The Senate Subpoena and the Nixon Tapes

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A SENATE INVESTIGATIVE panel has subpoenaed former President Nixon's tapes and papers on some covert operations; the White House has refused to comply. From that outline, the case sounds all too reminiscent of the great legislative-executive confrontations of the Nixon years. But that is precisely the wrong way to interpret the Ford administration's refusal to give the Senate intelligence committee Mr. Nixon's records on CIA covert operations in Chile and on the 1970 Huston plan and related domestic intelligence matters. For it is not at all demonstrable that presidential counsel Philip W. Buchen and the General Services Administration are deliberately trying to obstruct the work of Sen. Frank Church's panel. They have not, for example, invoked "executive privilege" or "national security" as their reason for not furnishing this material. Rather, they argue—quite reasonably, it seems to us—that, while the Nixon materials are indeed in their custody, access to those papers and tapes is governed by federal court order as a result of the pending litigation over the ownership and control of Mr. Nixon's presidential files. Thus the committee, the White House maintains, should take its request to the court.

The administration is standing on firm legal ground. The court has placed the Nixon records in escrow, in effect, until the many-sided litigation has run its course. The order controlling access to the materials does not specify whether they may be made available to congressional committees without Mr. Nixon's consent. It would be improper for Mr. Buchen and GSA, who are parties to the litigation, to make independent judgments on this point, just as it would be wrong for them to give up the materials to Mr. Nixon, or for that matter to destroy anything. Indeed, the purpose of the court order—as of the act passed by Congress last year—is to forestall any such exercises of discretion by the White House, and to impose legal controls over the voluminous record of the Nixon years.

This does not mean that the Church committee should be denied important information about covert operations and domestic intelligence that may be in the Nixon files. The point is simply that this request, unlike others made by the intelligence panel recently, cannot be settled by negotiations between the White House and the senators. The court, however, could clarify or modify its order so as to give the committee access to relevant materials under appropriate controls. Though a large volume of information would have to be searched, the methods devised for dealing with the Special Prosecutor's requests suggest that this problem can be surmounted if all parties cooperate.

Rather than heckling the White House, the Church committee should go directly to the court. The administration should join in a request to clarify the order, in keeping with its general attitude of cooperation with the Senate inquiry. By this route the procedural barriers could be surmounted with a minimum of fuss, thus dispelling any impression that a clash between Congress and the White House, in any way comparable to the confrontations in the Nixon days, has developed in this case.