

NIXON ORDERS SECRET SERVICE NOT TO TESTIFY ABOUT TAPING; PANEL ASKS RELEVANT RECORDS



The New York Times/Mike-Lin

Senator Sam J. Ervin Jr. with the Presidential letter banning Secret Service testimony on White House tapes.

CLASH ON SECRECY

Senators in Appeal to
President in 'Spirit
of Conciliation'

By JAMES M. NAUGHTON

Special to The New York Times

WASHINGTON, July 17 — President Nixon ordered the Secret Service today to withhold from the Senate Watergate committee all information about secretly made recordings of the President's White House conversations.

But the Senate committee, in what its ranking Republican termed a "spirit of conciliation," appealed directly to the President to make available the

Letters and statements on
taping issue, Page 22.

tape recordings of discussions and relevant documents that may be crucial to the Watergate case.

The clash over the recordings, barely one day after their

existence had been disclosed at the Watergate hearings, underscored their potential importance as the key to a determination of the scope of White House involvement in the Watergate break-in and cover-up.

Senator Howard H. Baker Jr. of Tennessee, the senior Republican on the committee, said this afternoon that it was "a matter of monumental importance" for the investigators to gain access to relevant tapes.

'Presidential Documents'

But the President's instructions that "no officer or agent of the Secret Service shall give testimony" about the agency's role in recording the conversations, coupled with a White House spokesman's assertion that Mr. Nixon considered the tapes to be "Presidential documents," indicated a determination by the White House to keep the recordings secret.

In declining to permit the Secret Service to disclose the taped information, the White House cited the doctrine of executive privilege. Earlier in the day, Ronald L. Ziegler, the White House press secretary, said that the contents of the tapes would be withheld because they fell into the category of Presidential papers.

The President said 10 days ago that he was obliged by the Constitution's separation of powers to withhold Presidential documents from Congress.

John W. Dean 3d, the dismissed White House counsel, testified last month that discussions he had with Mr. Nixon between Sept. 15, 1972, and April of this year had convinced him that the President was personally enmeshed in the Watergate cover-up.

Alexander P. Butterfield, a former White House aide who

Continued on Page 20, Column 2

Continued From Page 1, Col. 8

s now the head of the Federal Aviation Administration, disclosed at the Watergate hearings yesterday that listening devices were installed in 1971 in three offices and on four telephones used by the President. Mr. Butterfield testified that the devices would have automatically recorded conversations of the sort described

by Mr. Dean.

In a letter that he sent to Mr. Nixon this afternoon, Senator Sam J. Ervin Jr. of North Carolina, the Democratic Chairman of the committee, emphasized that the request for "all relevant documents and tapes under control of the White House" was urgent. He said that access to the information "should not be delayed if the committee is to perform its mission."

The letter was sent to the President at Bethesda Naval Hospital, where Mr. Nixon is recuperating from a mild case of viral pneumonia. Senator Ervin suggested that staff-level discussions of the dispute be undertaken if Mr. Nixon was unable to discuss them directly "in the next day or two" because of his illness.

"The committee deeply regrets your illness and hopes for you a speedy recovery," Mr. Ervin added.

Order Halts Effort

The committee's initial effort to determine who had official custody of the tape recordings, as a practice to a formal request for copies of the pertinent tapes, was blocked by Mr. Nixon's order barring interrogation of "present or former members" of the Secret Service detail assigned to the White House.

The President's order was relayed hurriedly to Senator Sam J. Ervin Jr. of North Carolina, the Democratic chairman of the Watergate committee, as Mr. Ervin, Mr. Baker and committee lawyers began a private noontime interview of Al Wong, the deputy assistant director of the Secret Service.

Mr. Wong was chief of the Technical Services Division of the Secret Service at the time that Mr. Butterfield said the Division installed the listening devices for Mr. Nixon and arranged for storage of the tapes. The tapes, Mr. Butterfield said, were meant to form part of the historical record of the Nixon Administration for eventual use in a Presidential library.

