

NY Times AUG 10 1973
**WATERGATE PANEL
FILES SUIT TO GET
TAPES FROM NIXON**

**Court Asked to Order Reply
From President in 20 Days
Under Speed-Up Plan**

2d APPEAL TO JUDGES

**Refusal to Turn Over Data
Scored as 'Unlawful' And
a 'Breach of Duty'**

By WARREN WEAVER JR.

Special to The New York Times
WASHINGTON, Aug. 9—The Senate Watergate committee filed suit in Federal District Court today to force President Nixon to make available the White House tapes the Senators believe may establish the truth about the political burglary and the subsequent cover-up.

"We submit to the court that the parameters of the Watergate affairs must be promptly determined so that the uncer-

*Excerpts from complaint
appear on Page 10.*

tainty and divisiveness that is abroad in the nation can be ended," the committee declared in asking the court to accelerate the case.

In a motion filed with their 2,700-word complaint, the seven Senators asked the court to reduce the time within which the President's lawyers must reply from 60 to 20 days. The longer period, normally authorized in suits against the Government, is unnecessary here, the committee said.

Advance Work Cited

"This suit runs directly against the President," the committee lawyers observed. "His own counsel have been served with the complaints and, apparently will personally handle the case."

Noting that the committee publicly voted to file the lawsuit on July 26, the Senators said, "Surely the President's counsel are well advanced in their preparation for this case and can, without undue difficulty, answer or respond to the present complaint within 20

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days." This was the second suit brought against President Nixon in two weeks. On July 26, Archibald Cox, the Justice Department's special prosecutor, filed a petition, also in Federal District Court here, to force Mr. Nixon to produce similar tapes and documents after he declined to honor subpoenas.

Obligation Is Denied

President Nixon, meanwhile, was working on a television address on the Watergate affair that he is expected to deliver to the nation next week. Mr. Nixon also plans to issue a "white paper" on the subject, rebutting charges against him in detail.

The committee complaint said that the President's refusal to release the tapes of his private conversations in response to subpoena was "unlawful, unwarranted and in breach of his legal duty."

"The defendant President's refusal and failure to make available such electronic tapes and other materials cannot be excused or justified by resort to any Presidential power, prerogative or privilege," the Senators said.

In a brief replying to the Cox suit earlier this week, the President's lawyers contended that Mr. Nixon had no obligation to provide the grand jury with internal White House records if he believed their retention was in the public interest.

In support of its right to bring a suit against the President, the committee cited a Senate resolution passed in 1928, giving all committees the power to go to court if they thought a suit was necessary to their performance or duties.

Some legal authorities have questioned whether this is sufficient authority. The Senators' complaint also maintained that Federal District Court has jurisdiction over the tape dispute because it "arises under the Constitution" in that it represents a conflict between executive and legislative powers.

Court Power Questioned

Plaintiffs in the case are Senator Sam J. Ervin Jr., chairman of the Senate Select Committee on Presidential Campaign Activities. And the six other members who presided over three months of televised hearings on the Watergate break-in and allied incidents.

Rather than limit themselves to a single legal theory, the

Senators asked the court for a declaratory judgment that the President must honor the subpoenas, a writ of mandamus compelling him to do his duty as a public official and an injunction prohibiting him from retaining the tapes and documents.

The court could refuse to grant two of these forms of relief, but the committee could still prevail if the third were upheld. There is, however, considerable legal question, already raised in the Cox suit, whether a court can compel a President to do anything.

"The defendant President continuing refusal and failure to comply with the select committee's lawful subpoenas are irreparably injuring the work of the select committee and the interests of the United States on whose behalf and in whose names the select committee sues," the committee argued.

Even if the court recognizes that the President has some authority to withhold confidential documents, the Ervin committee maintained in its complaint such privilege "does not extend to the protection of materials relating to alleged criminal acts."

Nixon Waiver Alleged

In addition, the Senators contended that any privilege of executive confidentiality had been waived "because the defendant President has himself partially revealed the contents of these materials and has permitted his agents and subordinates, both past and present, to reveal portions or versions of these materials."

In general, the Ervin committee arguments are similar to those voiced by the special prosecutor, except that Mr. Cox has the additional advantage of his claim that the in-

formation is needed by a grand jury investigating criminal activity.

If the court gives Mr. Nixon 60 days in which to respond to the committee suit and sets a comparable schedule for subsequent responses by both parties and oral argument, a decision in the case could easily be postponed until early in 1974.

The Cox-Nixon case, which is to be argued on Aug. 22, may be decided in Federal District court promptly enough so that a final appeal to the Supreme Court could be heard shortly after the Justices reconvene for their fall term on Oct. 1.