

J. J. Kilpatrick

# The End of the Rope for a Nixon Defender

Washington

FOR THE FIRST TIME since the President's troubles began two years ago, Mr. Nixon's remaining friends now find themselves face to face with the monstrous idea. It is a possibility that no longer can be evaded. The monstrous idea is that their President is indeed a crook.



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I speak as one of this body of friends. Just a week ago, I was writing cheerfully that Mr. Nixon's misfortunes had bottomed out. The President's statements on the milk deal and the ITT affair had left a favorable impression. He had nowhere to go, I thought, but up.

Then came the devastating evidence of the electronic experts as to the famous 18½-minute gap. A full day of cross-

examination failed to shake their testimony. "It is the court's considered opinion," said Judge John Sirica, "that a distinct possibility of unlawful conduct on the part of one or more persons exists here." It is that distinct possibility that impels consideration of the monstrous idea.

The tape in question was evidence. It contained a conversation between the President and H. R. Halde- man on June 20, 1972, just two days after the break-in at Democratic national headquarters in the Watergate. At least since early July, the tape has been under the "sole personal control" of the President himself. At some point between October 1 and November 12, the recorded conversation was erased. Until the experts testified last week, it seemed a plausible possibility that the erasure was accidental. Their testimony cannot be blinked away: The erasure was deliberate.

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THIS CREATES for me, at least, an entirely new proposition. If the President is to be removed from office by impeachment, it can only be for some high crime or misdemeanor in which he himself was involved. Over the past two years, we have heard 20 to 30 charges hurled against the President, but many of them were not high crimes or misdemeanors; in other instances, his personal involvement was remote.

The bombing of Cambodia, for example, was Mr. Nixon's act, but it was not, constitutionally speaking, a high crime. The cover-up of the Watergate conspirators may have been a high crime—it involved subor- nation of perjury, among other things — but I find it believable that the cover-up was kept from Mr. Nixon himself.

The same objections hold as to other charges. The overtures that were made to Judge Matthew Byrne, during the course of the Ellsberg trial, were blunders, not misdemeanors. The extortion of contributions from corporate executives was unlawful, but such of- fenses are common-place in political campaigns; the facts do not support a charge of bribery. The Presi- dent's income tax returns present problems of tax law, but his errors in this regard, if any, are civil, not crim- inal.

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THE ERASURES on the June 20 tape are of a different order of magnitude. Here the testimony is direct, authoritative, and overwhelming. Human hands manipulated the recording machine in order to obliterate the conversation. We have to assume that the tape contained incriminating material — why risk erasure otherwise? — but the nature of the conversation is immaterial. The evidence was knowingly destroyed by one of perhaps a dozen persons who had access to the tapes in the critical period. If it can be proved that this tampering was done at the direction of the Presi- dent, express or implied, Mr. Nixon is done for.

It is now imperative, it seems to me, for the Presi- dent to arrange an opportunity for the nation to have his own voluntary testimony, under oath, subject to cross-examination. Whatever defenses he may have advanced earlier, based upon "confidentiality" and "executive privilege," are now stripped away. He alone was responsible for the preservation of this evidence; and the evidence was destroyed.

I for one have reached the end of the rope. Two years of excuses, rationalizations, presumptions of innocence, benefits of doubts, strained credulity, and unceasing embarrassments come to a climatic silence in the 18½-minute erasure. It is the hum on the tape that provokes the monstrous idea. I want that idea to go away — I want to believe my President is not a crook — but only Richard Nixon himself can dispel the idea now.

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