

Ervin Says Saxbe Broke His Promise

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Sen. Sam J. Ervin Jr. (D-N.C.) charged yesterday that Attorney General William B. Saxbe has violated a pledge to keep out of the Watergate case by filing a friend-of-the-court brief in the Senate tapes suit.

"The Attorney General has violated his solemn agreement that he made before his confirmation that he would leave all matters related to Watergate to Special Prosecutor Leon Jaworski," Ervin said.

Saxbe promptly denied through a spokesman that he had violated his pledge, and suggested that Ervin, who is chairman of the Senate Watergate committee, "address his remarks to the court."

Saxbe said his brief did not relate to the merits of President Nixon's refusal to honor a Senate subpoena for five taped conversations, but dealt rather with "institutional issues."

The exchange was provoked by the brief the Justice Department filed Wednesday in the U.S. Court of Appeals here. In it, the department offered arguments in support of U.S. District Court Judge Gerhard Gesell's decision to refuse to enforce a Senate Watergate committee subpoena directing President Nixon to produce five tape-recorded conversations.

The brief, signed by Saxbe, said that "the interest of the President in protecting the confidentiality of presidential communications in this case . . . outweighs the needs of the committee."

It also contended that the tapes should be withheld in order to protect defendants in Watergate criminal cases from pretrial publicity.

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The brief amounted to the Justice Department's first direct intervention in legal proceedings between Ervin's committee and President Nixon in a matter specifically related to Watergate tapes.

Justice Department officials from Saxbe down insisted yesterday that no change in policy was involved. They maintained that the new brief was drafted to support certain constitutional principles and not to defend Mr. Nixon in his running battle with the Senate committee.

The brief declared, "The United States has an overriding interest in the proper application of the doctrine of executive privilege as well as protection of the integrity of the criminal justice system."

Irving Jaffe, acting assistant attorney general, elaborated on this theme in an interview.

"We decided that there are issues in this case sufficiently important to state a position—not on behalf of a party but on behalf of the United States," Jaffe said.

Those issues are executive privilege and the rights of defendants to get a fair trial free of prejudicial publicity, he said.

Jaffe observed that the department had taken a similar position in opposing the attempts of private litigants and the Senate committee to obtain tapes and documents pertaining to large campaign contributions made by dairy industry lobbies.

Jaffe said he had not discussed with Jaworski the department's position in the new brief. Jaworski has filed an 11-page appeal brief in the Senate subpoena case, taking a position considerably more neutral than that expressed by Saxbe.

Jaffe contended that "our interest is broader than Jaworski's." He said Jaworski had not wanted "to come down four-square on the fair trial issue" as the Justice Department brief does.

Jaffe insisted that the department's brief did not amount to taking sides with the President. "We think we're not taking sides," he said. "We are in favor of two principles."

He added, "We are trying to avoid the merits of the case."

However, it appeared that Justice also was interested in reinforcing the version of executive privilege that Mr. Nixon's lawyers have advanced and which the department felt was not strongly supported by Judge Gesell's opinion.

Jaffe said the Justice Department felt that the District Court "did a little bit of violence to the executive privilege principle."

Gesell had rejected the

President's broad claims of executive privilege in the case, which he decided in February. He said, "The court rejects the President's assertion that the public interest is best served by a blanket, unreviewable claim of confidentiality over all presidential communications."

But while rejecting that part of Mr. Nixon's argument, Gesell did say that the tapes should not be presented to the Senate committee in order to assure a fair trial for Watergate defendants.

The Justice Department appeals brief differs from Gesell's opinion by asserting that the tapes should be withheld on grounds of executive privilege as well as on grounds of preventing pretrial publicity.

Jaffe said yesterday he did not know of any consultation between the Justice Department and White House lawyers in filing the brief.