

Panel Asks President for Files, Tapes

White House Refusal Seen

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The Senate select Watergate committee formally requested President Nixon to give it all "relevant" White House documents and tape recordings of presidential conversations yesterday after Mr. Nixon invoked executive privilege to stop the committee's questioning of Secret Service agents about the tapes.

Although committee chairman Sam J. Ervin Jr. (D-N.C.) found room for optimism in President Nixon's letter directing the Secret Service agents not to testify, White House spokesmen said yesterday that the President has not changed his mind about refusing to turn over to the committee his official papers, including the tapes.

The Senate committee was told Monday by former White House aide Alexander P. Butterfield that tape recordings are "automatically" made of all conversations held by Mr. Nixon in the White House Oval Office, his Executive Office Building office and on four telephones he uses. In addition, Butterfield testified, meetings in the Cabinet Room are taped by a manually triggered device.

The committee wants tapes "relevant" to its investigation because they may prove whether or not, as President Nixon has maintained, he had no knowledge of the Watergate cover-up until March 21, 1973. Former White House counsel John W. Dean III testified that he had conversations with President Nixon about the cover-up in the Oval Office and in the Executive Office Build-

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ng office in September, 1972, and again in March before March 21, 1973.

Ervin's letter to President Nixon requesting the tapes and other presidential documents yesterday is the latest in a series of attempts by the committee to secure evidence from Mr. Nixon concerning his role in the Watergate affair.

Ervin again stopped short of delivering an ultimatum to President Nixon. He asked instead for an opportunity to "discuss these issues" with Mr. Nixon or for members of the committee staff to meet with members of the White House staff to arrange for access to the documents and tapes.

Although the committee is seeking the tapes as an important part of its inquiry, some committee members have privately expressed doubts that the tapes, if obtained by the committee, would necessarily be authentic, according to reliable sources.

One senator, according to an informed source, after hearing Butterfield's testimony Monday, asked his staff how difficult it is to alter tape recordings. An aide to another senator said "there would be an element of doubt in his mind" concerning the authenticity of the tapes.

The Senate committee had issued subpoenas for Secret Service officials in the White House to appear and testify about the making and storage of the tapes.

Butterfield had testified that the taping was actually done by the Secret Service at the direction of President Nixon through former White House chief of staff H. R. (Bob) Haldeman. Butterfield said initially that the taping began in the spring or summer of 1970 but later changed his testimony after Ervin read a letter from special counsel to the President J. Fred Buzhardt that dated the taping from the spring of 1971.

Ervin said that during the noon recess of yesterday's hearing he and Sen. Howard H. Baker Jr. (R-Tenn.), the committee vice chairman, attempted to question Alfred Wong, deputy director of the Secret Service for protective intelligence.

They were interrupted, Ervin said, by the lawyer for the Treasury Department, the parent body for the Secret Service, who produced a letter from President Nixon to Treasury Secretary George P. Shultz.

The letter, dated July 16, stated: "I hereby direct that no officer or agent of the Secret Service shall give testimony to Congressional committees concerning matters observed or learned while performing protective functions for the President or in their duties at the White House.

"This applies to the Senate Select Committee which is investigating matters relating to the Watergate break-in and the current efforts which I am informed are being made to subpoena present or former members of the White House detail of the Secret Service."

The letter concluded by telling Shultz, "You should further advise the chairman (Ervin) that requests for information on procedures in the White House will be given prompt consideration when received by me."

Citing this final statement in President Nixon's letter, Ervin said, "The committee hopes that the word 'procedures' is much broader than the strict interpretation that that word might imply.

The Senate committee, Ervin said, "is only interested at the stage in getting access and the right to use in the hearings of records and tapes in the possession of the White House which are relevant to the matters which the committee is authorized... to investigate."

Ervin's letter to President Nixon, dated yesterday, states: "Today the Select Committee on Presidential Campaign Activities met and unanimously voted that I request that you provide the committee with all relevant documents and tapes under control of the White House that relate to the matters the select committee is authorized to investigate under Senate Resolution 60."

Ervin then referred to documents he had requested in a letter to White House counsel Leonard Garment on June 16 and to the White House tapes Butterfield had mentioned.

Ervin told President Nixon that if his illness "prevents our meeting to discuss these issues in the next day or two, I should like to suggest that you designate members of your staff to meet with members of the select committee staff to make arrangements for our access to White House documents and tapes pertinent to the committee's investigation."

The initial response from the White House yesterday indicated, however, that the tapes would not be turned over to the committee. Deputy press secretary Gerald L. Warren told reporters, "There is no change in the basic position" stated in a letter from President Nixon to Ervin that was released July 7.

In that letter President Nixon said, "I shall not testify or permit access to presidential papers."

Asked if the tapes would be considered to be presidential papers, press secretary Ronald L. Ziegler said yesterday, "Of course they would be."

At Bethesda Naval Hospital, where President Nixon is recovering from viral pneumonia, Ziegler said, "We are giving consideration to the subject" of the tapes. He added that he was not prepared to discuss the issue publicly.

Ziegler said that President Nixon met with Garment and Buzhardt, his top legal advisers, for about 40 minutes at the hospital yesterday morning. Buzhardt is reportedly drafting a new letter to the Ervin committee that presumably will define the President's position on releasing the tapes.

Yesterday morning, a White House official who declined to be identified suggested one "scenario" under which the tapes might be released. Under this scenario, the President could allow himself to be taken to court on the issue. The court might then rule against the President, this official said, and Mr. Nixon could then release the tapes, which the official implied would corroborate Mr. Nixon's position that he was ignorant of the cover-up.

The value of this approach, the official said, is that it would enable the tapes to be made public while avoiding the precedent of the President voluntarily releasing documents to Congress.

The issue was discussed publicly by another administration official, Herbert G. Klein, departing communications director who said at a Washington luncheon meeting that Mr. Nixon would gain politically by releasing the tapes, but that he probably would not release them on principle.

"If you release the tapes, you violate principle," Klein said. "And if you release the tapes, why not release the papers."

Robert C. McCandless, one of former White House counsel Dean's lawyers, added another consideration to the equation yesterday. McCandless said that Dean, who is a target of the federal Watergate grand jury's investigation, could not be prosecuted if the tapes are not released.

"If they don't give up the tapes, I don't see how a trial could go forward," McCandless said. "How can you convict a man if vital evidence is being withheld?"

The demands of the committee for access to White House officials, papers and even the testimony of President Nixon have precipitated an ongoing constitutional confrontation between the committee and President Nixon.

On April 17, in announcing "major developments" in the Watergate case, President Nixon said that he would allow White House aides to testify before the committee and the grand jury. Previously, Mr. Nixon

had refused to allow Dean to testify before the Senate Judiciary Committee on the grounds that Dean's appearance would violate the doctrine of executive privilege.

In early May the White House issued guidelines covering the invocation of executive privilege that purported to allow present and past White House aides to testify. The guidelines were widely criticized, however, as broadening the area under which executive privilege could be invoked to an unprecedented extent.

On May 22, President Nixon announced that executive privilege would not be invoked in relation to the committee's investigation of the Watergate affair or in relation to other pending court actions.

Since Dean testified in June, the committee has been making public overtures to President Nixon to testify in response to Dean's accusations. Ervin has expressed himself passionately on the point several times, using witnesses before the committee to support his contention that the only witness who can say what President Nixon knew is President Nixon himself.

Mr. Nixon's letter to the committee on July 6 firmly and apparently finally ended any discussion of the President's appearing or releasing his papers to the committee. "At an appropriate time during your hearings, I intend to address publicly the subjects you are considering," President Nixon wrote Ervin.