

Above Law and Ethics

NYT 7/24/73

President Nixon has written bad law and disastrous politics in his decision to withhold White House evidence affecting the Watergate affair not just from the Congress but also from the special prosecutor and, by extension, the nation's courts of law.

His action yesterday can only heighten the increasing suspicion of direct Presidential participation in Watergate—a concern based not on abundance of proven facts, but on unproven allegations and circumstantial evidence, alongside a series of deceptions, evasions and now suppression of evidence by the principal in the suspected conspiracy. The basic political problem posed by the President's own actions, far transcending any question of tape recordings or written memoranda, is how any elected leader can expect to govern under this rapidly growing mushroom cloud of doubt and suspicion?

Mr. Nixon spoke in near-monarchical tones in his written replies to Senator Ervin, chairman of the Senate Watergate investigation committee, and Archibald Cox, the special prosecutor for the Watergate scandal. Material evidence involving an alleged criminal conspiracy is to be held "under my sole personal control," Mr. Nixon said. He arrogated to himself the unique judgment of what would best serve "the interest not just of the Congress or of the President, but of the people." These are claims of a ruler who harbors the illusion that he commands the personal trust of the populace, whatever whims he chooses to follow.

Mr. Nixon's assertions of fidelity to a lofty constitutional doctrine, the separation of powers, sound hollow and hypocritical against actions which show contempt for the spirit of the Constitution, for the responsibilities of a citizen—all citizens—under the law and the expectations of moral leadership from the President of the United States. This new Nixon Doctrine virtually sets the person of the President above law and public ethics.

The legal counter-moves launched by the Senate com-

mittee and Prosecutor Cox immediately upon notice or the President's decision will lead to a court test on the subpoenas issued by both investigations. These will involve complex issues of great moment; but a voluntary submission of evidence by Mr. Nixon would have showed far more sensitivity to the immediate problem of popular confidence in Presidential integrity.

Perhaps there is still the slimmest chance of a reversal or compromise by Mr. Nixon if the political gravity of his situation can be brought home to him. Legal and court battles are ill-suited for such lessons, which can best be conveyed by influential members of the President's own party and political family.

Senator Baker, vice-chairman of the Watergate committee, could sound a highly significant voice, backed both by his present position and his potential to the Republican party of the future. Other leading Republicans might be able to get through to the President, men like Senators Goldwater, Scott and Aiken, certain key Governors and national committeemen, perhaps old political friends like Herbert Brownell or William P. Rogers. All else seeming to fail, there are influences which stand the best remaining chance of penetrating the wall against reality which Mr. Nixon has erected around himself.

Just as the Watergate scandal has advanced far beyond the burglary of the Democratic National Committee, so is the current constitutional clash far more profound than any question about tape recordings of months-old White House conversations. Mr. Nixon may well be right—he, after all, is the only person who admits to having heard the tapes—in saying that they would not settle the central questions about Watergate. Our own guess is that they will neither prove nor disprove his innocence or guilt.

The real issue which Mr. Nixon has posed is whether a President of the United States, once elected, can succeed in holding himself answerable to no one but himself.