

Nixon Fights Committee Bid for Tapes

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WASHINGTON, Sept. 24 —

President Nixon's lawyers asked the United States District Court here today to reject the request for a summary judgment that would force Mr. Nixon to turn over to the Senate Watergate committee tape recordings made in his office.

In a 71-page motion filed with Chief Judge John J. Sirica, Mr. Nixon's lawyers argued that the court had no jurisdiction in the matter, that the committee, was exceeding constitutional limits and its own mandate in requesting the tapes and that the President had an unquestioned power to give information to the Congress or to withhold it.

Based on the foundation that the President has a right of "executive privilege" to withhold information and that it is part of his exclusive power, the brief argues:

"The court is asked to make an initial policy determination that the President has improperly or mistakenly invoked executive privilege. Such a determination by the court is constitutionally impermissible and violates the most basic tenets of the separation of powers.

"Moreover it is a determination beyond judicial abilities since the court simply cannot substitute its judgment for that of the President."

Disclose at Hearings

The Senate committee, headed by Senator Sam J. Ervin Jr., Democrat of North Carolina, went to the courts on July 23 seeking a declaratory judgment to compel the President to turn over the tape recordings. The existence of the recordings, which were made in the Presidential offices, came to light through the testimony of a former Presidential aide during the Watergate hearings.

When the President replied by refusing the tapes, the committee filed a motion for summary judgment. Today's brief was in answer to that motion.

The brief stated that Presidential cooperation in such matters had traditionally been voluntary but that the committee had "violated this time-honored tradition" when it issued two subpoenas.

"Now the committee urges this court to violate another

time-honored constitutional tradition—that is, to hold that the President can be subjected to compulsory process by the judiciary," the brief said.

'Direct Clash' Cited

The brief argued that, "the court is being asked to resolve a direct clash of power between two branches of government. To resolve the confrontation the court must necessarily declare that one power is greater than its counterpart and thus violate the very essence of separation of powers among the co-equal branches."

It continued, "The Presidential decision to invoke executive privilege is by definition a political decision ... it involves ... a complex blend of policy, perspective and knowledge uniquely the province of the executive branch. Neither the court nor Congress can look behind this political decision already made by the President."

The brief asserted that the Constitution and court rules allowed the Federal bench to act only when there was a carefully defined case or controversy before it and that the Watergate committee's request failed to meet the definitions.

Mandate at Issue

The brief attacked the committee for exceeding "its legislative authority, both under the Constitution and under the resolution setting up the committee."

It stated that the Senate wanted the tapes only to resolve conflicts in testimony among witnesses who have appeared before it.

"The committee's mandate was to identify illegal, improper or unethical activities and recommend corrective legislation, not to resolve the conflicts in evidence and adjudicate questions of guilt or innocence," the brief said.

"Of course the Senate is authorized to investigate campaign practices to see if legislation is needed in that area.

"But every time a member of the committee speaks of the importance of 'who said what to whom' or 'what the President knew and when,' and every time the committee's brief writers harp, as they do so repeatedly on 'the President's own possible criminality,' they make it manifest that they are in-

terested in here is 'to expose or the sake of exposure.'"

In its conclusion, the brief noted the "related litigation" by Archibald Cox, the special prosecutor, in his effort to secure specific tapes for use in criminal investigations into the Watergate affair.

In the Cox case, Judge Sirica ruled that the President should turn over the tapes to the judge so he could determine which portions are relevant to the criminal investigations and which legitimately fall within the President's need for confidentiality.

The brief submitted today argues that the judge's ruling, which is now under appeal, could not stand up because it was an infringement of Presidential power.