

Joseph Kraft

Part 7/29/73

The Crumbling of Power

The latest White House offensive on Watergate has turned out to be a kamikaze operation. Mr. Nixon is not so much toughing it out as messing it up. Presidential power, in consequence, is crumbling.

The big move in the widely-heralded counteroffensive was the refusal of the White House to release the tapes of Mr. Nixon's conversation and phone calls. The move came in two parts, and each bore the seeds of self-destruction.

First, Mr. Nixon himself sent a letter to Chairman Sam Ervin of the Watergate committee denying the committee's request for the tapes on the grounds of separation of powers between the executive and legislative branches of government. That claim is a straightforward one which could well be upheld in the courts. But Mr. Nixon tacked onto it an unnecessary and self-defeating assertion.

The President said he had listened to some of the tapes himself, and that they sustained his version of the Watergate break-in and cover-up. But he added that the tapes "contained comments that persons with different perspectives and motives would inevitably interpret in different ways."

That gratuitous observation amounts to a virtual confession that the President is holding back on the tapes because they do not exonerate him. As the legal fight for the tapes winds through the courts, the confession is going to be broadcast over and over to the nation. So even if he wins the legal fight with the committee, which seems likely, Mr. Nixon is in effect proclaiming: "I'm withholding the evidence because I'm not innocent."

The second move in the counterof-

"Mr. Nixon is not so much toughing it out as messing it up."

fensive is a letter from the White House denying the tapes to special prosecutor Archibald Cox. The legal problem was tougher here because Mr. Cox had been appointed by Atty. Gen. Elliot Richardson. Mr. Cox claimed that he was a member of the executive branch who could not be denied access to the tapes on grounds of the separation of powers.

The White House, in the person of Prof. Charles Wright, a special consultant on Watergate, made what looked like an ingenious response to this difficulty. Prof. Wright wrote Cox that his position as special prosecutor was anomalous. Prof. Wright said that if Cox was in fact a member of the executive, he was subject to orders from the President and could be denied the tapes simply by the President's fiat.

Prof. Wright went on, however, to say that Cox was in fact responsible to the grand jury and the courts, not the President. Therefore, Prof. Wright's letter concluded, the separation of powers doctrine did apply against Cox.

However ingenious that argument, it actually lost ground for the President. The thrust was to assert that Mr. Cox is an officer of the court in a matter

involving evidence of a crime. But in matters involving evidence of a crime, an officer of the court has special rights. So it looks very much as though Mr. Cox is going to win his court move to have access to the tapes. The more so as the President by his astonishing assertion that he would accept the ruling of the Supreme Court has denied his friends there their best reason to duck the issue.

The impression that the President is going down has already found its political consequences. Men all over Washington are splitting from Mr. Nixon.

Vice President Agnew has expressed his "relief" at not being involved in Watergate. Two of the President's most powerful White House advisers, Melvin Laird and Bryce Harlow, have let it be known that they favor partial release of the tapes.

The Congress, as evinced by recent stands on Cambodia and war powers, shows less and less respect for the President. Even the regulatory agencies, as indicated by the move of the Federal Trade Commission to break up the big oil companies, are moving on their own.

The final outcome, to be sure, is not clear. There are probably three months of legal maneuvering ahead. The Congress seems to have little stomach for impeachment, and the President says that talk of his resignation is "poppycock." But what is going on is not mysterious. Power and influence are running out on Mr. Nixon. He is working himself into the position where the only way to reassert the authority of the President will be for him to relinquish his grip on the office.