Administration of Richard Nixon

PRESIDENTIAL DOCUMENTS

Week Ending Saturday, July 28, 1973

Recordings of Presidential Conversations

The President's Letter to Senator Sam J. Ervin, Jr., Chairman, Senate Select Committee on Presidential Campaign Activities. July 23, 1973

Dear Mr. Chairman:

I have considered your request that I permit the Committee to have access to tapes of my private conversations with a number of my closest aides. I have concluded that the principles stated in my letter to you of July 6th preclude me from complying with that request, and I shall not do so. Indeed the special nature of tape recordings of private conversations is such that these principles apply with even greater force to tapes of private Presidential conversations than to Presidential papers.

If release of the tapes would settle the central questions at issue in the Watergate inquiries, then their disclosure might serve a substantial public interest that would have to be weighed very heavily against the negatives of disclosure.

The fact is that the tapes would not finally settle the central issues before your Committee. Before their existence became publicly known, I personally listened to a number of them. The tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth. However, as in any verbatim recording of informal conversations, they contain comments that persons with different perspectives and motivations would inevitably interpret in different ways. Furthermore, there are inseparably interspersed in them a great many very frank and very private comments, on a wide range of issues and individuals, wholly extraneous to the Committee's inquiry. Even more important, the tapes could be accurately understood or interpreted only by reference to an enormous number of other documents and tapes, so that to open them at all would begin an endless process of disclosure and explanation of private Presidential records totally unrelated to Watergate, and highly confidential in nature. They are the clearest possible example of why Presidential documents must be kept confidential.

Accordingly, the tapes, which have been under my sole personal control, will remain so. None has been transcribed or made public and none will be.

On May 22nd I described my knowledge of the Watergate matter and its aftermath in categorical and unambiguous terms that I know to be true. In my letter of July 6th, I informed you that at an appropriate time during the hearings I intend to address publicly the subjects you are considering. I still intend to do so and in a way that preserves the Constitutional principle of separation of powers, and thus serves the interests not just of the Congress or of the President, but of the people.

Sincerely,

RICHARD NIXON

[Honorable Sam J. Ervin, Jr., Chairman, Select Committee on Presidential Campaign Activities, United States Senate, Washington, D.C. 20510]

Recordings of Presidential Conversations

Letter to Special Prosecutor Archibald Cox From Charles Alan Wright, Special Consultant to the Counsel to the President. July 23, 1973

Dear Mr. Cox:

Mr. Buzhardt has asked that I respond to your letters to him of June 20th, July 18th and July 20th in which you make certain requests with regard to tape recordings of or about conversations between the President and various members of the White House staff and others.

The President is today refusing to make available to the Senate Committee material of a similar nature. Enclosed is a copy of his letter of this date to Senator Ervin stating his position about the tapes. I am instructed by the

President to inform you that it will not be possible to make available to you the recordings that you have requested.

In general the reasons for the President's decision are the same as those that underlie his response to the Senate Committee. But in your letter of July 18th you state that furnishing the tapes in aid of an investigation into charges of criminal conspiracy raises none of the separation-of-powers issues that are raised by the request from the Senate Committee. You indicated a similar position when we met on June 6th. At that time you suggested that questions of separation-of-powers did not arise since you were within the Executive Branch, though, as I recall, you then added that your position is a little hard to describe since, in your view, you are not subject to direction by the President or the Attorney General.

I note that in your subsequent letters, and particularly that of July 18th in which you argue that the separation-of-powers argument is inapplicable, there is no suggestion that you are a part of the Executive Branch. Indeed, if you are an ordinary prosecutor, and thus a part of the Executive Branch as well as an officer of the court, you are subject to the instructions of your superiors, up to and including the President, and can have access to Presidential papers only as and if the President sees fit to make them available to you.

But quite aside from the consideration just stated, there is an even more fundamental reason why separation-of-powers considerations are fully as applicable to a request from you as to one from the Senate Committee. It is clear, and your letter of the 18th specifically states, that the reason you are seeking these tapes is to use some or all of them before grand juries or in criminal trials. Production of them to you would lead to their use in the courts, and questions of separation-of-powers are in the forefront when the most confidential documents of the Presidency are sought for use in the Judicial Branch. Indeed most of the limited case law on executive privilege has arisen in the context of attempts to obtain executive documents for use in the courts.

The successful prosecution of those who have broken the laws is a very important national interest, but it has long been recognized that there are other national interests that, in specific cases, may override this. When Congress provided in the Jencks Act, 18 U.S.C. § 3500(d), that the United States may choose to refuse to disclose material that the court has ordered produced, even though in some instances this will lead to a mistrial and to termination of the prosecution, it was merely recognizing that, as the courts had repeatedly held, there are circumstances in which other legitimate national interests requiring that documents be kept confidential outweigh the interest in punishing a particular malefactor. Similarly in civil litigation the United States may feel obliged to withhold relevant information, because of more compelling governmental interests, even though this may cause it to lose a suit it might otherwise have won. The power of the President to withhold confidential documents that would otherwise be material in the courts comes from "an inherent executive power which is protected in the constitutional system of separation of power." *United States* v. *Reynolds,* 345 U.S. 1, 6 n. 9 (1953).

In your letter to Mr. Buzhardt of July 10th you quoted Mr. Richardson's statement to the Senate Judiciary Committee in which he concluded that it was the President's intention "that whatever should be made public in terms of the public interest in these investigations should be disclosed. . . ."

That is, of course, the President's view, but it is for the President, and only for the President, to weigh whether the incremental advantage that these tapes would give you in criminal proceedings justifies the serious and lasting hurt that disclosure of them would do to the confidentiality that is imperative to the effective functioning of the Presidency. In this instance the President has concluded that it would not serve the public interest to make the tapes available.

Sincerely,

CHARLES ALAN WRIGHT

[Honorable Archibald Cox, Special Prosecutor, Watergate Special Prosecution Force, 1425 K Street, N.W., Washington, D.C. 20005]

NOTE: For the President's letter to Senator Ervin, see the preceding item.

International Coffee Agreement

The President's Message to the Senate Transmitting for Advice and Consent to Acceptance the International Coffee Agreement 1968 as Extended. July 23, 1973

To the Senate of the United States:

I am transmitting herewith, for the advice and consent of the Senate to acceptance, the International Coffee Agreement 1968 as Extended. This modified and extended agreement, which was adopted by the International Coffee Council in its Resolution No. 264 of April 14, 1973, deletes all operative economic provisions but preserves the structure of the International Coffee Organization through September 30, 1975.

The International Coffee Agreement 1968 as modified and extended will continue the decade-long cooperation on world trade in the most important agricultural commodity export of the developing world. But, in view of the changed coffee market outlook from one of surplus to one of tight supply, the extended agreement no longer contains provisions for intervening in the market. It will keep the International Coffee Organization alive as a forum for studying and discussing the world coffee economy, for monitoring coffee developments and, when the members deem it appropriate, for negotiating a new coffee agreement to serve the interests of coffee producers and consumers.