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**ERVIN PANEL LOSES  
IN SUIT FOR TAPES**

**Sirica Rules Courts Lack  
Jurisdiction on Request by  
Watergate Committee**

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Special to The New York Times

WASHINGTON, Oct. 17—  
Chief Judge John J. Sirica ruled today that the United States District Court here lacked jurisdiction to handle the Senate Watergate committee's request for President Nixon's secret tape recordings.

Dismissing the committee's lawsuit to obtain the tapes, he ruled on the narrow issue of whether the committee had any right to go before the court, and did not deal with the merits of the case.

It was the first clear-cut victory for the White House in the struggle over the tapes Mr. Nixon made of conversations in his office. The recordings contain material that may show who has been telling the truth in the investigation of the Watergate scandal.

Earlier, in a suit by Archibald Cox, the special Watergate prosecutor, Judge Sirica ruled that the tapes must be produced for private judicial screening to determine what could be turned over to the Federal grand jury. That ruling has been upheld by the United States Court of Appeals for the

Continued on Page 30, Column 4

Continued From Page 1, Col. 2

District of Columbia Circuit.

After Judge Sirica's ruling today, Gerald E. Warren, deputy White House press secretary said, "we're pleased with the results."

Rufus L. Edmisten, deputy chief counsel to the Senate Committee, said that he thought the chairman, Senator Sam J. Ervin Jr., Democrat of North Carolina, would probably poll the committee members on whether to take the case to the Court of Appeals.

"I'm frankly not very upset about that decision," Mr. Edmisten said. "It is one that could easily be handed down. I can't imagine the Court of Appeals not reversing Judge Sirica."

"We still have two excellent chances with the Court of Appeals and the Supreme Court," he added.

Judge Sirica said that the first step in bringing a lawsuit is to determine whether the courts have jurisdiction over

the matter. He said that the committee had failed to establish this.

He cited four reasons for his actions.

First, he said that the suit had been improperly brought in the name of the United States. Such suits, he ruled, are only brought by the Attorney General or authorized through an act of Congress, both of which are lacking in this case.

Second, he said that the suit did not deal with a clearly defined Presidential duty. He said that only "ministerial,

plainly defined and peremptory" duties of officers of the Government were proper subjects for such legal proceedings.

"Regardless of whatever duty the President may owe the Select Committee [on Presidential Campaign Activities] as a citizen with evidence in his possession, it is not 'free from doubt' that his official responsibilities require compliance," the judge wrote.

"There is nothing in the Con-

stitution, for example, that makes it an official duty of Presidents to comply with Congressional subpoenas," he went on.

Third, Judge Sirica found that the President's action in withholding the tapes was not an action of a "Federal agency" and thus did not come under the Administrative Procedure Act.

"There is some question whether the President is an 'agency' for purposes of the act, whether 'agency action' is involved here, and whether plaintiffs [the committee] have suffered 'legal wrong' within the meaning of these provisions," the judge stated.

"The final resolution of these problems, however, is unnecessary here since the rule in this circuit precludes use of this act altogether as an independent basis of jurisdiction," he said.

Finally, he held that the suit failed to meet the rule that a minimum of \$10,000 must be at stake in a Federal civil

case. "It is a requirement imposed by Congress which the courts may not dispense with at their pleasure," Judge Sirica emphasized.

The committee had argued that \$10,000 was exceeded by the costs of not turning over the tapes, such as extra staff costs and legislators' time, but Judge Sirica held that the court "cannot accept such indirect costs as the amount in controversy."

He stated that the Federal Courts could use only that power given them by acts of Congress and that those acts defined the courts' jurisdiction to take up any matters.

"The presumption in each instance is that a Federal court lacks jurisdiction until it can be shown that a specific grant of jurisdiction applies," he said. "Truly, to paraphrase the Scripture, the Congress giveth, and the Congress taketh away."

The committee had based its legal standing to sue on the unanimous vote of the Senate that set up the committee and

the committee's unanimous vote to subpoena the tapes from Mr. Nixon. The President's lawyers, headed by Charles Alan Wright of the University of Texas Law School, had argued that an act of Congress was necessary to take the matter to Federal court.

The committee first heard of the tapes from testimony at its hearings into a republican break-in at the Democrats' offices in the Water gate complex here. When informal attempts to obtain them proved fruitless, the committee issued two subpoenas to the President on July 23.

They argued that the tapes contain information bearing on their investigation and could clear up conflicts in the testimony of key witnesses. The President formally refused to release the tapes and, after complaints and answers were filed, the committee asked for a summary judgment from Judge Sirica.