

I have the deepest of suspicions involving criminality in the operation of the Republican presidential campaign of 1972. However, there appears to be a stumbling block for impeachment, at least on the grounds of non-disclosure of subpoenaed evidence (the various tapes) despite the insinuating information that may be contained within. Precedent has been set concerning disclosure of information in the possession of the Chief Executive. The more recent examples include Attorney General Robert Jackson's 1941 refusal "with the approval and at the direction of the President" to allow the House Committee on Naval Affairs to see certain F.B.I. reports and President Truman's refusal to disclose loyalty information on Dr. Edward Condon, then director of the Bureau of Standards. In both cases, disclosure was refused because it would have been contrary to the public interest.

Until recently, I believed that if the information was of a political nature and not of a governmental one (thus involving the separation of powers doctrine), the President had no right to withhold it and so could be compelled to release the tapes subpoenaed of him. However, E. S. Corwin in his "The President: Office and Powers, 1787-1948," New York University Press, New York, 1948, pp. 6-7, cited John Locke's "Treatise," chapter 14, which was used by the Framers of the Constitution as a guide in developing the Constitution:

For the legislators not being able to foresee and provide by laws for

all that may be useful to the community, the executor of the laws, having the power in his hands, has by the common law of Nature a right to make use of it for the good of society, in many cases where the municipal law has given no direction, till the legislative can conveniently be assembled to provide for it; nay, many things there are which the law can by no means provide discretion of him as the public good and advantage shall require . . .

. . . This power, whilst employed for the benefit of the community and suitable to the trust and ends of the government . . . never is questioned.

As I understand it, once the President refuses disclosures of information because it would be contrary to the public interest, he cannot be questioned—hence, the courts have no jurisdiction if the Constitution is to be followed according to its intent. Perhaps even if the suspicious gaps in the tapes are proved to have been caused with criminal intent, no crime has actually been committed if the President decides that further discussion of the topic is contrary to the public interest. The fight for access to the tapes on any grounds may lead the President to believe that it is quite fortunate that the "buck" indeed does stop with him. There is one way, though, to compel disclosure and that is through impeachment proceedings.

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