Mr. Nixon's ban on testimony by the agents was contained in a letter, dated yesterday, to the Cabinet officer who has jurisdiction over the Secret Service, Secretary of the Treasury George P. Shultz. The letter, dispatched to the committee with a brief covering note, specifically ruled out testimony "concerning matters observed or learned" by the agents while they were "performing protective functions

for the President or in their duties at the White House."

At least three other Secret Service and Treasury officials—including Edgar L. Morgan, a former Presidential assistant who is currently the assistant secretary for enforcement—halted the interview of Mr. Wong and said that the President's letter to Mr. Shultz formed the basis of a claim of executive privilege in the matter.

Under the doctrine of executive privilege, Presidential documents have traditionally been withheld from Congress.

The full seven-member Watergate committee was assembled hastily, 15 minutes before the hearings were to have resumed this afternoon, in Senator Ervin's office. For an hour, the Senators conferred privately with the Administration officials and they voted to sidestep the issue of Secret Service testimony and ask Mr. Nixon directly for the tapes.

Both Senator Ervin and Senator Baker seized on the final sentence of President Nixon's letter as the basis for a plea for release of the tapes.

'An Amicable basis'

The letter instructed Secretary Shultz to advise Senator Ervin "that requests for information on procedures in the White House will be given prompt consideration when received by me."

Senator Ervin, recounting the development of the fresh dispute with the White House when he reconvened the hearings this afternoon, said that the committee was "desirous of adjusting this matter, if possible, on an amicable basis with the White House."

Accordingly, the Senator said, the committee authorized him to write to the President to ask "cooperation in making available to the committee records and tapes which are relevant" to the Watergate investigation. He added:

"I sincerely hope that this course of action will bear fruit, and that we will be able to get access to the records and tapes which we think are relevant."

Senator Baker, endorsing Mr. Ervin's statement, said that the request was being made "in a spirit of conciliation" and in an attempt to determine the following:

¶Who is the custodian of the tapes? Senate investigators said privately that this could be important in determining how to proceed with an attempt to subpoena the tapes if the President refused to volunteer

them.

¶Who has had access to the tapes? Mr. Butterfield said yesterday that only a handful of senior White House officials knew that the tapes existed, but that they could have obtained temporary custody of some tapes. He said that he had occasionally done so — as the official serving both as liaison with the Secret Service and as superintendent of documents

destined for a Nixon library— to assure that the recording devices were working properly.

¶How can the Senate committee obtain both the technical information and access to the tapes?

Senator Baker said that the committee sought only those tapes that related to the inquiry of the committee, and not “to a general fishing expedition” among tapes that would be “clearly protected” by the doctrine of executive privilege.

“We are, I hope, being both patient and optimistic in taking this course of action,” he said, noting that the committee had, for now, decided against a legal effort to “compel testimony from Secret Service agents.”

He urged a swift resolution of the matter — either in a meeting that President Nixon has consented to have with Senator Ervin about requests for other White House documents or in deliberations between members of the White House and committee **staffs.**

The committee had asked the White House for a wide assortment of documents, including several that Mr. Dean testified he had not been permitted to copy.

But President Nixon, in a letter to Senator Ervin made public 10 days ago, said that he

was required to maintain the constitutional separation between the executive and legislative branches of the Government and must, therefore, refuse either to provide White House papers or appear before the committee.

In response to that letter, Senator Ervin urged Mr. Nixon last Thursday, in a telephone conversation described as bluntly candid, to meet with him to try to resolve the disagreement. The White House said that the President would meet with Mr. Ervin as a “courtesy” but would not alter his position on the documents.

Thus, the President's stand appeared to rule out any likelihood that the tapes would be volunteered.

The White House did not categorically rule out testimony of any kind by Secret Service committee staff members said that such testimony was rare.

The sole precedent that officials could recall today was a hearing in 1970 of the Senate Judiciary Subcommittee on Administrative Practice. Senator Edward M. Kennedy, Democrat of Massachusetts, conducted an inquiry into the Secret Service's use of buses as a protective barrier around the White House during anti-war demonstrations.