

COURT TEST SEEN

Separation-of-Powers Doctrine Is the Basis

of Nixon's Stand

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WASHINGTON, July 23—

President Nixon refused today to release tape recordings of his conversation about the Watergate case. Both his special prosecutor and the Senate Watergate committee moved at once to subpoena the tapes.

Three subpoenas—once each from the prosecutor and the

Texts of Nixon's letter and replies are on Page 19.

Senate committee covering the tapes and one from the committee covering other documents—were served shortly after 6 P.M. They were accepted by Leonard Garment, the acting White House counsel, and J. Fred Buzhardt, a special counsel.

Gerald L. Warren, the deputy Presidential press secretary, said that he could not predict whether they would be honored or not, but other White House officials said that the decision had already been made to ignore them, thus implicitly inviting a test in the Federal courts.

The subpoenas call for a response on Thursday.

Separation of Powers

And so the constitutional struggle between the President and those charged with investigating the Watergate and allied scandals was finally joined, more than 13 months after the break-in at the Democratic National Committee.

Mr. Nixon took his firm stand behind the doctrine of separation of powers, despite the prevailing view among politicians outside the White House that to do so would convince the public that he had something to hide.

He also took the risk that the battle could result in his being the first President to be impeached—put on trial before the Senate—since Andrew Johnson in 1868. But the White House inner circle believes, and many Senators and Representatives agree, that the Congress will hesitate before forcing the issue to that extreme.

Second Letter Sent

In a letter to Senator Sam J. Ervin Jr., Democrat of North Carolina, the Senate committee chairman, the President argued that "the tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth." But he insisted that "the tapes would not finally settle" the question of his involvement.

"As in any verbatim recording of informal conversations," Mr. Nixon added, "they contain comments that persons with different perspectives and motivations would inevitably interpret in different ways."

Mr. Nixon also sent a second,

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President refuses to release tapes; Senate unit and Cox serve subpoenas; White House expected to ignore them

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private letter to Mr. Ervin, which the Senator made public. In it, he said that he knew of "no useful purpose that will be served" by a meeting between himself and Senator Ervin, which he promised on July 12. The President said that he was willing to go through with a meeting if Mr. Ervin insisted, but Mr. Ervin said he would not.

The rejection of the requests of the special prosecutor, Archibald Cox, was stated not by the President or by any permanent member of his staff but by Charles Alan Wright, a law professor at the University of Texas who has been serving as a \$150-a-day consultant to the White House on Watergate matters.

In a letter couched in unusually blunt language, Mr. Wright dismissed Mr. Cox's contention that, because he was appointed by the President, he is a part of the executive branch and thus not involved in any separation-of-powers question.

"If you are an ordinary prosecutor, and thus a part of

the executive branch as well as an officer of the court," Mr. Wright wrote, "you are subject to the instructions of your superiors, up to and including the President, and you can have access to Presidential papers only as and if the President sees fit to make them available to you."

Mr. Wright argued further that the separation-of-powers doctrine applied to Mr. Cox because release of the tapes to him "would lead to their use in the courts, and questions of separation of powers are in the forefront when the confidential documents of the Presidency are sought for use in the judicial branch."

Mr. Cox replied in a statement that Mr. Wright's arguments were "without foundation." The prosecutor, a law professor at Harvard University who served as Solicitor General under President Kennedy, has made it clear from the start that he would demand all relevant documents, and has told some friends that he would resign if he was unable to obtain them.

White House officials have

said privately in recent days that the loss of Mr. Cox would be a further blow to the credibility of the President. But the tone of the Wright letter led some observers to wonder whether Mr. Nixon wanted him to quit.

Asked whether the President has lost confidence in the prosecutor, Mr. Warren avoided a direct answer, replying that "nothing has changed."

Mr. Warren turned aside almost all questions at a special 3 P.M. briefing. He would not say where the tapes were being kept, when the secret listening devices that produced them had been disconnected or who has had access to the recordings.

Testimony by Dean

The spokesman did disclose that Mr. Nixon had listened to some of the tapes early in June.

That was about the time that the first bits of what John W. Dean 3d, the deposed White House counsel, planned to tell the Senate committee later in the month began to become public. Mr. Dean's testimony heavily implicated the President in the Watergate cover-up, and the committee had hoped to

discover whether he was telling the truth by listening to tapes of his numerous conversations with Mr. Nixon.

The existence of the tapes was made public a week ago when Alexander P. Butterfield, a former White House aide, told the Senate committee that Mr. Nixon had taped nearly all of his meetings and telephone conversations at the White House, in the Executive Office Building next door and at the Presidential retreat at Camp David, Md.

Mr. Nixon cited the volume of material contained on the tapes as one reason that they could not be released.

"The tapes could be accurately understood or interpreted only by reference to an enormous number of other documents and tapes, so that to open them at all would begin an endless process of disclosure of private Presidential records," he said.

The President concluded that "the tapes, which have been under my sole personal control, will remain so." He said that none had been transcribed and that none would be.