

PRESIDENT FIRM ON TAPES STAND

Says Yielding Documents to
Senate Would Give Them
'to the World at Large'

By **ANTHONY RIPLEY**

Special to The New York Times

WASHINGTON, Feb. 6 — President Nixon told a Federal district judge today that giving five White House tape recordings to the Senate Watergate committee would be giving them "to the world at large." He said that this would infringe on the confidentiality of his office and would possibly prejudice criminal trials.

The President's position was stated in a five-paragraph letter

*Text of White House letter
to Judge Gesell, Page 21.*

to Judge Gerhard A. Gesell, who is attempting to decide whether to order Mr. Nixon to comply with a Senate committee subpoena to produce five tapes.

Mr. Nixon declared that, unlike the grand jury, which uses the tapes in secret, the Senate committee "has made known its intentions to make these materials public."

"The publication of all these tapes to the world at large would seriously infringe upon the principle of confidentiality, which is vital to the performance of my constitutional responsibilities as President," Mr.

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President Defends His Refusal to Yield 5 Tapes to Senate Committee

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Nixon said. This was an allusion to what is known as the doctrine of executive privilege.

Mr. Nixon added, "It is incumbent upon me to be sensitive to the possible adverse effects upon ongoing and forthcoming criminal proceedings should the contents of these subpoenaed conversations be made public at an inappropriate time."

The special Watergate prosecutor, Leon Jaworski, also asked by the court to comment on possible effects that going ahead with the subpoenas would have upon criminal trials, conceded that four of the five tapes sought would be "important and material evidence" at future criminal trials. However, he took no position on the advisability of turning them over to the Senate.

Some of the tape recordings sought in the Senate subpoena had also been sought by the former special prosecutor, Archibald Cox, who was dismissed by President Nixon's order on Oct. 20 because he refused to stop seeking the tapes. President Nixon later agreed to turn some tapes over to Mr. Jaworski.

National Interest Cited

The President in his letter today, labeled the Senate committee's request "political" and said it was "inappropriate for resolution by the judicial branch." He reasserted his contention that yielding the tapes "would not be in the national interest."

The committee sought five tape recordings last July 23 in one of two subpoenas it sent to the White House.

Judge Gesell quashed the second subpoena, calling it "too vague" because it sought all documents and tapes relating to 25 different White House and campaign aides. However, he asked for a personal assertion of executive privilege by the President if Mr. Nixon was still relying on that doctrine for a defense.

He also asked the President for "factual ground" on which to base his contention that turning the material over to the committee would "not be in the public interest." It was this explanation the President submitted today.

Tapes Sought by Cox

Also on July 23, Mr. Cox also subpoenaed nine tapes and other documents. Four of the tapes sought by the Senate committee and by Mr. Cox were the same. They concern the following:

A conversation Sept. 15, 1972, between Mr. Nixon, his former counsel, John W. Dean 3d, and H. R. Haldeman, former White House chief of staff, Mr. Dean has testified that the President complimented him on a "good job" in containing the

extent of the investigation into the Watergate burglary. Mr. Haldeman has contradicted that version in his testimony.

A meeting March 13, 1973, by the same three men. Mr. Dean contends there was talk of executive clemency and \$1-million to be raised to buy the silence of the seven original Watergate defendants. Both the President and Mr. Haldeman have denied this.

A meeting March 31, 1973, by the same three men. All accounts agree they talked solely of Watergate and that Mr. Dean

spoke of a "cancer" on the Presidency.

A second meeting on March 31, 1973, that also included John D. Ehrlichman, then the chief assistant to the President for domestic affairs. It also covered only Watergate matters.

The fifth tape sought by the committee was of a conversation on Feb. 28, 1973, from 9:12 A.M. to 10:30 A.M. Mr. Dean has testified that on this day he told Mr. Nixon of his role in the cover-up and that he was told "not to worry."

Mr. Jaworski, in his memorandum filed with the court to-

day, noted that all four of the tapes sought in common with the committee had already been presented to the grand jury.

He said that turning these over to the committee "would increase the risk that those indicted could contend with more force than presently available that widespread pretrial publicity prevents the Government from empaneling an unbiased jury for the trial of the offenses charged."

However, he concluded, "at this time, it is impossible to assess the precise impact of such publicity."

He said that this depended

on how the Senate committee used the tapes and concluded, "If jurors are selected with the care required by the decisions of this circuit, all defendants will receive a fair and prompt trial."

"Accordingly," Mr. Jaworski said, "we take no position on whether the court should consider the danger of prejudicial pretrial publicity a decisive factor."

He suggested, however, that copies and not the original tapes be turned over to the Senators if the court should decide to uphold the committee subpoena.