

Ervin Unit Loses Appeal on Tapes

Washington

A federal appeals court, saying the House impeachment inquiry overshadows the Senate Watergate Committee probe, yesterday refused to enforce the committee's subpoena for five of President Nixon's secret tapes.

The unanimous ruling of seven judges of the U.S. Court of Appeals for the District of Columbia was a major victory for Mr. Nixon, who has battled for ten months to keep the recordings out of the committee's hands.

It was severe setback for Senator Sam J. Ervin Jr.

(Dem - N.C.) and his six colleagues, who uncovered the existence of the White House taping system and have insisted the tapes could prove or disprove the President's own criminal involvement in the bugging scandal.

Pointedly, the court said that job now belongs not to Ervin's Senate Select Committee on Presidential Campaign Activities but to the House Judiciary Committee considering Mr. Nixon's impeachment.

"The investigative authority of the judiciary committee with respect to presidential conduct has an express constitutional source," wrote Chief Judge David Ba-

zelon for the court, moreover, so far as these subpoenaed tapes are concerned, the investigative objectives of the two committees substantially overlap . . .

"There is no indication that the findings of the House Committee on the Judiciary and, eventually, the House of Representatives itself, are so likely to be inconclusive or long in coming that the select committee needs immediate access of its own."

Unlike watergate prosecutors in a similar case last fall, the court ruled, the Ervin committee failed to prove a compelling need for the tapes.

The decision upheld U.S. District Judge Gerhard A. Gesell, who ruled February 8 — after a protracted legal hassle that necessitated a special act of congress giving the courts jurisdiction to consider the case—that the Ervin committee was not entitled to the evidence.

Although Ervin has indicated he would take the case all the way to the supreme court if necessary, there was no immediate committee comment.

Chief counsel Sam Dash said only that "the committee will study the decision to determine whether it will take any further appellate review."

The Ervin committee is scheduled to issue its final report June 30, staying in existence beyond that date only to continue its court fight for the tapes.

At issue are recordings of Watergate discussions Mr. Nixon had with his then-White House counsel, John W. Dean III on Sept. 15,

1972, Feb. 28, 1973, March 13, 1973 and twice on March 21, 1973.

Copies of all five tapes are in the possession of impeachment investigators and transcripts of them all were made public by Mr. Nixon on April 30 — a fact the appeals court stressed.

It said for the Ervin committee to examine the tapes now would be "merely cumulative."

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