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Aug. 7
Hearing
Ordered

Washington

President Nixon refused yesterday to comply with subpoenas requiring him to furnish tape recordings of his conversations about the Watergate case to the Senate Watergate committee and to Archibald Cox, the special prosecutor.

Chief Judge John J. Sirica of the U.S. District Court immediately ordered Mr. Nixon to explain by August 7 why he should not be compelled to release the tapes to Cox. And the committee, in an unprecedented action, voted in open session to go to court next week to secure the recordings.

The day's dramatic events intensified a momentous constitutional struggle, compared by some participants to *Marbury vs. Madison*, the landmark 1803 case that established the principle of judicial review.

Deputy White House Press Secretary Gerald Warren, said that "the President, just as in any other matter, would abide by a definitive decision of the highest court."

That statement apparently means that if the Supreme Court rejects Mr. Nixon's argument that the doctrine of "separation of powers" precludes him from turning over the tape recordings, he will then release them.

LETTERS

The President made his position known in carefully reasoned letters, amounting to informal legal briefs, that were delivered yesterday morning to Sirica and to Senator Sam J. Ervin Jr. (Dem.-N.C.), the Watergate committee chairman.

With former White House aide John Ehrlichman waiting on the witness stand and the nation watching on television, the committee voted quickly and unanimously to sue the President — something no congressional com-

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mittee had ever done in the Republic's 184-year history.

"I think this litigation is essential if we are to determine whether the President is above the law," said Ervin, "and whether the President is immune from all of the duties and responsibilities in matters of this kind which devolve upon all the other mortals who dwell in this land."

The committee's staff is studying the legal avenues open to it, but the chief counsel, Samuel Dash, said that a contempt of Congress citation would not be sought.

SIRICA

About an hour after the committee acted, Sirica, who had presided over the original Watergate trial, mounted the bench in his courtroom about six blocks away. Like Ervin, he began by reading the contents of the President's letter.

Cox summarized the background of the case, the discovery of the existence of

the tape recordings last week, the President's arguments and his own. He then asked Sirica, with the grand jury present to register its assent, to issue an order requiring the President to "show cause" at a hearing a week from Tuesday why the tapes should not be produced.

After questioning the grand jury briefly, Sirica signed the order and the courtroom emptied. The entire procedure had required 28 minutes.

DOCUMENTS

In his letter dated Wednesday, Mr. Nixon did offer to give the committee some documents "that can properly be made public" if the committee would ask for them specifically. Ervin said that was patently impossible.

"We are not clairvoyant," the Senator said. "Since we have never seen the documents, and since even those of the White House aides who are willing to identify the documents are not allowed to copy them or any parts of them, the President puts on the committee a manifest impossibility in re-

ceiving the documents.

"The way the chair construes the letter, the President flatly refuses to give us the tapes."

Ervin interpreted the President's letter as a sign of non-cooperation, despite the President's assertion that his staff was instructed "to cooperate fully."

AIDED

If Mr. Nixon were to comply with the committee's demands, Ervin added, his voice heavy with sarcasm, "the Constitution would not collapse, the heavens would not fall, but the committee might be aided by the President in determining the truth of his involvement."

The committee's legal situation is difficult. The normal procedure would be to seek a citation of the President for contempt from the full Senate.

But according to committee sources, that course has been rejected for four reasons: it would take too long; the Senate as a whole is reluctant to debate a contempt citation, which might turn into a kind of mini-impeachment; the committee does not want to apply the word "contempt" to the presidency; and it is questionable whether the Justice Department could enforce a

contempt citation against the man responsible for that same department.

Therefore, the committee will attempt to win from a federal court a declaratory judgment stating that Mr. Nixon must honor the subpoena. Alternatively, it might try to join the procedure initiated by Cox and Sirica.

Ultimately, federal court decisions in either the Senate or Cox cases will be appealed to the U.S. Court of Appeals for the District of Columbia and then to the United States Supreme Court.

New York Times



UPI Telephoto

JUDGE JOHN SIRICA
He signed the order



AP Wirephoto

ARCHIBALD COX
Special prosecutor