

# EVIDENCE ON NIXON CITED BY LAWYERS

Senate Staff in Brief Says  
His Claim to Privilege on  
Recordings Is Damaged

By ANTHONY RIPLEY

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WASHINGTON, Sept. 28—

Lawyers for the Senate Watergate committee argued today that there was "sufficient evidence to establish a prima facie case that the President was engaged in criminal conduct." Thus, they contended, he was damaged his claim to executive privilege in withholding taperecordings of conversations made in his office.

The statement was part of a 27-page brief filed in United States District Court here in support of the committee's motion of Aug. 29 for a summary judgment that would force President Nixon to honor subpoenas for the tapes. Chief Judge John J. Sirica will hear oral arguments in the case on Monday. OCT

The brief, the committee lawyers stated that Mr. Nixon's lawyers had not contested the point that the President "enjoy no privilege to withhold evidence relating to his own criminality."

"The President has sought to avoid the impact of that concession in this case by contending that the committee lacks authority to investigate Presidential misconduct," the brief stated.

### Matter of Involvement

It noted that the resolution setting up the committee "was specifically passed [by the Senate] to allow the committee to investigate the 1972 Presidential campaign and election and the conduct of the candidates therein—one of whom was the defendant President—and was enacted in an atmosphere of widespread speculation regarding the President's own involvement in Watergate.

"It would thus be blinking reality to read Senate resolution 60—which hardly could be drawn in broader language—to exclude the issuance of subpoenas to one of the principal persons being investigated."

In addition the brief said that the Senate Republican leader, Senator Hugh Scott of Pennsylvania, had observed that the resolution had "the widest possible power." It also noted that two days after the subpoenas to the President were issued, the Senate unanimously voted an additional \$500,000 appropriation to the committee.

"Accordingly, the President is required to respond to the

committee's subpoenas insofar as they bear on his own possible wrongdoing," it stated.

### 'Not Recklessly Made'

The brief added in a footnote:

"We trust the court will recognize that the reference to the President's own possible criminality is not recklessly made. There is certainly much evidence that would exonerate the President, but, as demonstrated in our Statement of Material Facts, there is sufficient evidence to establish a prima facie case that the President was engaged in criminal conduct.

"In such circumstances, executive privilege cannot be used to suppress evidence that would tend to prove or disprove this prima facie case."

Prima facie is a Latin legal term meaning a case in which the evidence is sufficient to establish a fact or to raise a presumption of fact unless rebutted.

The brief concluded: "The defendant President may not toy with the select committee by picking and choosing among tapes, papers and memory, and only allowing revelation of those portions he apparently feels most beneficial to disclose."

The brief was signed by Samuel Dash, chief counsel to the Senate Select Committee on Presidential Campaign Activities; Fred D. Thompson, Republican counsel; Rufus L. Edmisten, deputy counsel; James Hamilton, assistant chief counsel; Richard B. Stewart, special counsel, and three assistant counsels, Donald S. Burris, William T. Mayton and Ronald D. Rotunda.