

NY Times AUG 30 1973
**NIXON'S LAWYERS
ASSAIL COMMITTEE**

**In Paper Filed in Court, His
Counsel Rejects Demand
of Senators for Tapes**

Special to The New York Times
WASHINGTON, Aug. 29

— President Nixon's lawyers charged today that the Senate Watergate committee had conducted a "criminal investigation and trial" that exceeded the authority granted to Congress by the Constitution.

In papers filed in Federal District Court, the White House attorneys rejected the committee's demand for tape recordings of Nixon conversations on the ground that the Senators were illegally attempting to determine "whether or not criminal acts have been committed and the guilt or innocence of individuals."

The President's lawyers also contended that the court had no jurisdiction over their client, either as an individual or as President, and that Mr. Nixon "owes no duty," in either capacity, to the Senate committee to provide it with recordings of his confidential meetings or other related documents.

In a legal countermove, the Senate committee filed with Chief Judge John J. Sirica a motion for summary judgment in the same case, a request that the judge enforce two subpoenas already served on the President with a minimum of

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further court proceedings.

The motion by the committee, which is headed by Senator Sam J. Ervin Jr., seemed to anticipate the ruling today by Judge Sirica in the parallel lawsuit brought by Archibald Cox, the Justice Department's special prosecutor, to obtain the Nixon tapes for an investigating grand jury.

In a sweeping denial that the Ervin committee had any right to the disputed records, the President's lawyers asserted the following:

¶The court had no jurisdiction over the controversy because it did not involve more than \$10,000, the lowest amount with which a Federal District Court is required to deal in a civil suit.

¶The Senate committee did not have sufficient authorization from Congress to bring the suit.

¶The committee members "have not suffered any legal wrong, nor have they been adversely affected or aggrieved" as a result of the President's rejection of the subpoena to produce the documents.

¶The subpoenas served on Mr. Nixon were "null and void" because they had never been authorized by a vote of the full Senate.

¶The subpoena requesting production of papers relating to White House employes and alleged criminal acts was "so unreasonably broad and oppressive as to make compliance impossible."

A Contrast in Briefs

The answer to the Ervin committee suit was filed on the President's behalf by Leonard Garment, his counsel; J. Fred Buzhardt, his special counsel; Prof. Charles Alan Wright of the University of Texas Law School, a legal consultant, and four staff attorneys.

It contrasted sharply with the 34-page opposition brief that the same lawyers filed three weeks ago in the suit brought by Mr. Cox. That brief was packed with long legal arguments and citations of Supreme Court decisions and rulings by past Attorneys General.

Virtually all of the statements in today's four-page answer dealt with procedural rather than substantive objections to the Senate committee's request. The principal exception was the 10th and last defense raised by the White House, which read as follows:

"The relief sought by plaintiffs (the Senate committee members) constitutes an unconstitutional attempt to interfere with the confidentiality of

private records of conversations between the President of the United States and his closest advisers relating to the official duties of the President."

The President's lawyers also stated in the answer that Mr. Nixon "is without information or knowledge sufficient to form a belief" as to the Ervin committee's claims that information in the tape recordings is relevant to the Congressional investigation.

The motion for summary judgment by the Senate committee asserted that the two subpoenas served on the President "were lawfully issued and served and must therefore be complied with," and that the President's refusal to comply was "unlawful and cannot be justified by resort to any asserted Presidential power, prerogative or privilege, or otherwise."

The Ervin committee papers included a 36-page memorandum in support of the motion for an immediate decision, a 10-page historical index with references to acts of 10 Presidents and a 16-page statement of facts "as to which there is no genuine issue" between the committee and the White House.

In the memorandum, the Senate committee's lawyers said that their dispute with the President should be placed "in proper perspective."

"This suit does not seek wholesale invasion of the President's files," they said. "It does not request a broad ruling that might hereafter serve as a dangerous precedent for the conduct of Presidential business. Rather, it seeks only tapes and materials relating to criminal activity in the Presidential campaign and election of 1972."

Responding, in effect, to the White House contention that the Senate committee lacked jurisdiction to conduct its investigation and to subpoena Presidential papers, the Ervin committee's attorneys said:

"The select committee, by unanimous vote of the Senate, has the mandate and responsibility to ferret out all the facts regarding the Watergate affair, both to aid the Senate in its legislative function and, in that connection, to inform the public, which has a right to know the total extent of the corruption that has beset our Government."

The Ervin committee's papers were submitted by Samuel Dash, the committee's chief counsel; Prof. Arthur S. Miller of George Washington University Law School; three Washington lawyers, Sherman Cohn, Eugene Gressman and Jerome A. Barron, and five staff lawyers.