

7/24/73 NYT

# President vs. Congress

## Nixon Viewed as Risking His Credibility And Role in History in Confrontation

By JAMES M. NAUGHTON

Special to The New York Times

WASHINGTON, July 23 — President Nixon's refusal today to release the secret tapes of his conversations with central figures in the Watergate conspiracy signaled a determination by the President to run the legal and political risks that Watergate poses to his long career.

It pitted the President against Congress in a test of their separate powers and was grave enough to

move Senator Howard H. Baker Jr., the Tennessee Republican, to declare that the nation was on "the brink of constitutional confrontation." It posed a peril to Mr. Nixon's leadership of the country basic enough to prompt Senator Sam J. Ervin Jr. of North Carolina, the Democratic chairman of the Senate Watergate Committee, to assert that Watergate was a greater tragedy than the Civil War.

Yet Mr. Nixon, by the accounts of his associates, decided to risk both his current credibility and his place in history in defense of an esoteric doctrine called executive privilege, which has never been defined.

The Constitution's separation of powers must "preclude" him, the President said, from making available such evidence as the tapes — or, for that matter, an assortment of White House documents — that the Congressional investigators would read into the record of their hearings or that Archibald Cox, the special Government prosecutor, might introduce in criminal trials.

"I don't think," Senator Ervin proested grimly this afternoon, "that the American people are so interested in abstruse arguments about separation of powers or executive privilege as they are in fining answers" to questions about any Presidential role in Watergate.

Thus Mr. Nixon's rejection of the plea for answers represented by the tapes, constituting what will inevitably be dubbed his seventh crisis, brought into sharp focus the risks that he was confronting.

Proponents of Presidential impeachment, who have been unable so far to get more than a detached discussion among now with the arguemnt that Mr. Nixon is forcing them to subject him to a trial by the full Senate—with the prospects of examination of the President under oath—as the only way to obtain Mr. Nixon's side of the Watergate story.

The public, whose faith in the Presidents's denials of involvement in the conspiracy has slid to the lowest level of Mr. Nixon's rank in the opinion polls during his Presidency, may be tempted to join Senator Ervin in concluding that it is "more difficult" to maintain. A presumption of Presidential innocence when the President is withholding the hardest evidence available.

Mr. Nixon said today, in his letter to the chairman of the Senate Select Committee on Presidential Campaign Activities, that the evidence on the tapes "would not finally settle the central issues before your committee."

If so, what risk would be entailed in making the pertinent portions of the tapes part of an already inconclusive record?

### Misinterpretation Feared

The President, anticipating that argument, said that he had heard the recordings and that they were "entirely consistent" with his public professions of innocence and his ignorance of involvement of his aides and campaigners in the conspiracy. But he said the tapes contained comments that could be misinterpreted by "persons with different perspectives and motivations."

What the seven members of the Senate committee and Mr. Cox at the special prosecuting team were saying, in reply, was that it was insufficient for Mr. Nixon to be the sole judge of the proper perspective and that their own motivations were limited to searching for facts in the thicket of conflicting testimony.

The investigating committee, insisted its senior Republican, Senator Baker, is "not trying to prosecute anyone, or to protect anyone," but only to "divine" the truth. The Constitution, contended its most reverential interpreter in Congress, Senator Ervin, provides for no privilege against disclosure of information about either illegal activities or political campaigns.

In his curt, 212-word letter, Mr. Nixon rejected the Senate committee's professions of good intent and its interpretations of executive authority. He maintained that the tapes were so, inextricably tied to "an enormous number of other documents and tapes" and to unrelated but "highly confidential" matters that agreement to provide access to any of them would lead to an "endless process of disclosure and explanation" that he was unwilling to permit.

Officially, then, he made his stand on the contention that he would not establish the precedent for opening up the White House files to outside examination.

There were, however, some political considerations that entered into the President's decision to make his stand at the White House door. His associates suggested that Mr. Nixon, after a long period on the defensive over Watergate, was back in form as a combatant who is at his best when the going is roughest.

The rejection of the request by the Senators and prosecutors may well be the opening salvo in a counteroffensive in which Mr. Nixon will seek to persuade the public that the Senate committee, with its hearsay evidence and its questions about witnesses' assumptions, has overstepped its bounds.

Further, the White House officials privately expressed—and intimated that the President held—the view that adverse public opinion had "bottomed out" in the most recent Gallup Poll, which estimated that barely 40 per cent of the voters approved Mr. Nixon's performance in the White House.

According to this view, with the President's esteem at its lowest level since he took office, things could hardly get worse and might get better, so there was little jeopardy involved in withholding White House tapes and documents.

But not everyone was so confident of an upward trend in Phase 2 of the Watergate conflict. What if Mr. Cox were to resign as he intimated,

if the White House refused to supply him with all materials relevant to his investigation?

Or what would happen in the court of public opinion if Melvin R. Laird, the President's new assistant for domestic matters, became so disillusioned by his minimal access to Mr. Nixon and his lack of impact on the Watergate decision that he opposed that he reluctantly quit?

And what if either the prosecutor of the Senators carried the legal dispute over the tapes to its ultimate end and won a ruling against the President from the "strict constructionist" Supreme Court that Mr. Nixon worked so hard to assemble?

### Confrontation Invited

The President invited a head-on confrontation with Congress by noting in his letter to Senator Ervin that he had placed the tapes under "my sole personal control." Thus the subpoenas—which might otherwise have been directed at the custodian of White House documents or at the Secret Service official in charge of the recording system—were addressed to Mr. Nixon, himself, and served on him late today.

The Federal courts have not faced before a determination of the outer limits of a President's privilege to withhold information from Congress. There is no certainty that they will in this case. But should the President challenge the subpoenas in court or refuse to honor them and face a citation for contempt of the Senate, the Supreme Court would inevitably be asked to make a final judgment that neither the White House nor Congress seems to desire.

The only thing approaching a precedent was a ruling by the Supreme Court in 1807 that President Thomas Jefferson must answer a subpoena from a United States District Court in Richmond.

Beyond the legal contentions and within the framework of the political clash, the risks were clearly more immediate.

Senator Ervin, in an apparent effort to dissuade Mr. Nixon from the course that he took today, warned on Saturday that he could "think of no rational reason for the President not turning over the tapes unless the evidence found in them would be against him."

John W. Dean 3d, the deposed White House legal counsel, swore under oath last month that conversations with Mr. Nixon — conversations almost certainly on tape — had persuaded him that the President

was personally enmeshed in the Watergate cover-up.

#### **Strachan Backs Dean**

Gordon C. Strachan, a former assistant to the former White House chief of staff, H. R. Haldeman, told the Watergate committee today that "my opinion would be that John Dean would be telling the truth" if he said he had discussed cover-up incidents with the President.

Three months ago, Senator Ervin was confiding to his friends that he simply could not believe that the President had been personally involved in the Watergate conspiracy.

"I venerate the office of the President," he said today, "and I have the best wishes for the success of the incumbent, present incumbent of that office, because he is the only President this country has at this time."

But, as Senator Ervin stated it on Saturday, "I'll have to confess he's making it more difficult for me and members of the committee to continue to cling to the presumption of innocence by continuing to withhold evidence which could tend to show that presumption should be sustained."

That, for Mr. Nixon, is the most serious risk of all.