

Excerpts From Bid To Get Nixon Tapes

Special to The New York Times

WASHINGTON, Aug. 9 — Following are excerpts from the text of the complaint filed by the Senate Watergate committee in Federal District Court seeking to compel President Nixon to make available recorded tapes of White House conversations:

This action seeks a declaratory judgment, a mandatory injunction and a writ of mandamus to direct Richard M. Nixon, individually and as President of the United States, to comply with two subpoenas duces tecum, duly served upon him by the Senate Select Committee on Presidential Campaign activities pursuant to its authority under Senate Resolution 60, 93d Congress, 1st session (1973).

This action arises under Article I of the Constitution of the United States, which vests investigative and legislative powers in the Congress of the United States, and under Article II of the Constitution of the United States, which vests executive powers in the President of the United States.

JURISDICTION

The jurisdiction of this court rests on 28 U.S.C. Sec. 1331, granting to this court "original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States." This case arises under the Constitution of the United States. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

The jurisdiction of this court further rests on 28 U.S.C. Sec. 1345, granting to this court "original jurisdiction of all civil actions, suits or proceedings commenced by the United States" and on Article III of the Constitution of the United States, vesting in this court jurisdiction over "controversies to which the United States [is] a party." The plaintiff select committee is authorized to bring this suit "on behalf of and in the name of the United States" by virtue of S. Res. 262.

The jurisdiction of this court further rests of 28 U.S.C. Sec. 1361, granting to this court "original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff."

The jurisdiction of this court further rests on the Administrative Procedure Act, 5 U.S.C. Sec. 701-706, giving this court jurisdiction to remedy any "legal wrong" suffered by the plaintiffs as the result of Presidential action for which no adequate review proceeding is otherwise available.

In order to aid and supplement the exercise of this court's jurisdiction under the foregoing sections of the United States Code and the United States Constitution, the plaintiffs invoke the authority of this court to render declaratory judgments and grant other relief under 28 U.S.C. Secs. 2200 and 2202, and to issue "all writs necessary or appropriate in aid of [its] jurisdiction and agreeable to the usages and principles of law" under 28 U.S.C. Sec. 1651.

STATEMENT OF FACTS

By virtue of Sec. 3 (A) (5) of S. Res. 60, the plaintiff select Committee is empowered "to require by subpoena or order any department, agency, officer, or employee of the executive branch of the United States Government, or any private person, firm, or corporation, or any officer or former officer or employee of any political committee or organization to produce for its consideration or for use as evidence in its investigation and study any books, checks, canceled checks, correspondence, communications, documents, papers, physical evidence, records, recordings, tapes, or materials relating to any of the matters or questions it is authorized to investigate and study which they or any of them may have in their custody or under their control."

Pursuant to this section, the plaintiff select committee, on July 23, 1973, addressed two subpoenas duces tecum, signed by its chairman, to "President Richard M. Nixon, the White House, Washington, D.C.," which sought specified material within the defendant President's sole possession, custody or control. Both subpoenas were duly served on that date.

Both of the aforesaid subpoenas were returnable on July 26, 1973, at 10 A.M. at the Caucus Room, Old Senate Office Building. Neither on that date nor on any other date has the defendant President complied with the subpoenas or otherwise made available to the select committee the materials demanded. The defendant President's refusal to comply with the subpoenas was announced in a letter on July 25, 1973, which was addressed to Senator Sam J. Ervin Jr., chairman of the select committee, and received by him on July 26, 1973.

In justification of his refusal to comply with the subpoenas, the defendant President relied in part on reasons stated in letters dated July 6 and July 23, 1973, from him to the chairman. Thus the defendant President did willfully and intentionally refuse to comply with either subpoena, in whole or in part.

No Action or Denial

At no time has the defendant President moved in this court or any other court to quash, modify or narrow the scope of either subpoena.

At no time has the defendant President denied that he has the sole possession, custody and control of all the materials requested in the aforesaid subpoenas or denied that he is capable of submitting those materials to the select committee in compliance herewith.

In a letter dated July 23, 1973, to the chairman of the select committee, the defendant President stated that "the tapes, which have been under my sole personal control, will remain so."

The electronic tapes and other materials sought by the aforesaid subpoenas, which relate to alleged criminal acts in connection with the Presidential campaign and election of 1972, are relevant to the subject matters of the select committee's investigation pursuant to S. Res. 60.

With respect to the tapes, the defendant President, in his letter dated July 23, 1973, to the chairman of the select

committee has conceded the relevance of those tapes to the select committee's investigation, stating:

"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."

Moreover, sworn testimony of John Wesley Dean 3d and H. R. Haldeman before the select committee has demonstrated that the subject matter of the five specified conversations falls within the investigatory jurisdiction of the select committee.

Furthermore, the defendant President, acting through his special counsel, has revealed alleged facts demonstrating that the subject matter of these conversations is within the select committee's jurisdiction.

