

WXP Post Presidency Not A Monarchy, Panel Argues

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The Senate select Watergate committee argued yesterday that if it is denied tapes of presidential conversations on the grounds that "the President is so immune by privilege that he cannot be reached by force of law short of impeachment, he will become much as the monarch from whom our form of government constituted a revulsion."

Almost simultaneously, as the committee filed its formal argument here before Chief U.S. District Judge John J. Sirica, the White House filed its response to the committee's suit seeking the tapes.

Lawyers for President Nixon, the only defendant, argued that the investigation of the Watergate affair by the committee "has been, in fact, a criminal investigation and trial conducted for the purpose of determining whether or not criminal acts have been committed and the guilt or innocence of individuals."

The White House response asserts that the Senate resolution establishing the committee and the committee's investigation "exceed the legislative powers granted to the Congress in Article I of the Constitution."

The low-key nature of the White House brief and its reliance on legal principles rather than rhetoric almost obscured the historic proportions of the confrontation between the committee and the President. The committee's suit seeks to enforce the first subpoenas ever issued by a committee of the Congress against a President of the United States.

In addition to relying on standard legal arguments—for example that the court lacks jurisdiction and that the suit "fails to state a claim upon which relief can be granted"—the White House brief repeats President Nixon's claim that the committee's subpoena of the tapes "constitutes an unconstitutional attempt to interfere with the confidentiality of conversations between the President of the United States and his closest advisers relating to the official duties of the President."

The committee argues in its brief that the tapes and other presidential documents sought are relevant to its investigation of the Watergate break-in and cover-up and to charges that President

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Nixon was criminally involved. "In such circumstances," the committee brief states, "the committee would be derelict if it did not proceed to further examination of the President's complicity or lack thereof, no matter how distasteful that task may be."

Citing several decisions by the United States Court of Appeals here and the Supreme Court, the committee argues that the judiciary traditionally has accepted its role as a "neutral authority" to settle disputes that have arisen between the legislative and executive branches of government.

The importance of the tapes, which include recordings of conversations between Mr. Nixon and his principal accuser, former White House counsel John W. Dean III, is "obvious," the committee said.

"Most particularly," the committee said, "it would aid in a determination whether legislative regulation of executive involvement in political campaigns is necessary. The evidence sought is also vital to Congress' discharge of its associated informing function. How high executive corruption reached, and whether, in particular, the President himself was involved, is a great and unresolved public question. The evidence sought by the committee promises to aid in the resolution of that great question. So long as key evidence is withheld, public confidence in the self-corrective processes of government will remain at low ebb."

The effect of the President's claim of an "absolute executive privilege" against turning over the tapes, the committee said, "may be to shield the President's associates, or the President himself, from exposure of wrongdoing. In such circumstances, does the President have the right to disobey the committee's lawfully issued subpoenas? That is the

question which this court must decide."

Even if the Constitution recognized the broad right of executive privilege that President Nixon has claimed, the committee argued, he has waived the privilege by discussing portions of the recorded conversations himself and by allowing his aides to testify to the committee about them.

"Moreover," the committee argued in conclusion, "if the position of defendant President were accepted, immunity from the rule of law and the ordinary processes of government would not be limited to the President himself, but could be extended, at his sole discretion and pleasure, to every one of the two and one-half million officers or employees of the executive branch. This would represent an expanse of executive absolutism that even the Bourbons might have envied."

The White House will have an additional opportunity to respond to the committee's motion prior to Judge Sirica's holding a hearing on the matter. No date has been set for a hearing.