Senators Denied Tapes

Sirica Says Court Lacks Jurisdiction

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U.S. District Court Judge John J. Sirica yesterday rejected the Senate Watergate committee's demands for President Nixon's secret Watergate tapes.

Acting solely on jurisdictional grounds, Sirica said the courts had no power to entertain a congressional civil lawsuit against the President.

"The court has here been requested to invoke a jurisdiction which only Congress can grant, but which Congress has heretofore withheld," Sirica ruled. "... Truly, to paraphrase the scripture, the Congress giveth and the Congress taketh away."

Sirica indicated that a contempt proceeding against the President might be permissible, either in Congress or in the courts. But he pointed out that the Senate committee had deliberately avoided that course as "inappropriate and unseemly" and had sought a declaratory judgment instead.

The 18-page decision marked the first legal victory for Mr. Nixon in his double-barreled efforts to keep the tapes from both the committee and Watergate Special Prosecutor Archibald Cox.

White House deputy press secretary Gerald L. Warren said, "We are pleased with the result."

By contrast, the White House has yet to comment on last week's 5 to 2 ruling by the U.S. Circuit Court of Appeals here upholding the Watergate grand jury's right to those portions of the tapes relevant to its criminal investigation of the Watergate scandal.

The White House has until Friday to take that controversy to the Supreme Court.

Judge Sirica had ordered Mr. Nixon in August to surrender nine of the disputed recordings so that Sirica could inspect them privately and decide what segments to turn over to Cox and the grand jury.

But the judge said yesterday that the Senate lawsuit poses far different problems.

In the case brought by Cox on the grand jury's behalf, Sirica said, "it was there ruled that compliance with the subpoena could be judicially required and that the court was empowered to determine the applicability of any privilege" claimed by the President.

"This present case, by contrast, is a civil complaint," the judge pointed out, "and in such actions particularly, jurisdiction is a threshhold issue . . . The presumption in each instance is that a federal court lacks jurisdiction until it can be shown that a specific grant of jurisdiction applies."

This, he held, is what the Senate committee had failed to do.

Sen. Sam J. Ervin Jr. (D-N.C.), the committee chair-

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man, was said to be studying the decision, but a committee aide predicted that it would almost certainly be appealed to the appeals court here. He discounted any thought of attempting to hold the President in contempt, and said the committee had rejected that strategy before on the grounds that it would cause a furor on the Senate floor.

Instead, the committee sued Mr. Nixon after he refused to comply with its subpoenas for recordings of five of his conversations with former White House counsel John W. Dean III, plus other White House documents.

Some of the committee's legal advisers had warned that the bid for a declaratory judgment against the President might be tossed out on jurisdictional grounds, but the committee voted unanimously on July 26 to file the suit.

Lawyers for the committee had cited four statutes in claiming a right to sue the President, but Sirica found all of them wanting.

"No jurisdictional statute known to the court, including the four which plaintiffs name," he said, "warrants an assumption of jurisdiction, and the court is therefore left with no alternative here but to dismiss the action."

Senate Watergate lawyers had argued that the committee could act in the name of the United States, but Judge Sirica said this was a right reserved to the Attorney General and the Department of Justice.

The committee had also maintained that Mr. Nixon has "a legal duty to respond to and to comply with" its subpoenas, but Sirica said a civil suit to enforce that duty could be sustained only if the duty was a "plainly defined and peremptory" obligation.

"Regardless of whatever duty the President may owe the select committee as a citizen with evidence in his possession," Sirica held, "it is not 'free from doubt' that his official responsibilities require compliance. There is nothing in the Constitution, for example, that makes it an official duty of Presidents to comply with congressional subpoenas."

Other shortcomings of the Senate suit, Sirica said, included its failure to set out a controversy worth more than $10,000. The judge called this "a requirement imposed by Congress which the (federal) courts may not dispense with at their pleasure."

Intrinsically, Sirica said, the tapes and other documents do not approach a $10,000 value. Despite attempts by the Senate committee to count indirect costs, such as increased expenses of investigation if the tapes are not obtained, the judge said he could not take those into consideration.

Aside from a direct appeal to the appellate court here, Sirica's decision left the committee with only two courses open to it under present law.

A contempt proceeding against the President, he indicated, could be pressed in the courts under a law making any willful failure to produce papers "upon any matter under inquiry by either House" a misdemeanor.

The committee, Sirica said, could also resort to "congressional common law powers which permit the sergeant at arms to forcibly secure attendance of the offending party."

The judge suggested that the only other remedy would be special legislation by Congress expanding the powers of the courts to entertain such lawsuits.

"Whether such jurisdiction ought to be conferred is the prerogative of the Congress," Sirica said, "but the court cannot, consistent with law and the constitutional principles that reserve to Congress the conferral of jurisdiction, validate the present course."