

Above the Law? 4/6/74

The arguments on behalf of President Nixon before the United States Supreme Court yesterday constitute an audacious effort to place the person of the President outside and above the legal processes of the land, however much the lawyers try to blur the point. No measure of public weariness with the perplexing twists in the knot of Watergate can obscure the extraordinary presumption underlying the claims now issuing from the White House.

Thus, Presidential lawyer James D. St. Clair's bland utterance: "The President is not subject to the criminal process, whether that process is invoked directly or indirectly." It would seem that Mr. St. Clair has discovered a long overlooked deficiency in the language of the Constitution; to that phrase requiring the President to "take care that the laws be faithfully executed" should apparently be appended, "by everyone except the President."

Mr. St. Clair is arguing in circles: A President cannot be indicted while in office—a premise which may or may not be sound but is not under consideration now anyway. Nor is it permissible, the argument goes, for a grand jury to name the President as a conspirator without indicting him. At the same time, the grand jury is alleged to have acted unfairly in naming the President without listening to his side of the story; but Mr. Nixon himself admits that he refused the grand jury's request for his testimony. The President evidently wants to have it both ways.

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Even more disingenuous footwork came as Mr. St. Clair warned the Supreme Court against interfering with the impeachment process, clearly assigned by the Constitution to the House of Representatives. In the first place, the issues before the Court concern only the special prosecutor and the Watergate grand jury. The failure to comply with Congressional subpoenas, a potentially impeachable offense, is not now at issue.

Nevertheless, Mr. St. Clair's warnings could conceivably have had some merit if his client were in fact cooperating fully with the impeachment inquiry and were accepting that forum for Presidential accountability. But, no, the stonewall against the House Judiciary Committee is just as adamant as that against Mr. Jaworski. Squaring the circle, one of the arguments of the President's men is that supplying too much documentation to the Congressional investigators must prejudice due process in the courts!

Now for the first time the Supreme Court is engaged in the unravelling of the Watergate conspiracy—not in all of its aspects, by any means, but in certain key points. Can the practice of executive privilege be properly invoked against a prima facie case of criminal conspiracy inside the executive? And can a citizen—even the First Citizen—be the sole judge of the evidence to be assembled against him? The questions almost answer themselves, for anyone honoring the rule of law. Mr. Nixon's audacity lies not in an effort to protect the Presidency; it lies in the use of the Presidency to protect Mr. Nixon.