

Dash Urges Sirica Order For Surrender of Tapes

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By ANTHONY RIPLEY OCT 5 1973

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WASHINGTON, Oct. 4 — Samuel Dash, the chief counsel for the Senate Watergate Committee, argued in Federal court today that President Nixon has no right to withhold secret tape recordings that might implicate the President in criminality.

Mr. Dash appeared before Chief Judge John J. Sirica in United States District Court to press the Senate's case for access to the tapes made in the President's offices.

"We could probably agree with two-thirds of the President's brief" as far as executive privilege and the need for confidentiality are concerned, Mr. Dash told the court.

But he called this a "unique case" and historically "a mixed bag."

Judge Sirica made no immediate ruling in the case, saying he would take it under advisement. The hearing was on a motion for a summary judgment forcing the President to honor two July 23 subpoenas for the tapes.

self may be involved." Mr.

"This is the first time in history where a President himself," Dash told the court. "We have no denial from the president's counsel that a prima facie [on the face of it] case has been made of Presidential involvement."

There is neither historical precedent, Mr. Dash asserted, nor any right for a President to use executive privilege "as a shield for self-protection."

Rebuttal to Wright

Mr. Dash's remarks came in his rebuttal to President Nixon's lawyer, Charles Alan Wright at the close of the two-hour hearing today. Mr. Wright was asked by Judge Sirica if he wished to respond, but he shook his head and declined.

Mr. Wright had said earlier that the motion of executive privilege and the need for confidentiality among the President's associates bar him from turning over the tapes. He said the argument was based on the Constitution and the doctrine of separation of powers.

He called Mr. Dash's earlier arguments "another manifestation of the spirit of Watergate: The end justifies the means, damn the Constitution, full speed ahead."

He contended that Congress's only mission is to write laws and that the Dash argument "underscores" its preoccupation with criminal matters, not legislative ones. Criminal matters are the job of grand juries, Mr. Wright said.

The case, he said, is "quintessentially a political ques-

tion," with one branch of Government suing another branch of Government and asking a third, "You be the referee." "This is simply something that has never been done before," he argued.

Defense of President

The President's action in denying access to the tapes was taken to preserve confidentiality, Mr. Wright said, "not to take a tax deduction by giving them to the General Services Administration."

The reference was to recent news reports that the President had paid only small income taxes for 1970 and 1971 because of deductions allowed for turning his 1953 to 1961 Vice-Presidential papers over to the National Archives, which is run by G.S.A.

The tapes, recorded secretly in the Presidential offices, lie at the center of conflicts in testimony before the committee by such men as John W. Dean 3d, former Presidential counsel; John D. Ehrlichman, former assistant to the President; and H. R. Haldeman, former White House chief of staff.

Mr. Haldeman was allowed to listen to the tapes in preparing for his appearance before the committee. Also, Mr. Nixon waived executive privilege in allowing all three to appear.

Judge Sirica asked Mr. Wright:

"When the President of the United States authorized Mr. Dean, Mr. Ehrlichman, Mr. [Name] was involved to go before the select committee, did he not in effect waive any privilege that may have existed?"

"We believe he did not, Mr. Chief Judge," the President's lawyer answered. He said they were not authorized to tell all they knew about every conversation they ever held with the President but were "very limited."

"Our contention is that it was not a waiver," he said, citing a New York Times article by Prof. Alexander Bickel of the Yale Law School, which maintained that executive power is as much exercised by giving information as it is by holding back information.

Mr. Wright said he had not dwelled on the question of waiver because it was "so insubstantial."

In a related matter today, G. Gordon Liddy, a convicted Watergate conspirator, asked the United States Court of Appeals for a new trial on the ground that Judge Sirica had violated his constitutional rights.

Liddy thus became the seventh and last of the Watergate defendants from last January's trial to ask for a new trial.