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White House Hints Nixon Will Accept a Court Ruling

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WASHINGTON, July 24 — The White House indicated today that President Nixon would abide by the ultimate decision of the courts in his historic struggle to prevent the release of the recordings of his private conversations on Watergate.

Gerald L. Warren, the deputy Presidential press secretary, said that there was "no question that the President has abided by court rulings in the past and that he would" do so in the future. Pleading ignorance of the "fast-changing, complex legal situation," Mr. Warren refused to apply his general statement to this specific case, but that was the burden of his remarks.

It appeared certain that the Supreme Court would be called upon to resolve the constitutional confrontation between the President on one hand and the Senate Watergate committee and Archibald Cox, the special prosecutor, on the other.

The prosecutor and the committee served subpoenas on Mr. Nixon last night, demanding access to tapes and other documents that they believe may help to settle the question of Presidential involvement in the scandal. The President refused earlier yesterday to supply the materials voluntarily, citing the separation of powers.

No President had been served with a subpoena since Thomas Jefferson received one more than 166 years ago.

Attorney General Elliot L. Richardson, apparently attempting to promote an out-of-court solution to the crisis, issued a statement urging both sides to seek "some practical means of reconciling the competing public interests at stake." But he asserted that Mr. Nixon had acted with "substantial legal and constitutional foundation."

On Capitol Hill, the President's action was heavily criticized by Senators and Representatives of both parties.

The high drama of the moment was suggested by the opening words of the Senate

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subpoenas, which showed none of the deference usually evoked by the majesty of the Presidency.

"To President Richard M. Nixon, the White House, Washington, D. C.," the subpoena began, "Pursuant to lawful authority, you are hereby commanded to make available . . ."

Mr. Warren refused, at his regular morning briefing for reporters, to say precisely what action the White House would take in response to the Senate subpoenas. But he said that it would be "consistent" with the principles stated by Mr. Nixon in the letter he sent to the Senate committee yesterday.

Compliance Seen Ruled Out

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The two others are to move to quash—that is, to annul—the subpoenas on constitutional grounds, or simply to ignore them. A decision must be made before Thursday morning, when Mr. Nixon has been ordered to produce the material.

If the President attempted to quash the subpoenas, the committee and the prosecutor would fight that move in Federal District Court. That court's decision could then be appealed to the Court of Appeals and, finally, to the Supreme Court.

The initial judge in the case would be Chief Judge John J. Sirica, who presided over the earlier Watergate trials.

If, on the other hand, Mr. Nixon ignored the subpoenas, the legal situation would be more complex. According to informed sources, Mr. Cox would ask Judge Sirica either to hold Mr. Nixon in contempt or to issue a show-cause order, which lead to a public hearing.

The case would then proceed through the courts. Mr. Cox himself, a former Solicitor General, is prepared to argue his position before the Supreme Court. It is not known who would represent the White House, although Mr. Richardson said some time ago that the Justice Department probably would not be able to.

As for the Senate committee, it could ask the Senate as a whole to find Mr. Nixon in contempt. If the Senate did so, the contempt citation would be turned over to the Justice Department for prosecution. But that would be difficult, because the Justice Department would

be caught in a conflict of interest.

Samuel Dash, the committee's chief counsel, said a contempt citation was therefore unlikely. The committee would find it preferable, he told reporters this afternoon, "to act on a motion to quash."

Arthur Miller, the committee staff member who is researching the question, said he was studying the possibility of asking the courts immediately for a declaratory judgment that Mr. Nixon must produce the tapes and documents, rather than going through the contempt process.

Such a procedure, he said, is "grounded in the common law," although he conceded that it was highly unorthodox.

Leonard Garment, the acting White House counsel, heads the six-man legal team that is examining the possible courses of action open to Mr. Nixon. But the President, according to Mr. Warren, will make the ultimate and fateful decision.

Other Points by Warren

Mr. Warren made the following other points about the tapes:

¶ That they were being "adequately protected" and were "secure," although he again refused to say precisely where they were, or even how many reels were involved.

¶ That "they have not been edited."

¶ That when Mr. Nixon listened to some of the tapes last June — as the President disclosed in his letter yesterday to the committee chairman, Senator Sam J. Ervin Jr., he did so all alone.

The press spokesman was questioned repeatedly about Mr. Nixon's willingness to obey the courts in the tape controversy.

"There's no question that he would abide by court rulings," he said in one of several answers to essentially the same question, "but I am not going to get into a hypothetical discussion on this particular case because we are at a particular stage in a very complex legal situation. The president abides by the law, but the subpoenas have just arrived at the White House."

Richardson Statement

Mr. Richardson, whom the President consulted before refusing to release the tapes voluntarily, said in his statement:

"The President's decision to protect the confidentiality of conversations rests, in my view, on substantial legal and constitutional foundations. The separation of powers seems to me particularly persuasive with regard to the Ervin committee.

"It is also my view that Mr. Cox, in seeking access to the tapes, is acting in full accord with the requirements of his job. In the interest of justice, it seems to me appropriate to try to work out some practical means of reconciling the competing public interests at stake."

The legal situation is clouded by the absence of precedent. Only once before has a subpoena been issued to a President. That occurred on June 13, 1807, when Thomas Jefferson was ordered by Chief Justice John Marshall to hand over certain papers for use in the treason trial of Aaron Burr.

Because Jefferson produced the documents, it was never necessary for the courts to decide what to do if a President refused to comply with a subpoena.

Perhaps the toughest statement issued today on Capitol Hill was that of Senator Walte F. Mondale, Democrat of Minnesota, who said that if Mr. Nixon "fails to reveal the tapes, the American people can conclude only one thing, that he is guilty."

"If the President is right about executive privilege," he continued, "I would recommend to every criminal in the country that he get a job at the White House because then he couldn't be prosecuted."

Other comments included the following:

¶ Senator Jacob K. Javits, Republican of New York: "I find no legal basis for withholding by the President of part of the information relevant to these matters. We will be on the brink of a constitutional confrontation between the executive and legislative branches of government unless the President modifies his position. I sincerely hope that he does so."

¶ Senator James L. Buckley, Conservative-Republican of New York: "I think he has painted himself into a very tight corner, unnecessarily and foolishly. I think clearly in the instant case the consensus of the American people will be that the President, while he has the right to exercise the [executive] privilege, ought not to be exercising it."

¶ Senator Richard L. Schweiker, Republican of Pennsylvania: "I'm very distressed by his refusal. I think it raises in everyone's mind the question of doubt and suspicion."

Mr. Cox's subpoena asked for tapes and documents relating to eight meetings and one telephone conversation, involving the President and a number of aides, including H. R. Halde- man, John D. Ehrlichman, John N. Mitchell and John W. Dean 3d. It also asked for certain political memorandums.

One senatorial subpoena asks for papers relating to the Watergate involvement of 25 present or former officials at the White House or the Committee for the re-election of the President. The other seeks the tapes of five conversations between the President and Mr. Dean, former counsel to the President, beginning on Sept. 15, 1972, and ending on March 21, 1973.