

Part 10/17/73

# Mr. Nixon: Determined to Defy the Supreme Court?

High administration officials and Republican leaders in Congress, abandoning nearly all doubt within the last two weeks, are now convinced that President Nixon has decided to defy any Supreme Court order to surrender his surreptitious tape recordings.

Presidential defiance of the high court, Mr. Nixon's aides admit privately, would set off impeachment proceedings in the House. Even if the House voted down impeachment, this ultimate threat to Mr. Nixon's political legitimacy would further disrupt the nation. For that reason, Nixon administration officials hope the Supreme Court will make an essentially political decision and avert the constitutional crisis by ruling in Mr. Nixon's favor.

By a tortuous process of reasoning, the burden of avoiding yet greater turmoil, therefore, rests not with Mr. Nixon, but with the Supreme Court. Since the President has made up his mind, Nixon partisans insist it is now up to the court whether or not to provoke an historic constitutional confrontation.

Nor does this seem an elaborate and not so subtle presidential bluff.

Many prominent Republicans in Congress, the administration and even the White House itself genuinely believe today that Mr. Nixon will never surrender the tapes. Butressing that conclusion are these new items of evidence:

ITEM: Presidential counselor Melvin R. Laird, who alone among Mr. Nixon's senior advisers urged him to turn over the tapes to special prosecutor Archibald Cox in the first place, is reading an 11th-hour effort to urge compliance with a possible court order. Laird says he trusts and hopes that no such final decision has yet been made by the President, but he leaves the impression he is not at all confident in either his hope or trust.

ITEM: Highly placed officials who last summer were stressing that no decision had been finally made now refuse to discuss that question one way or another. But at the same time, they give the distinct impression that Mr. Nixon has crossed his Rubicon and will never surrender the tapes.

ITEM: The July 26 statement by assistant press secretary Gerald Warren that Mr. Nixon would obey a "definitive" Supreme Court order to surrender the tapes is now virtu-

ally disowned in private by Mr. Nixon's lawyers. They tell friends the word "definitive" has never been used in White House discussions and is not a precise/legal term. So, where in the world Warren got it from is something they say they wonder about.

What complicates the thinking at the White House is the absolute certitude of Prof. Charles Alan Wright, Mr. Nixon's lawyer, that the Supreme Court will rule in the President's favor. There seems an almost desperate desire by both the President and his senior aides to believe Wright.

Their belief was not shaken by last Friday's decision against the President by the U.S. Court of Appeals here. "What else would you expect from that bunch of liberals?" asks one presidential aide.

One political figure who usually reflects Mr. Nixon's views believes that the Supreme Court will understand that any order to hand over the Watergate tapes would sabotage the presidency. He believes "those wise old men on the Supreme Court" will not want to open the floodgates for a torrent of lawsuits by Watergate conspirators. Lt. Calley and scores of other federal defendants to boot

the secret White House tape closet.

To highly respected lawyers in Washington (including some high in the Nixon administration), such an argument is nonsense. They believe a plan for selective release of portions of the tapes is feasible and hence suspect that the President is truly most worried about what's on the tapes. For much the same reasons, there is great skepticism about hints from high in the White House that Mr. Nixon might voluntarily hand over the tapes if not compelled to do so by the courts.

But among sophisticated students of the Supreme Court, there is belief it may rule in the President's favor for political reasons that would not be considered by a lower court. To prevent the worst confrontation yet in a year of governmental chaos, they hope, the high court might save Mr. Nixon from any need to defy it.

If it does not and instead rules against him, Laird will make that last final effort to urge presidential compliance. The present climate at the White House strongly suggests that he would lose and Richard Nixon would face a crisis dwarfing even Watergate and the Agnew affair.