

# Ultimate Test of Coequality

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The three branches of America's national government, separate and coequal, converged yesterday in a traumatic moment of history, an ultimate test of constitutional authority provoked by the questions of high crime in the White House.

In the morning, the Supreme Court delivered its unanimous opinion, 8 to 0, commanding President Nixon to surrender the evidence he has withheld from the special federal officers who are prosecuting his former closest aides.

Across the Capitol lawn, a block away, the House Judiciary Committee began its public debate last night on writing a resolution of impeachment—charges against the Chief Executive which, if the House of Representatives concurs, will put President Nixon on trial this fall before the Senate. The nation watched the opening scene of this momentous drama via television.

Beforehand, from across the continent, the President's defense lawyer went on network TV briefly to announce that Mr. Nixon will comply fully with the court's edict.

"While I am, of course, disappointed by the results," the President's statement declared at San Clemente, Calif., "I respect and accept the court's decision."

James D. St. Clair, his lawyer, said that White House officials will begin work immediately, preparing tape recordings of 64 presidential conversations to be turned over to the Watergate special prosecutor. The White House announcement ended some suspense because the President's spokesmen had been ambiguous about whether Mr. Nixon would comply with a Supreme Court decision against him in the case. The widespread assumption outside the White House is that the additional tapes and documents may further damage the President's case.

In any event, Congressmen of both

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parties noted that the Supreme Court's reasoning indirectly undercuts Mr. Nixon's in his impeachment struggle with Congress, even though the decision does not deal with that subject. Their reasoning, in short, is that if the President's rights to confidentiality must yield to a criminal prosecution, then surely he has not grounds for refusing to honor eight subpoenas issued by the Judiciary Committee in its impeachment inquiry.

Several senior Republicans on the House committee suggested that, perhaps now, the President would see the wisdom of complying with their demands for evidence and they urged a temporary postponement of the impeachment debate. The majority of Democrats, however, argued that the accumulated evidence, compiled and catalogued in 22 volumes, already demonstrates the President's guilt. Barring the unforeseen, a committee majority is already formed to recommend impeachment.

Rep. Jack Brooks, a Texas Democrat on the committee, described the weight of the decision his opening remarks: "We, as well as the President, are on trial for how faithfully we fulfill our constitutional responsibilities."

The republic has faced this crisis only once before in its life, a bitter interlude in the divisive years after the Civil War when the nation was still torn over how to reunite itself and how to emancipate truly the freed slaves of the Confederacy. In November of 1867, the House Judiciary Committee voted, 5 to 4, to impeach President Lincoln's successor, Andrew Johnson, but the charge lacked substance and it failed in the House of Representatives, 57 to 108.

Two months later, after Johnson had once more defied the congressional majority on "reconstructing" the union, impeachment roared back and succeeded in the House, 126 to 47. Johnson was acquitted in the Senate by one vote after a bitter three-month trial, but the experience left such

troubled memories that many scholars thought presidential impeachment had become a dead-letter article in the Constitution.

"Judging by our past experiences," wrote Woodrow Wilson, the historian who became President, "impeachment may be said to little more than an empty menace. The House of Representatives is a tardy grand jury and the Senate an uncertain court."

The present tremor of history crept up on the government, both on Congress and the White House, like an inexorable tide. It swept aside the conventional political judgments that the Watergate scandal would never come to that. At every juncture, when the President's fortunes seemed revived, new revelations or controversy pitched him into deeper trouble.

Twenty-five months ago five burglars were caught in the act at a Washington office complex, planting electronic eavesdropping equipment in the national headquarters of Mr. Nixon's political opposition. It hardly mattered at the time. The President won re-election five months later with 61 per cent of the vote; he carried 49 states.

"Certain elements," the President's press secretary suggested at the time of the break-in, "may try to stretch this beyond what it is."

But the simple crime fed upon itself, "a cancer growing on the presidency," said John Dean, the White House counsel who turned principal accuser. Other tangential scandals were revealed. The President's men changed their denials into awkward explanations. The President himself first resisted, then relented again and again to the demands for better explanations.

Even so, there was not much sentiment for impeachment when a year ago almost to this day Rep. Robert Drinan, the Jesuit congressman from the Boston suburbs, introduced the first resolution for impeachment. "I threw this in on July 31 last year, frankly with the hope that it would all go away," Drinan said yesterday, "that it would be re-

solved without this. But it kept growing and growing with an inexorable logic."

Standing alone a year ago, Drinan now confidently assumes the House majority will impeach. "It's all over, it's done," he said. "I'm trying to find an original way to express the tragedy of it all."

What started as newspaper allegations of White House cover-up has become a monumental debate on the uses of presidential power, certain to alter the major institutions in ways which no one can confidently foretell. The issues reflect a narrower moral concern than the questions of human rights which lay behind Andrew Johnson's impeachment, but the debate over Mr. Nixon's official behavior is fed by many more concrete allegations of common crimes.

A majority of the American people wants him out, or so the public opinion polls contend. Most recently, the Gallup Poll found that 50 per cent of the public thinks that the President should be tried, against 32 per cent who are opposed. Still, ironically, the President's ratings in the polls improved marginally during the past two months while the Judiciary Committee conducted its closed hearings on the evidence.

The White House has complained bitterly about an "impeachment lobby" led by Mr. Nixon's left-liberal political opponents. But in the capital yesterday the demonstrations of public sentiment were almost entirely in support of the President.

On the east front of the Capitol, Baruch Korff, the retired rabbi from Rhode Island who organized grassroots supporters for the President, inveighed against the "vampires soaked in blood" who would remove Mr. Nixon. Hundred of fasting young people, gathered on the Capitol steps to pray for the nation and for Mr. Nixon, earnestly cheered the rabbi's harsh rhetoric.

"Will we survive this lyching symptom in America?" Korff asked, and they thundered yes. "Will we survive the media which is the biggest lobby for impeach-

ment?" he exclaimed. Yes, they shouted again, waving a profusion of American flags.

A steady stream of curious tourists paused to watch, the only spectacle of impeachment which most of them can get to observe firsthand. They were particularly alert when Rep. Henry Smith came to the rally microphones. He is a Republican from upstate New York, a Judiciary Committee member still not announced for or against impeachment. Would he reveal his position?

"I think it's a marvelous thing you all are doing, praying for the country," Smith said neutrally. "We all need it, we need guidance."

At the Supreme Court, a different crowd gathered in the marble foyer gasped and cheered when the historic decision on presidential privilege was announced. The President has the right executive confidentiality, the court insisted, but he cannot claim it absolutely when the courts need the material for a criminal prosecution.

"It reinforces everything we've been saying," Father Drinan exclaimed. "There are some things where the separation of powers does not apply."

Whether Congress ever will get a tape recordings involved in yesterday's case is not at all clear, but even Mr. Nixon's Republican friends on the Judiciary Committee were urging him to provide the material voluntarily.

"Any further White House defiance of our subpoenas in view of the definitive Supreme Court ruling would only strengthen the case for impeachment," warned Rep. Robert McClory of Illinois, the second-ranking committee Republican.

Meanwhile, in one of those ironic coincidences which have become so commonplace in the Watergate scandal, Vice President Ford, the man who would succeed to the Oval Office was in town yesterday. He lunched with editors at The Washington Post, an off-the-record chat at the newspaper which the White House regards as the enemy camp.