jury action made further secrecy unnecessary.

The Supreme Court must act before the papers become public, however, because the documents are now at the high court pending its hearing of the battle between Mr. Nixon and Mr. Jaworski over the latest prosecution subpoena of White House tapes.

Mr. Jaworski is seeking the subpoenaed tapes—covering 64 conversations, all but one of them between President Nixon and four of his former top aides—for use in the cover-up trial.

Pretrial hearings in the cover-up case began before Judge Sirica this morning. Lawyers for all six defendants started off the hearings by asking him to dismiss the charges.

The lawyer for one of the six, John N. Mitchell, disclosed in his argument that Mr. Mitchell, the former Attorney General, was aware last summer that he would be indicted in the cover-up.

Notified of Refusal

The lawyer, William Hundley, also disclosed that Mr. Mitchell had notified the special prosecution months ago that if he were asked to testify before the grand jury about the cover-up, he would claim his constitutional right under the Fifth Amendment to refuse to answer on the ground that his answers might incriminate him.

Mr. Hundley made these disclosures in the course of arguing that Mr. Mitchell, who was the director of Mr. Nixon's 1972 re-election campaign, had been denied his due process rights when he was "compelled" to testify before the Senate Watergate committee last summer.

Studied Immunity

According to Mr. Hundley, Mr. Mitchell was at that time "a defendant in everything but name." The Watergate committee knew this, he argued, but persisted in demanding Mr. Mitchell's appearance at its televised hearings. Thus, he argued, the committee gave Mr. Mitchell only two alternatives—to take the Fifth Amendment before a national audience or to testify and thereby give away his defense to the cover-up charges that were ultimately to be brought against him.

Mr. Hundley said he had "explored" the possibility of getting immunity for Mr. Mitchell in return for his testimony and that he had also "explored" the possibility of having his client testify in secret rather than in the public sessions.

But, he said, "no way was John Mitchell going to get immunity, secret sessions." The committee, he maintained, wanted Mr. Mitchell as a "star."

Mr. Hundley's argument, basically, was that the committee had in effect forced Mr. Mitchell to testify and that any trial in the wake of that forced testimony would be a violation of his due process rights.

Calls Indictment Improper

Richard Ben-Veniste, the assistant special prosecutor in charge of the Watergate unit of the prosecution force, replied that Mr. Mitchell had not in fact been forced to testify before the committee.

Mr. Ben-Veniste quoted from a letter that Mr. Hundley wrote to the committee saying that Mr. Mitchell would testify, and saying that Mr. Mitchell, like Mr. Nixon, wanted the truth about Watergate to come out.

Lawyers for the other defendants raised a number of other points in arguing for dismissal. John M. Bray, representing Gordon C. Strachan,

said that his client indictment was improper in view of the immunity that was granted him in return for his testimony before a grand jury and before the Senate Watergate committee.

John J. Wilson, lawyer for H. R. Haldeman, the former Presidential assistant, argued that the grand jury that returned the indictment was not authorized to do so because the Congressional action that extended its life was improper.

Jacob Stein, representing Kenneth W. Parkinson, former counsel of the committee for the Re-election of the President, said he was resting on his written request for a dismissal. But lawyers for the remaining defendants—Thomas Greene, for Robert Mardian, and Andrew C. Hall, for John D. Ehrlichman—also argued orally, summing up written motions already filed.

The hearings resume tomorrow.

Only the First Part

The Presidential conversation involved in the appeal that Mr. Nixon announced today is a portion of one of the nine conversations covered by the first prosecution subpoena of White House tapes. It is the second segment of a conversation help on Sept. 15, 1972, between Mr. Nixon, Mr. Haldeman, and John W. Dean 3d, Mr. Nixon's counsel then.

Mr. Nixon, is complying with this subpoena last fall, has already turned over the tape of the conversation to the court. However, he claimed executive privilege with regard to the

second part of the conversation, and Judge Sirica sustained the claim, giving the grand jury only the first portion.

Mr. Jaworski recently asked Judge Sirica to reconsider. He said he had evidence of an attempt by the White House to misuse the Internal Revenue Service by having it proceed with an improper inquiry into Lawrence F. O'Brien, the former Democratic National Chairman.

According to Mr. Jaworski, this attempt was apparently discussed in the latter portion of the Sept. 15 conversation.

Judge Sirica announced Friday that he had listened to the tape again and that it was "unquestionably relevant" to the prosecutor's inquiry.

Under the Court of Appeals ruling in the original tapes subpoena case, the President may appeal such rulings by the courts by the courts on his "particularized" claims of privilege. Mr. St. Clair asked for a stay of five days pending appeal, and the judge's law clerk, D. Todd Christofferson, said the stay would probably be ordered as a matter of form.