

Court Seen Ducking Tape Confrontation

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Some constitutional lawyers said yesterday that the courts may be tempted to avoid the confrontation growing out of President Nixon's refusal to turn over Watergate tapes to the Senate committee and the special prosecutor.

"My main concern is that the Supreme Court may shirk from its duty in the case . . . dodge, or duck, the issue," said William W. Van Alstyne, professor of law at Duke University in Durham, N.C.

"This is no longer a political question for the polls to decide, or national television or the news media. Hopefully, the court will not avoid its duty. It's a good tough question, a strong issue," he said.

The confrontation was joined yesterday when President Nixon told the Senate Watergate Committee and special prosecutor Archibald Cox that he would not turn over the subpoenaed records. The President said he would abide by a definitive ruling by the Supreme Court.

The Watergate committee then voted unanimously to sue the President, and Cox asked for a court order requiring Mr. Nixon's compliance with the subpoena.

"There will be a great temptation for the courts to duck the issue altogether," said Prof. Terrance Sandalow, a specialist in constitutional law at the University of Michigan. He said the court may decide that the broad constitutional and philosophical implications of Watergate, including the relationship of the executive and legislative branches, extend beyond the scope of the courts.

"I personally feel this is an issue that ought not to involve the courts. It is beyond the function of the judiciary," said Jesse H. Choper, professor of constitutional law at the University of California at Berkeley. "I feel it is improper for the Congress and the President to shove this issue off on the courts when they have the capability and the tools to work out an accommodation. The judiciary ought to reserve its capability to problems of individual rights, not to interpreting allocations of power between the other two government branches."

Arthur Bonfield, professor

of constitutional law at the University of Iowa, said he was concerned whether it would be appropriate for the Supreme Court to enjoin the President and order him to hand over the tapes. He said the court would have no way to enforce its decision and said that would produce an "unthinkable" constitutional crisis.

He said one way to avoid such an impasse would be for the Supreme Court to issue a declaratory opinion that the President has a duty to turn over the tapes.