

# Judge Tells Nixon to Explain Withholding Tapes From Hill

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U.S. District Court Judge Gerhard A. Gesell called on President Nixon yesterday for a better explanation of why five subpoenaed White House tape recordings should be withheld from the Senate Watergate committee.

The judge held that Mr. Nixon's sweeping claims of executive privilege for the recordings were "too general" and outdated by the court rulings that led to surrender of most of the same tapes for the Watergate grand jury.

As a result, Gesell asked for a detailed statement, signed by the President him-

self, of what portions of the Senate-subpoenaed tapes he still considers privileged.

Calling for the statement by Feb. 6, Gesell also asked the President to set out the precise grounds for his determination that disclosure to the Senate committee "would not be in the public interest."

Handing down two other orders in the dispute, Gesell:

- Quashed another subpoena issued by the Senate Watergate committee last July for all records involving 25 former White House aides and 1972 Nixon campaign officials.

- Asked for a report from Watergate Special Prosecu-

tor Leon Jaworski on what effect he thinks release of the tapes to the Senate committee would have on Jaworski's investigations and forthcoming trials.

The Senate committee issued a subpoena last July 3 for five tapes of Mr. Nixon's conversations with ousted White House counsel John W. Dean III.

The President refused to comply, stating in letters to Sen. Sam J. Ervin Jr. (D-N.C.), the committee chairman, that their surrender would violate the separation-of-powers doctrine and tear down the confidential-

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ity he deemed essential to the conduct of his office.

Since then, however, four of the five tapes the Senate subpoenaed were turned over to Jaworski, along with portions of several others demanded by the Watergate grand jury.

U.S. District Court Chief Judge John J. Sirica held that those the grand jury got were all relevant to its investigation of the Watergate scandal.

Judge Gesell offered to review the tapes again, in light of the Senate suit, if the President so desires.

But he emphasized that any particular claims of privilege for the recordings "must be signed by the President, since only he can invoke the privilege at issue."

The Senate committee contends that it needs the tapes to help it weigh various legislative proposals under consideration, including limits on a President's term of office.

The five tapes at issue involve conversations between Mr. Nixon and Dean on Sept. 15, 1972, and Feb. 28, March 13, and March 21, 1973. Two meetings were held on March 21.

Of these, only the Feb. 28 recording remains to be reviewed by the courts. Dean

has said he told Mr. Nixon at this meeting that Dean "had been a conduit for many of the decisions that were made, and therefore could be involved in an obstruction of justice" in the Watergate scandal. Dean said the President "would not accept" that analysis and said that Dean "had no legal problems."

According to the White House, Dean told the President at this meeting that there was no White House involvement in Watergate.

The Watergate committee first filed suit for the tapes last summer, but Sirica dismissed it, saying he had no jurisdiction in the dispute. Congress later passed a law conferring jurisdiction on the courts and the litigation was reassigned to Gesell. White House lawyers have asked again for dismissal of the case, which they contend is a "political question . . . clearly inappropriate for judicial resolution."

In quashing the Senate subpoena for White House documents, Gesell said it was "too vague" and "wholly inappropriate" for a case involving claims of executive privilege. It called for all records concerning "any alleged criminal acts" by 25 individuals in the 1972 presidential campaign.