

Tape Battle Starts In Courts Today

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The constitutional battle over whether President Nixon can be forced to relinquish tapes of Watergate conversations begins in the courts today when the President's attorneys reply to the subpoenas served Monday.

While it is clear that they will reject the demand to turn over the tapes both to the Senate Watergate Committee and to special prosecutor Archibald Cox, their tactics were a closely guarded secret last night.

Chairman Sam J. Ervin Jr. (D-N.C.) of the Senate Watergate committee said he hoped the White House would move to quash the subpoenas so that the committee could then ask the courts to sustain the committee's subpoenas.

A fight all the way to the Supreme Court is expected. Some legal experts suggested yesterday that a deci-

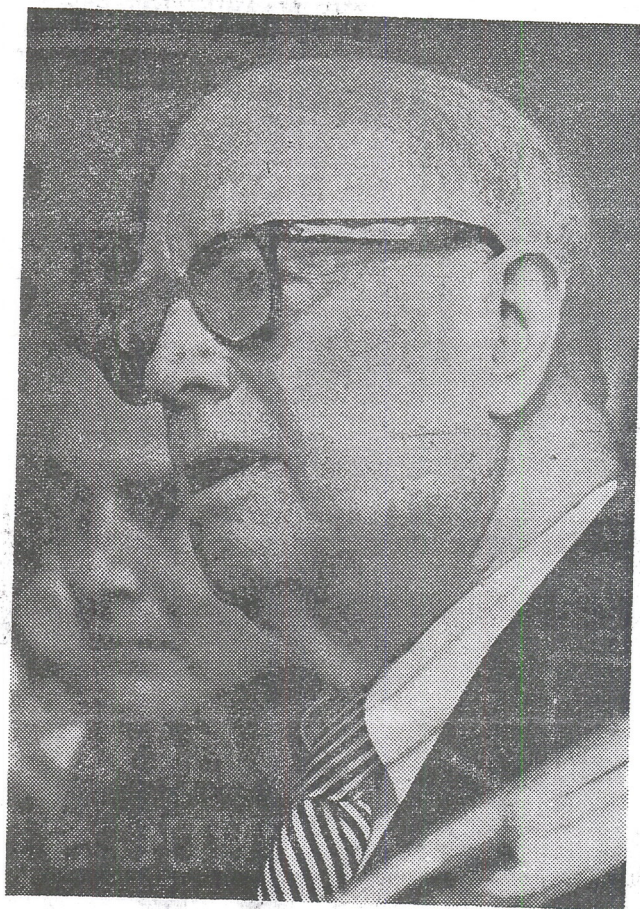
sion could be expedited and might be handed down within 90 days.

The President set the stage for the constitutional test Monday when he wrote to Ervin refusing to turn over the requested tapes of conversations with aides. The tapes also were denied Cox, who, like the Senate committee, promptly issued a subpoena, returnable in federal court here at 10 a.m. today.

On Capitol Hill, many Republican senators said they would like to avoid a vote on whether to endorse the committee's subpoena. The Ervin committee has the option of asking the Senate of the courts to support its subpoena demanding the tapes and supporting documents.

At the White House, Republican leaders predicted

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By Frank Johnston—The Washington Post

John J. Wilson argues a point with Sen. Sam Ervin.

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that the President would surrender the tapes if the Supreme Court ordered him to do so. The comments were made by Senate Minority Leader Hugh Scott (R-Pa.) following a meeting with the President on his legislative program.

But he expressed confidence the Supreme Court would uphold the President's position that the tapes are presidential papers and should not be divulged.

Ervin said later that if the President "has any respect for law and order" he should comply with any court orders requiring him to furnish the tapes.

Ervin said the committee would not, however, attempt to cite the President for contempt if he refused to comply with the subpoenas.

A resolution backing the committee's demand for the tapes or a contempt citation would require a Senate vote,

thus taking on the semblance of an informal censure proceeding against the President.

Republican senators said that if they should vote for a resolution they may seem to be repudiating the President and declaring him guilty. If they vote against it, they may be accused of participation in a cover-up.

"It would put us between the rock and the hard place," Sen. Bob Dole (R-Kans.) commented.

"It might look like an impeachment proceeding against the President—it could open up no end of debate," said Sen. Milton R. Young (R-N.D.).

Dole said on the NBC-TV Today Show that the majority of Republicans in the House and Senate believe the tapes should be released.

The former Republican National Committee chairman said the President "ought to put the cards on the table and discuss it with those of us who are loyal to

the President. If the President's not involved, why not inform some of us? I think it's long past that we can say the Watergate will just go away."

Since the President has strongly indicated that he will not comply with the subpoenas, several scenarios could develop.

A presidential aide—possibly J. Fred Buzhardt, the special counsel dealing with the subpoena issue—could appear at 10 a.m. in Grand Jury Room Three of the U.S. Court House, where Cox and his assistants will be waiting.

The presidential assistant could move to quash the Cox subpoena, which seeks nine White House tapes and two documents. U.S. District Judge John J. Sirica, who is in charge of grand juries and who tried the seven Watergate burglary defendants, could then set a hearing for oral arguments on the motion, which Cox would oppose.

Or the President's repre-

sentative could choose not to appear in court today—to ignore the subpoena. In that case, Cox could move for him to show cause in court for not answering the subpoena.

Judge Sirica could then set a hearing on the show-cause motion.

In each scenario—the motion to quash hearing or the show-cause motion hearing—the judge would rule and his opinion could be appealed to the U.S. Court of Appeals and then to the Supreme Court.

The two Ervin committee subpoenas, one asking for four tapes and the other asking for written matter concerning 25 past and present White House aides and campaign staffers, are returnable at 10 a.m. today to the committee itself.

Assuming the President does not comply, one of his assistants could move in the same federal court to quash the subpoenas. Or, again, the White House could simply ignore them.

If a motion to quash is filed, committee lawyers

would argue against it in a hearing set by Sirica or would ask him to call a three-judge court, from which an appeal would go directly to the Supreme Court.

If the White House ignores the subpoenas, Ervin indicated that the committee lawyers would ask the judge for a declaratory judgment to enforce compliance.

Ervin said a 1928 Senate resolution gives such authority to a committee so that his unit would not have to go before the full Senate for a new resolution empowering it to litigate in court.

Both Ervin and Committee Counsel Sam Dash said they had no word yesterday on what action Mr. Nixon intends to take.

"I haven't even had a telephone call," Ervin said.

According to one expert,

the reason the committee has ruled out the possibility of seeking a contempt citation is that "it isn't dealing with the average guy down the street. Not that the President is above the law, but the committee is looking for information; it isn't seeking to punish anyone. A contempt citation would merely cause a furor."

The only other time a President was subpoenaed was in 1807 when Thomas Jefferson was ordered by Chief Justice John Marshall to produce certain correspondence in the Aaron Burr treason trial.

Jefferson declined to appear himself because the court was sitting in Richmond and he felt his appearance there "would leave the nation without an Executive Branch." But he did produce a letter that Marshall wanted.