

Nixon Won't Yield Tapes, Documents

Could Set Stage for Legal Fight

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By Lou Cannon

Washington Post Staff Writer

SAN CLEMENTE, Jan. 4

—President Nixon today defied the Senate Watergate committee's request for a broad array of tapes and documents and said that compliance with committee subpoenas "would unquestionably destroy any vestige of confidentiality of presidential communications."

"Neither the judiciary nor the Congress could survive a similar power asserted by the executive branch to rummage through their files and confidential processes," Mr. Nixon said in a letter to Committee Chairman Sam J. Ervin Jr. "Under the circumstances, I can only view your subpoena as an overt attempt to intrude into the executive to a degree that constitutes an unconstitutional usurpation of power."

The President's refusal to comply with the committee's request for nearly 500 Watergate-related tapes and documents could set the stage for a new and probably extended legal battle. Sam Dash, the Watergate committee's chief counsel, said the committee does not plan to file a lawsuit seeking the documents until U.S. District Court Judge John J. Sirica makes a new ruling on the committee's original attempt to obtain the tapes of five of Mr. Nixon's conversations with deposed

White House counsel John W. Dean III.

Sirica ruled last Oct. 17 that he did not have the jurisdiction to enforce the committee's subpoena of these tapes. The congressional response to this ruling was to pass new legislation granting the court this authority.

Dash acknowledged that the subpoenas defied by Mr. Nixon today had asked for "quite a bit," but said that every new tape and document requested had been carefully selected as relevant to the Senate investigation.

This was not the White House view.

Presidential aides, some of them clearly reflecting Mr. Nixon's personal view, have been complaining since the subpoenas were filed Dec. 19 that they are "ridiculous," too broadly drawn and part of a Senate committee "fishing expedition."

The White House has also maintained that some of the requested conversations with Secretary of State Henry A. Kissinger touch on security matters and has implied that the confidentiality of the White House communications would not be safeguarded by the committee. Presidential spokesmen have on several occasions cited the incident at a

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Georgetown cocktail party where public interest attorney William Dobrovir played portions of a tape that was in his possession.

In some respects the President's letter today returned the White House to the same ground it occupied last summer, before Sirica's ruling.

Last July 6, in a letter refusing one of the committee's first requests for White House documents, Mr. Nixon said that "formulation of sound public policy requires 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 confidential."

The President quoted from his own letter today and said that he anticipated that even quite limited disclosures of presidential recordings and documents "would inevitably result in the attrition, and the eventual destruction of the indispensable principle of confidentiality of presidential papers."

Privately, White House officials acknowledge that Mr. Nixon's long refusal last year to comply with requests from either the committee or the Watergate special prosecutor contributed to his steady decline in public opinion.

This time, however, they believe that the President's refusal to comply will be more politically acceptable because of the wide-ranging extent of

the Senate committee requests.

Nevertheless, Mr. Nixon in his letter to Ervin expressed awareness that his latest defiance may also be interpreted as a continuing cover-up.

"I recognize that in the current environment there may be some attempt to distort my position as only an effort to withhold information, but I take this position to protect the office of the President against incursions by another branch which I believe . . . is of utmost constitutional importance," Mr. Nixon said.

"Accordingly, in order to protect the fundamental structure of our government of three separate but equal branches, I must and do respectfully decline to produce the materials called for in your subpoenas," the letter concluded.

In response to Mr. Nixon's action, Ervin said, "There's nothing in the Constitution of the United States that gives the President the power to withhold information concerning political activities or information concerning illegal activities."

In a statement issued by his Washington office, Ervin said:

"All the committee is desirous of obtaining is evidence in the possession of the White House which tends to show political activities on the part of the President and his aides and on the part of the Committee to Re-Elect the President, and information in the possession of the President of criminal violations on the part of his aides . . ."

White House officials had been suggesting for days that the President did not intend to comply with the committee subpoenas. However, the President waited until the last minute to issue his letter, with the result that the 10 a.m. (EST) deadline for answering the subpoenas had expired when legislative liaison William Timmons delivered Mr. Nixon's reply to the committee.

White House spokesman Gerald L. Warren said an extension of several hours had been asked for by special counsel J. Fred Buzhardt and granted before the deadline expired.

Dash was pessimistic about the outcome.

"The White House made it clear through Buzhardt that they are not voluntarily submitting anything, not even one tape," he said. "We have no indication that we will get anything. I must say we're not hopeful."

Dash has said committee lawyers would cut down the new subpoenas to the "high priority items" before any lawsuit is filed. Meanwhile, he said, they will press for an early resolution of the court fight over last July's subpoenas for five of Mr. Nixon's Watergate tapes and other documents.

A Senate brief and amended complaint in that case is scheduled to be filed with Sirica Monday. The White House reply will be due Jan. 17.

Most of the tapes involved in this lawsuit have already been turned over to Watergate Special Prosecutor Jaworski, but Mr. Nixon remains unwilling to surrender them to the Senate committee.