

# Nixon Lawyers Fight Senate's

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President Nixon's lawyers yesterday urged the U.S. District Court here to reject the Senate Watergate investigating committee's demand for presidential tapes on the grounds that the President is answerable to Congress only in an impeachment proceeding.

He is not answerable to an individual committee's demands for information, the lawyers said in a 71-page brief

filed with Judge John J. Sirica.

The lawyers also contended that the court has no power even to hear the case because it cannot substitute its judgment for the President's on what tapes or papers he should release or keep confidential.

For the court to tell the President what to do would violate "the most basic tenets of the separation of powers," the brief argued.

The lawyers repeated many of the arguments made in the

case brought by special Watergate Special Prosecutor Archibald Cox, who also sought by subpoena to obtain tapes of conversations in the President's office.

Sirica ruled that Mr. Nixon should turn the tapes Cox sought over to Sirica for private inspection, a ruling the White House has taken to the Court of Appeals.

If anything, the Senate committee's argument is weaker than Cox's, the lawyers contended, because the committee is asking that the President be

"subjected to compulsory process by the judiciary."

For the court to rule that Congress has the power to ask a court to review a presidential invocation of executive privilege would open the door "for such declarations by all 400 district court judges," the brief said.

Presidential judgments on what papers to release "cannot be second-guessed and overruled at the caprice of the Senate committee," the lawyers said. "Nor can they be evaluated and reviewed by any discernible criteria traditionally utilized by the courts in resolving constitutional disputes between individuals."

But primarily the lawyers argued that the President's decision to invoke executive privilege "is by definition a political decision" and is his alone to make.

If Congress does not like his decisions it has only one avenue open to it—impeachment—for the President "is answerable in only one constitutional proceeding."

"That proceeding," the brief said, "requires the deliberate action of the whole Congress under the impeachment action of the whole Congress under the impeachment clause, not the filing of a discretionary suit by a select committee of the Senate under a general enabling resolution."

Arguing that the committee can carry out its mandate without access to the tapes, the lawyers quoted one of the President's Democratic critics to support them.

They said that (Sen. Daniel K. Inouye (D-Hawaii) com-

## Tape Bid

mented earlier this month on NBC's Meet the Press program that "we can proceed and file an adequate report without the tapes."

Inouye declared that "if this were a criminal matter, I would say that the tapes are absolutely necessary," but he added that it was not the committee's business to decide "guilt or innocence."

Nevertheless, the brief said, the Senate committee has conducted and is continuing to try to conduct "a criminal investigation and trial."

It is a commentary on "the infectious spirit of Watergate" that the committee's demand for the tapes threatens "a rapid reduction in an historically protected area of presidential power," the brief said.