

Panel Staff Challenges Nixon

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The staff of the Senate Select Watergate committee has challenged President Nixon's position that he has the constitutional authority to withhold White House notes and documents that the committee has said it needs for its investigation.

A memorandum prepared by lawyers for the committee suggests that Mr. Nixon's arguments in support of his position are a rehash of claims the President had made on executive privilege. On May 22, Mr. Nixon backed off from his earlier stand on executive privilege and agreed to permit his aides to testify before the Watergate committee.

"Perhaps because he has already waived executive privilege as to testimony of his staff, the President ostensibly bases his refusal to produce presidential papers on the doctrine of separation of powers, but his arguments sound in executive privilege terms," the staff memorandum says.

The Senate Watergate committee is to meet today to discuss whether or not it should subpoena the documents if President Nixon continues in his refusal to turn them over to the committee voluntarily.

Committee staff members suggest that the committee would not hold a vote to subpoena the papers during today's meeting, as reported earlier, but rather would wait for some change in the White House position, and thus avoid a confrontation that would have to be resolved in the courts.

President Nixon on Saturday sent a letter to the committee Chairman Sam Ervin (D-N.C.) stating that under no circumstance would he testify before the panel or open presidential papers for committee inspection.

"No President could function if the private papers of his office, prepared by his personal staff, were open to public scrutiny. Formulation of sound public policy re-

quires that the President and his personal staff be able to communicate among themselves in complete candor, and that their tentative judgments, their exploration of alternatives and their frank comments on issues and personalities at home and abroad remain confiden-

tial," the President's letter said.

The Watergate committee staff noted in its memorandum made available yesterday that legal scholars disagree as to whether or not there is any legal basis for executive privilege.

Even if there was a legal foundation for the privilege, the Watergate staff asserted, it would not apply to the committee request for papers since the doctrine may not be used a device to conceal information relating to the commission of a crime.

Moreover, the staff legal memorandum said, the President, by permitting his aides to testify, has waived his rights to claim privilege for his papers.

"Mr. Nixon has 'opened the door' to evidence and it is now difficult for him to argue that presidential documents regarding Watergate may be withheld," the memorandum said.

"There is, in short, no reason to draw a distinction between documentary and testimonial evidence and waiver of rights as to the former should also result in waiver as to the latter."

Although the Watergate committee has formally requested that the White House supply all documents in its possession that may be relevant to the Watergate investigation, the Senate panel expressed particular interest in specific papers.

Those papers include: daily news summaries prepared for the President in which Mr. Nixon purportedly wrote by hand notations on the margins to White House aides regarding Watergate news

accounts; notes purportedly taken by former White House chief of staff H. R. (Bob) Haldeman during alleged discussions of Watergate with former presidential counsel John W. Dean III; briefing papers for presidential news conferences, and all Watergate related papers from the files of Haldeman, Dean and former White House domestic affairs adviser John D. Ehrlichman.

The Watergate committee staff, in asserting its right to the presidential papers, noted nevertheless that documents could be selected and excised by the White House so that they included

only the matters within the scope of the Senate committee's investigation.

That same theme of more narrowly defining what the committee wants was sounded by Sen. Ervin at the committee's hearing yesterday in extended questioning of former Attorney General John N. Mitchell.

Ervin said he believed that executive privilege extended only to secret confidential communications between the President and his aides that are for the purpose of assisting the President in performing "in a lawful manner" one of his constitutional or legal duties.

"Since there is nothing in the Constitution requiring the President to run for reelection, I don't think that executive privilege covers any political activities whatsoever . . . I also take the position that executive privilege does not entitle a President to have kept secret information concerning criminal activities of his aides or anybody else because there is nothing in the Constitution that authorizes or makes it the official duty of a President to have anything to do with criminal activities."

The former attorney general agreed.

Rufus L. Edmisten, deputy counsel to the Watergate Committee, described the comments by Ervin and other members of the committee on the opening of the papers to the committee and having the President himself give his version of events as "feelers"—aimed at achieving some agreement between

the President and the committee.

"You look for signs (from the White House)," Edmisten said. "Like Noah in the ark looking for a dove and an olive branch."

Edmisten said in response to questions that, so far, he'd "seen no dove, no olive branch."
