

Watergate Panel Asks Court for Tapes

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The Senate Watergate committee, smarting from what it regards as second-class status, made a last, almost plaintive appeal yesterday for a few of President Nixon's Watergate tapes.

"Memories are short," the committee's chief counsel, Samuel Dash, lamented at a hearing before the U.S. Circuit Court of Appeals here, but, he said, the committee is still around, still hoping to get its hands on the five recordings it subpoenaed from Mr. Nixon last July.

By now, the court was reminded, almost everyone who is anyone in the Watergate investigations has gotten a piece of the tapes—except the Senate committee that discovered their existence in the first place.

The Watergate grand jury got them. The House Judiciary has copies. Excerpts from one have even been put into the public record at the New York conspiracy trial of former Cabinet officers John W. Mitchell and Maurice H. Stans.

But the Senate Watergate committee, Dash protested, has been put in an "inferior posture" by U.S. District Court Judge Gerhard A. Gesell's dismissal of its lawsuit for the recordings. In withholding the tapes, Gesell cited the risks of prejudicial publicity for forthcoming criminal trials.

Gesell "preferred the judicial fact-

finding process to the legislative fact-finding process," Dash complained. He said that previous federal court decisions have made clear that congressional investigations should not be limited by such considerations.

Since Gesell's Feb. 8 ruling, Dash added, the risk of prejudicial publicity from release of the tapes to the Senate committee has disappeared.

"There's really nothing to risk," Dash said, emphasizing that Mr. Nixon himself decided last month to give a far greater number of secret tapes and documents to the House Judiciary Committee for its impeachment inquiry. More recently, Dash added, the Court of Appeals approved the turnover to the House committee of a secret Watergate grand jury report on Mr. Nixon, presumably including some relevant portions of the same tapes the Senate committee has been seeking.

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

"In view of what already has been produced [to the House], the [Senate] select committee's requests are paltry," Senate lawyers said in a written brief.

On top of that, Dash made clear the

committee is willing to walk the last mile for its own copies of the recordings. He said it has already decided not to hold any more public hearings. Now, he said, it is even willing to accept a "stringent protective order" from the courts that would prohibit it from disclosing the contents of the tapes in its final report next month.

Even under those conditions, Dash said, the committee needs the tapes before it can intelligently recommend remedial legislation which, he suggested, could be rather "drastic" if Mr. Nixon were found to be personally involved in the Watergate scandal.

The White House was still unrelenting. Special presidential counsel John J. Chester told the court that Mr. Nixon still regards the tapes as confidential and privileged. He also hinted that the Senate Watergate committee has outlived its usefulness.

The seven appellate judges who conducted yesterday's *en banc* hearing took the case under advisement. But even Judge George E. MacKinnon, who has steadily sided with Mr. Nixon in past tape controversies, seemed skeptical about White House claims that withholding the tapes from the Senate Watergate committee is needed to preserve fair trials in the courts.

"Do you think there's anything left to protect?" MacKinnon asked. "Haven't we long passed that stage?"