

White House Asks Voiding Of Tape Suit

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The White House asked a federal judge here yesterday to dismiss a Senate Watergate committee attempt to gain access to five White House Watergate tapes, claiming that the committee is exceeding its investigative authority.

"... This is a classic example of a political question, which is clearly inappropriate for judicial resolution," White House lawyers said in a 52-page brief filed in U.S. District Court here.

In the brief, the White House lawyers leaned heavily on what they called the President's "power to withhold information from Congress... (that) he determines to be country to the public interest."

A suit filed last summer by the Watergate committee in an attempt to get access to the five tapes was dismissed by U.S. District Judge John J. Sirica, who claimed the court had no jurisdiction in the case.

Congress later passed a law specifically authorizing the suit that became law without the President's signature, and filed an amended complaint saying that the tapes were necessary because the committee was considering far-reaching legislation that could include such measures as a limitation on a President's term of office.

The suit, now assigned to U.S. District Judge Gerhard Gesell, is an attempt to force the senate's subpoenas on five specific records and several documents. Senate committee attorneys have said that if they win this suit, they will then try to enforce a subpoena for more than 500 White House tapes and documents.

Much of the subpoenaed material, including the tapes, has been turned over to the Watergate special prosecutor and to a grand jury.

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"There is no frustration of any law enforcement activity or judicial proceeding. There is, however, a determination by the President that these plaintiffs (the committee) not be allowed to undercut the independence and integrity of the executive branch," the attorneys said in their brief.

Saying the materials aren't needed by the committee to

indict or accuse guilty persons, the attorneys added: "That is the role of a grand jury, and properly so, since it is incomprehensible that formal claims of executive privilege would be overruled each time a congressional committee decided to investigate imagined executive wrongdoing."

While saying they had "very serious doubts about the constitutionality" of the law authorizing the suit, White House attorneys said they would assume for the sake of argument that it was legal.

However, they contended that the court should not become "embroiled... in what is essentially a confrontation between the executive and legislative branches of this government."

The courts cannot rule on the problem, the attorneys said, because it is a "political question."

They said that an earlier decision by Sirica that resulted in portions of the same tapes being turned over to a grand jury was not comparable to the Senate request. The Sirica decision was upheld by the U.S. Court of Appeals.

"The committee has made the political decision, albeit under color of law, to make an unprecedented demand on the President. The President has considered the demand and made the political determination that compliance would be contrary to the public interest," the attorneys said.

The committee is asking the court to "referee this dispute... (and) substitute its political judgment to... determine which of

two co-equal branches of government should prevail.

"Such a determination by a court is constitutionally impermissible and violates the most basic tenets of the separation of powers," they said.

In support of its claim that the committee is exceeding its authority, the White House brief commented that "Congress is not a law enforcement or trial agency."

"Accordingly, the committee's mandate was to identify illegal, improper or unethical activities and recommend corrective legislation, not to resolve the conflicts in the evidence and adjudicate questions of guilt or innocence," the White House attorneys said.

"Such an inquiry is not germane to the committee's legislative purpose and is outside its charge. Clearly (the com-

mittee members) can honor their legislative mandate without access to the tapes," they added.

Saying that the committee had not been "unduly frustrated" in carrying out what it had called its "informing function," the attorneys pointed out that many of the President's closest aides and advisers have given public testimony without claiming privilege.

In addition, they made it clear they did not feel the contents of White House tapes should be disclosed publicly.

"The public disclosure of conversations and memoranda that were always intended to be private has a tendency to degrade and ridicule the presidency by transforming heretofore private and personal discussions into cocktail party en-

tertainment," they said in an apparent reference to a private attorney's playing of five minutes of a White House tape at a Georgetown gathering recently.

More than half of the brief, however, was in support of the President's right to withhold certain information from Congress under a claim of executive privilege.

"Plaintiffs have not cited any authority, either historical or legal, for the proposition that a president can be compelled to furnish information to Congress. There is good reason for this. There is no such authority," the White House lawyers said.

The lawyers cited instances from President George Washington through President Harry Truman when "Presidents repeatedly as-

serted the privilege, and, when forced to a showdown, Congress has always yielded and ceased to press its demands."

They said also that it is "absolutely essential that the President be able to protect the confidentiality of communications" with his advisers.

"What is really at stake is the ability of constitutional of-

icers of government to perform their duties under conditions that will make it possible for them to function to the best of their ability," they added.

For this to be achieved, a president should know that his advisers "can speak freely to him without fear of being summoned before some tribunal and forced to detail their conversations with him," the lawyers said.

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