

Self-Protection Seen in Nixon Tapes Stand

By George Lardner Jr. 10/5/73
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The chief counsel of the Senate Watergate committee accused President Nixon yesterday of hiding behind the doctrine of executive privilege as "a shield for self-protection."

Committee counsel Samuel Dash charged in Federal court here that the real issue in the battle over Mr. Nixon's secret Watergate tapes is the question of the President's own possible criminality. In those circumstances, he maintained, executive privilege cannot properly be invoked.

"We have no denial from the President's counsel that a prima facie case has been made of presidential involvement" in the Watergate cover-up, Dash emphasized at a hearing before U.S. District Court Judge John J. Sirica.

"The President is still a citizen and as a citizen, he comes under the law."

Mr. Nixon's chief courtroom lawyer, Charles Alan Wright, offered no final rebuttal on the point. But he argued earlier in the hearing that Dash's contentions simply underscored White House protests that the purpose of the Senate committee's court suit for the tapes is "criminal, not legislative."

"That sounds to me like the traditional work of grand juries," Wright said. "A congressional committee has no power to expose for the sake of exposure."

Wright conceded that Mr. Nixon's refusal to give up the recordings is "a demonstrably unpopular position." But he said it is the duty of every President to resist encroachments on the office.

The hearing came while the U.S. Court of Appeals continued to wrestle privately with the question of whether even the Watergate grand jury is entitled to the recordings.

The Court of Appeals is expected to hand down a decision on that case shortly. Meanwhile, the Senate committee's lawsuit, which is several steps behind the one filed by Watergate Special Prosecutor Archibald Cox on the grand jury's behalf, came up for the hearing before Judge Sirica.

Dash insisted that the five tapes the committee is seeking—all involving conversations between Mr. Nixon and former White House counsel John W. Dean III—are crucial to the Senate mandate for "a really full report to safeguard the electoral process in this country."

In the light of the Water-

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gate scandal, Dash said: "If it were to be established that the criminality of the President existed, it would call for drastic legislation."

He gave no examples in the courtroom, but he told newsmen later that the Watergate committee's recommendations might well include a constitutional amendment "for a one-term President" — to prevent an incumbent from misusing his powers to insure his reelection.

Judge Sirica gave no hint of when he might make a decision on the Senate suit. He

questioned Wright closely on Dash's claim that the President has already waived any privilege for the tapes by permitting Dean and other White House aides to testify about the disputed conversations at length.

"This is a very interesting and important question, Mr. Wright," Sirica said. "You know it and everyone else knows it."

Wright said the tapes con-

tain confidential discussions of many other issues besides Watergate. And he contended that the President's decision to permit "some disclosure" did not mean that he had to disclose everything.

Dash, in turn, found himself peppered with questions by Sirica about whether the

courts could assert jurisdiction over the Senate suit.

Wright maintained that the judiciary has no business getting into the controversy between the executive and legislative branches. "To me," the President's lawyer said, "this is quintessentially a political question" beyond the province of the courts.

Dash contended that it was simply a "political case," of the kind that the judiciary has seemed increasingly willing to settle in recent years.

But Judge Sirica interrupted him with repeated questions about public statements by some members of the Senate Watergate committee itself—such as Sen. Daniel K. Inouye (D-Hawaii) and Edward J. Gurney (R-Fla.) — who have said the tapes are not essential to the committee's work.

Dash replied that the committee unanimously voted last July to subpoena the five tapes of conversations between Mr. Nixon and Dean, who has accused the President of complicity in the Watergate cover-up.



By James K. W. Atherton—The Washington Post

The photographer lying down on the job isn't, really, he's trying to come up with an interesting hearings shot.