CAUSE OF ACTION

The defendant President's refusal and failure to make available the electronic tapes and other materials in response to the select committee's lawfully issued subpoenas are unlawful, unwarranted and in breach of his legal duty to respond to and to comply with such subpoenas.

The defendant President's refusal and failure to make available said electronic tapes and other materials cannot be excused or justified by resort to any Presidential power, prerogative or privilege.

If there be any doctrine of

Presidential power, prerogative or privilege that protects materials in the possession, custody or control of the President, such a doctrine does not extend to the protection of materials relating to alleged criminal acts and thus cannot justify the refusal of the defendant President to respond to or comply with the two subpoenas.

If there be any Presidential power, prerogative or privilege that renders confidential and protects materials in the possession, custody or control of the President, that confidentiality has been breached and the alleged power, prerogatives or privilege has been waived in regard to certain, if not all, of the materials sought by the select committee's subpoenas because the defendant President has himself partially revealed the contents of these materials and has permitted his agents and subordinates, both present and past, to reveal portions or versions of these materials. The breach of confidentiality and the waiver of any alleged Presidential power, prerogative, or privilege are the result of the following actions (among other):

(A) The defendant President's statement of May 22, 1973, that:

"Executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation, including the Watergate affair and the alleged cover-up."

(B) The communications by the defendant President and his agents asserting that the defendant President would not invoke executive privilege or the attorney client privilege in regard to the testimony of certain present and former aides before the select committee.

(C) The communications by the defendant President's counsel to the select committee purporting the summarize

certain Presidential meetings and telephone conversations with John Wesley Dean 3d.

(D) The defendant President's action in turning over certain of the tapes now under subpoena to H. R. Haldeman, a private citizen, who was instructed by the defendant President that he could listen to them.

The investigation of the plaintiff select committee is a continuing one, for which the subpoenaed electronic tapes and other materials are vitally and immediately needed if the select committee's mandate and responsibilities under S. Res. 60 are to be fulfilled.

The defendant President's continuing refusal and failure to comply with the select committee's lawful subpoenas are irreparably injuring the work of the select committee and the interests of the United States on whose behalf and in whose name the select committee sues.

There is no remedy at law adequate and appropriate in the present circumstances to the resolution of its controversy, which is of widespread public interest and concern, and relief through injunction and/or mandamus is therefore in order.

MEMORANDUM IN SUPPORT OF MOTION TO REDUCE TIME FOR ANSWER OR RESPONSE

Resolution of the controversy that is the subject of this lawsuit is undisputedly of great moment.

We submit to the court that the parameters of the Watergate affair must be promptly determined so that the uncertainty and divisiveness that is abroad in the nation can be ended. The court, in the present motion, is asked to quicken that result.

The Federal rules do not specifically provide for reducing the time to answer, but there appears no doubt that this court can do so. As Professor Charles Alan Wright, now the President's special counsel, has written in his treatise on Federal procedure:

"Although the Federal rules do not expressly give the court power to shorten the period, it probably has inherent power to do so in the face of special circumstances." Wright and Miller, Federal Practice and Procedure, Sec. 1346, at 529-30 (1968).

In addition to the national need for prompt determination of the present controversy, there are other considerations supporting the present request. The 60-day rule was propounded in the recognition that it takes a normal complaint against the Government considerable time to sift through appropriate channels. In the usual circumstances, 60 days is needed to inform concerned officials of the lawsuit and allow them to make determinations as to an appropriate response.

These factors are not relevant here. This suit runs directly against the President. His own counsel have been served with the complaint and, apparently, will personally handle the case. The President and his counsel have been aware that this litigation was imminent since July 26, 1973, when the select committee in public session voted its investigation. Surely, the President's counsel are well advanced in their preparation for this case and can, without undue difficulty, answer or respond to the present complaint within 10 days.

In this regard, we observe that the President and his counsel have already responded with lengthy papers to the show cause order issued by this court upon petition of the special prosecutor who seeks similar materials in connection with proceedings before the grand jury. The issues in the show cause proceeding and the present one are similar (although not identical) and the President's show cause papers demonstrate that his counsel are fully conversant with the basic principles they intend to urge in the case at bar.

SENATE SELECT COMMITTEE ON PRESIDENTIAL
CAMPAIGN ACTIVITIES, suing in its own
name and in the name of the UNITED
STATES,

and

SAM J. ERVIN, JR.; HOWARD H. BAKER, JR.;
HERMAN E. TALMADGE; DANIEL K. INOUE;
JOSEPH M. MONTÓYA; EDWARD J. GURNEY;
and LOWELL P. WEICKER, JR., as United
States Senators who are members of the
Senate Select Committee on Presidential
Campaign Activities.

United States Senate
Washington, D.C. 20510

Plaintiffs

v.

RICHARD M. NIXON, individually and as
President of the United States.

The White House
Washington, D.C. 20500

Defendant

Associated Press

The opening page of the document filed by the Senate Watergate committee in U.S. District Court, Washington. It asks that the President be ordered to turn over to the committee tapes of conversations and other records.