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Committee Wins Subpoena Powers

Tapes Refused

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President Nixon refused again yesterday to surrender any of his Watergate tapes to the Senate Watergate committee and said the courts had no power to make him give them up.

Mr. Nixon took the position in a letter to U.S. District Judge Gerhard A. Gesell, who had asked the President for a more detailed explanation of why the five subpoenaed tapes at issue should be withheld from the committee.

Instead the President simply stated that he had decided disclosure of the recordings "would not be in the national interest."

He emphasized that he was submitting the letter only "out of respect for this court" and without conceding that the judiciary could resolve the dispute.

Mr. Nixon said he objected to the Senate committee's plans to make the tapes public and to the "possible adverse effects" of the publicity on forthcoming trials growing out of the Watergate scandal.

"The dangers connected with excessive pre-trial publicity are as well-known to this

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court as they are to me," the President wrote Gesell. "Consequently, my constitutional mandate to see that the laws are faithfully executed requires my prohibiting the disclosure of any of these materials at this time and in this forum."

The next step is up to Judge Gesell, who has already ruled that earlier but similarly sweeping White House claims of privilege for the recordings were "too general" and outdated by court rulings that led to surrender of most of the same tapes for the Watergate grand jury last year.

Mr. Nixon's response did not appear to be the "particularized statement addressed to specific portions of the subpienaed tape recordings" that Judge Gesell had called for.

The 1½-page letter, which Mr. Nixon signed himself, was delivered to Gesell by White House messenger just a few minutes before the court's usual 4:30 p.m. closing time. By contrast, the President's lawyers have appeared in court themselves to file other pleadings in the Senate suit.

All five tapes involve conversations between the President and former White House counsel John W. Dean III. Four of them have already been played before the Watergate grand jury. Watergate prosecutors did not subpoena the fifth, which involves a Feb. 28, 1973, meeting between Mr. Nixon and Dean. It was furnished to Wastergate Special Prosecutor Leon Jaworski anyway, but has not been played before the grand jury yet.

In a separate statement requested by Judge Gesell, Jaworski called the four tapes the grand jury has heard "important and material evidence" in the trials to come. But he voiced less fear than Mr. Nixon did about the dangers of pretrial publicity.

Jaworski said public release of the tapes by the Senate committee would probably enable any Watergate defendants to complain about pretrial publicity more forcefully. But he said that this would "add only marginally to previous publicity" and would be "largely factual."

The special prosecutor also suggested that the tapes could be turned over to the Senate Watergate committee on condition that they be used with "restraint" and not made public. But in any event, Jaworski said, he was asking "no position" on whether the risk of prejudicial publicity should rule out the Senate subpoena for the tapes if Gesell finds it "otherwise enforceable."

Mr. Nixon maintained that the dispute with the Senate committee is a "political question" that cannot be resolved by the courts. He drew a sharp distinction between it and the long battle over the tapes with former Watergate Special Prosecutor Archibald Cox, which was settled only after Cox's ouster.

"Unlike the secret use of four out of five of these conversations before the grand jury," the President wrote, "the publication of 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."

Jaworski's office refused to comment on why the Watergate grand jury has not heard the Feb. 28 tape yet or whether it would. Dean has said he told Mr. Nixon at that meeting that Dean might be involved in "an obstruction of justice" in the Watergate scandal. Dean said the President assured him he had "no legal problems."

According to the White House, Dean simply told the President that there was no White House involvement in Watergate.

Mr. Nixon's letter seemed to reflect a hardening White House stance, which first surfaced this week when the President reportedly refused to give any more of his tapes and documents to Jaworski. The special prosecutor plans to meet with White House special counsel James D. St. Clair on the issue, but no date has been set.

Whatever the outcome of the meeting, Jaworski aides said, may hold back any fresh subpoenas until Watergate trials are at hand. In his report to Judge Gesell yesterday, the special prosecutor said he still expects the Watergate grand jury to wind up its work with indictments this month.