Two-Pronged Struggle

Nixon's Immediate Future Is at Issue Along With Constitutional Questions

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By WARREN WEAVER Jr.
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WASHINGTON, July 26—The confrontation between President Nixon and Congress today touched off a historic legal struggle that could affect the political prestige and authority of their two branches of government for many years.

When the President refused to honor subpoenas from the Senate Watergate Committee and the special prosecutor, Archibald Cox, and both investigators moved toward a court attack on that refusal, one of history's most serious challenges to American Presidential power was formally begun. Not since 1952, when President Truman seized the steel industry to avert a national strike and the Supreme Court found his action unconstitutional, has a comparable attempt been made to curtail official action by a President claiming constitutional authority.

News Analysis

But President Nixon, unlike Mr. Truman, is not under pressure from private interests. He is caught instead in a cross fire of litigation, from the Senate investigating committee on one flank and an officer of his own Administration's Department of Justice on the other.

Ruling on 'Privilege'

The Supreme Court ruling, which will probably come within six weeks to three months, will decide for the first time whether the Constitution gives a President the "executive privilege" to keep much of his official business private and then sketch limits around that privilege, if it is found to exist.

More immediately, the Court decision could directly affect President Nixon's tenure in the White House, compelling him to reveal information that either confirms his ignorance of the Watergate affair and the ensuing cover-up or establishes his involvement.

During the last month, in a series of statements declining to provide information to the Senate committee and the special prosecutor, Mr. Nixon has put forward broad historical and practical arguments but only the most general hints as to his legal case.

Subpoena for Jefferson

His letters today to Senator Sam J. Ervin Jr., the committee chairman, and Chief Judge John J. Sirica of the Federal District Court here did not provid much more in the way of clues to issues in the emerging court contest ahead.

The President wrote Judge Sirica that, in declining to honor the Cox subpoena, "I follow the example of a long line of my predecessors as President of the United States who have consistently adered to the position that the President is not subject to compulsory process from the courts."

Legal historians believe that only one other President, Thomas Jefferson, in 1807, was serve with a subpoena while in office. He declined to appear in court in Richmond, pleading the press of Presidential business, but furnished the requested documents.

Mr. Nixon cited as precednt a statement by Attorney General James Speed in 1865 that Presidents, Cabinet officers and Governors "are not bound to produce papers or disclose information communicated to them where, in their own judgment, the disclosure would,,on public consideration, be inexpedient."

Several Presidents have refused to make public documents sought by Congress — Dwight D. Eisenhower was the first to call the practice "executive privilege" — but their right to assert it has never before been testd in the courts.

In his letter to Senator Ervin, the President did not shed any new light on the legal case his attorney, Charles Alan Wright, is scheduled to present on Aug. 7 before Judge Sirica.

"I cannot and will not consent to giving any investigatory body private Presidential papers," Mr. Nixon declared. He referred back to earlier statements on "my constitutiod al obligation to preserve intact tthe powers and prerogatives of the Presidency" and "my constitutional responsibility to defend the office of the Presidency against encroachments b other branches."

In a White House briefing, Professor Wright, who teaches constitutional law by the University of Texas when he is not advising the Preident, made what appeared to be the major concessions to the Ervin committee, moves that could have considerable impact on the legal case.

No. G.O.P. Privilege

Professor Wright reported that the President would not claim executive privilege with respect to any conversation of documents involving "his duties as head oof the Republican party." Senator Ervin has long contended that political material could not qualify for any such exemption.

The President's lawyer also indicated that Mr. Nixon would not claim privilege as to papers and discussions that have already been the subject of testimony by another participant.

"It is very difficult to make any claim of privilege for material that is no longer confidential," Professor Wright conceded.

Other legal authorities indicated that the President, by permitting his aides to testify about certain conversations, had waived his own right to refuse to provide information about them, if he had such a right in the first place.

"The issue," on Washingto lawyer observed, "is not whether the President can withhold the best evidence or whatever particular evidence he chooses to withhold."

Neither the President nor Professor Wright said so, but some lawyers expect them to base part of their case against the Ervin committee on a charg that the subpoena goes well beyond information needed by the Senators to draft remedial legislation.

Relevance of Information

The focus of such a legal move would be to question whether the Senators really needed to know who was tell ing the truth and who was lying in a given situation in order to draw up a bill designed to prevent a recurrence of such events in the White House.

Generally, the courts have been reluctant to circumscribe the power of Congressional committees to obtain information, allowing them considerable latitude in fact-finding rather than running the risk of denying the lawmakers any relevant information.

The speed with which the legal controversy will make its way to resolution in The Supreme Court remained uncertain. Judge Sirica's decision to set the first argument for Aug. 7 indicated that the pace would be moderate rather than precipitous.

On that general timetable, the District Court might decide the Nixon-Cox case by the end of August, and the Court of Appeals could dispose of the inevitable appeal during September. The Supreme Court, which goes back into session on Oct. 1, could take a month or more after that.

Professor Wright suggested at his briefing, however, that it might be possible to move directly rom District Court to the Supreme Court, saving considerable time. But he did not provide details of what he conceded was an unusual procedure.

"If we're going to have a court test," the Nixon lawyer said, "I would like to have it end just as soon as it possibly can."