

# Judge Asks Nixon to Back Plea of Privilege on Tapes

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WASHINGTON, Jan. 25—A Federal judge here asked President Nixon today to tell the court personally whether he was still relying on executive privilege as a defense against the Senate Watergate committee's subpoena for five crucial White House tape recordings.

If the President still wishes to invoke executive privilege, the judge said in a two-page order, he should give the court "the factual ground or grounds for his determination that disclosure to the select committee would not be in the public interest."

The judge, Gerhard A. Gesell, said that the President could submit his views through his attorneys. But, he said, the President himself must make the statement.

"This statement must be signed by the President, for only he can invoke the privilege at issue," Judge Gesell said.

The subpoena in question was issued by the Senate Watergate committee last July 23 after the disclosure one week earlier of the existence of the White House taping system.

## Subpoena Resisted

President Nixon resisted the subpoena and other committee requests that month for his testimony and documents by asserting, in three letters to the committee, the claim of executive privilege.

Judge Gesell said today that the President's claim as set

forth in those letters was "too general" and also "not sufficiently contemporaneous" as a defense against the subpoena.

In a second order, however, the judge quashed the other subpoena issued by the committee to the President last July 23. That subpoena called for all documents and tapes relating to 25 White House aides and Nixon campaign aides. According to Judge Gesell, it was "too vague."

The broad demand in that subpoena, Judge Gesell ruled, "overlooks the restraints of specificity and reasonableness which derive from the Fourth Amendment."

Lawyers on the Senate Watergate committee said this afternoon that they and the committee's chairman, Senator Sam J. Ervin Jr., were "encouraged" by Judge Gesell's ruling on the first subpoena and "not upset" by his ruling on the second.

It is the first subpoena, they said, that is the more crucial of the two.

The Senate committee has three other subpoenas pending against the President. In those subpoenas, issued last December, the committee demanded more than 500 documents and tape recordings. The committee has decided to hold off any lawsuit seeking compliance with the December subpoenas, however, until the litigation over the July subpoenas is concluded.