

NYTimes

Letters to the Editor

The President vs. the 'Super-Presidents'

To the Editor:

Surely the President is not above the law. In his own right as an individual he is not. With this he agrees.

The question is whether the position he has taken with respect to the Watergate tapes and memos is within the law as it applies to the Presidency.

Of necessity he must hold private talks in his official position with the widest variety of people. He is adamant in holding to the principle of executive confidentiality. No one has cited a clear-cut Supreme Court decision holding the contrary. The Marshall-Jefferson case pertaining to Aaron Burr is not a precedent. Marshall acted as trial judge, and no decision of the Supreme Court was made.

That the talks are recorded creates no more legal basis for their production than for requiring the President to testify.

Even though production of the tapes might be less inconvenient than his personal appearance, the tapes and memos could be incomplete or out of context, and, hence, require that he appear to give his version. If there is merit to the proposition that there can be no Presidential privilege as to them, it follows that he must be answerable to a subpoena calling for his personal appearance. This, no one has seriously contended.

It is in the nature and imperatives

of the office of the Presidency that the privilege of confidentiality must rest in his unreviewable discretion. He has been placed by nationwide election in an unequaled position of primacy, which carries powers and responsibilities far greater than of any other official. In his election, faith and confidence in his wisdom and integrity were placed. Innuendoes that he claims the privilege in bad faith do not constitute cause for invading the privilege. For misconduct in office, the Constitution provides recourse.

When judges become reviewers of the judgment and wisdom of the President in his exercise of executive privilege of confidentiality and substitute what their judgment and discretion in the matter may be, they thereby purport to constitute themselves Super-Presidents, an office to which they were not elected. Would the President similarly have the right to overrule a decision of the Supreme Court and thereby act as a Super-Supreme Court Justice? Where, then, would the doctrine of separation of powers—the very foundation for the stability of our government—be found? Only in its ashes.

CHARLES A. LORETO

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The writer is a retired Justice of the Supreme Court of the State of New York.