

Excerpts From Watergate Tapes Ruling

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WASHINGTON, Feb. 8 — Following are excerpts from Judge Gerhard A. Gesell's ruling today on the Senate Watergate committee's subpoena of Presidential tape recordings:

It becomes the duty of the court to weigh the public interests protected by the President's claim of privilege against the public interest that would be served by disclosure to the committee in this particular instance. The circumstances are unique in our constitutional history.

It has not been demonstrated to the Court's satisfaction that the committee has a pressing need for the subpoenaed tapes or that further public hearings before the committee concerning the content of those tapes will at this time serve the public interest. Conversely, the Court rejects the President's assertion that the public interest is best served by a blanket, unreviewable claim of confidentiality over all Presidential communications, and the President's unwillingness to submit the tapes for the court's in camera ex parte inspection or in any other fashion to particularize his claim of executive privilege precludes judicial recognition of that privilege on confidentiality grounds.

On the other hand, both the President and the special prosecutor have advanced another factor bearing upon the public interest which the Court finds to be of critical importance—the need to safeguard pending criminal prosecutions from the possibly prejudicial effect of pre-trial publicity.

At this juncture in the so-called Watergate controversy, it is the responsibility of all three branches of the Federal Government to insure that pertinent facts are brought to light, that indictments are fairly and promptly tried, and that any accusations involving the conduct of the President or others are considered in a dignified manner and dealt with in accordance with established constitutional processes. The President, the Congress and the courts each have a mutual and concurrent obligation to preserve the integrity of the criminal trials arising out of Watergate.

No one can doubt that, should the President be forced to comply with the subpoena, public disclosure of these tapes would immediately generate considerable publicity. The risk exists that it would bolster contentions that unbiased juries cannot be impaneled for trial.

The President has a constitutional mandate to see that the laws are faithfully executed and should therefore quite properly be concerned with the dangers inherent in excessive pre-trial publicity. That the President himself may be under suspicion does not alter this fact, for he no less than any other citizen is entitled to fair treatment and the presumption of innocence. The public interest does not require that the President should be forced to provide evidence, already in the hands of an active and independent prosecution force, to a Senate committee in order to furnish fuel for further hearings which cannot, by

their very nature, provide the procedural safeguards and adversary format essential to fact finding in the criminal justice system. Congressional demands, if they be forthcoming, for tapes in furtherance of the more juridical constitutional process of impeachment would present wholly different considerations.

Prosecutor Has Data

The five tapes at issue are sought principally for the light that they might shed on the President's own alleged involvement in the Watergate cover-up. The President has, however, reluctantly, now provided the special prosecutor with all of the information he requires with regard to the five conversations at issue.

To suggest that at this juncture the public interest requires pre-trial disclosure of these tapes either to the committee or the public is to imply that the judicial process has not been or will

not be effective in this matter. All of the evidence at hand is to the contrary.

The committee's role as a "grand inquest" into governmental misconduct is limited, for it may only proceed in aid of Congress' legislative function. The committee has, of course, ably served that function over the last several months, but surely the time has come to question whether it is in the public interest for the criminal investigative aspects of its work to go forward in the blazing atmosphere of ex parte publicity directed to issues that are immediately and intimately related to pending criminal proceedings.

Experience and tradition teach that facts surrounding allegations of criminal conduct should be developed in an orderly fashion during adversary proceedings before neutral fact finders, so that not only the truth but the whole truth emerges and the rights of those involved are fully protected.