

Eyes On The High Court

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President Nixon, through his lawyer James D. St. Clair, has thrown before the Congress of the United States in formal, explicit terms a challenge that was merely implicit in his posture over the months leading up to that historic Monday morning in the august chamber of the Supreme Court.

In his defense of the doctrine of executive privilege — specifically, the right of the President to withhold 64 White House tapes from the special Watergate prosecutor — St. Clair stated his argument in these sweeping terms:

Only Congress, he told the justices, through the impeachment process, has the power to breach the constitutional balance between the executive, legislative and judicial branches of the government. In all other cases, even in a criminal proceeding, the President has not only the right but the duty to refuse to disclose confidential information in his possession to either Congress or the courts if, in his judgment, such disclosure would jeopardize or encroach upon his executive functioning.

In other words, in any matter before the Congress in which it is believed the President has relevant information — even if the President is not himself personally involved — the House of Representatives must first impeach the President

before he can be required to produce that information.

Ironically, this is precisely the opposite of the position of most Republican members of the House Judiciary Committee.

Their argument is that only if it is conclusively shown that the President has committed some impeachable, criminal act — only if the “body” is produced — may the President be impeached.

If St. Clair's view were to prevail, all the work of the Judiciary Committee, whose hearings are certainly a legitimate and necessary part of the impeachment process, would be an exercise in futility. In this and any other matter in which presidential performance were under question, Congress must take the extreme, ultimate step of impeachment — or do nothing.

If the view of the President's supporters on the committee were to prevail, no president would ever be impeached for anything — short of shooting someone on the White House lawn in full view of witnesses.

Obviously, it cannot be both ways. That is why the decision of the Supreme Court, whatever its effects on the fortunes of one Richard M. Nixon, will be remembered as one of the most momentous decisions in the history of the Republic.