

'Nothing to Hide'

"The President has nothing to hide in this matter."

—President Nixon, television address, April 29, 1974.

"The President feels he has given them [the committee] everything that he thinks they need."

—James St. Clair, May 5, 1974 (emphasis added).

By Anthony Lewis

BOSTON, May 15—The House Judiciary Committee, in its impeachment inquiry, has wisely refused to be distracted from its duty of hearing the evidence against President Nixon by a fight over his claims of executive privilege. But the issue is there, and it will not go away. That is the issue of a President's power, in his own unreviewable discretion, to withhold from the other branches of Government information bearing on criminal activities.

From the beginning of Watergate, access to the facts has been a crucial question. Mr. Nixon certainly saw it that way. A main theme running through the edited transcripts of his White House tapes—from the very first, of Sept. 15, 1972—is the search for ways to avoid disclosure.

The various "scenarios" rehearsed by the President with Messrs. Halde- man, Ehrlichman and Dean were designed to meet public pressure by giving some information "without breaking down our executive privilege," as Mr. Nixon put it.

Over the last year the tactics of withholding and evasion have been employed successively against Congress, the courts and Congress again. The tactics failed in each case in the past, and now they are approaching a new point of confrontation—and inevitable failure.

In the winter of 1973 the taped conversations focused on ways to thwart the Senate Watergate Committee. On March 12 Mr. Nixon issued a statement claiming executive privilege in unprecedentedly sweeping terms: He said no White House staff member, past or present, would even appear before the committee. He withdrew from that position under public pressure. On April 17 he said that all White House aides would appear when called. On May 22 he said "executive privilege will not be invoked as to any testimony concerning possible criminal conduct" in the Watergate affair.

Mr. Nixon next tried to use executive privilege as a way of withholding tapes from the Watergate grand jury. When that course failed in the courts, he gambled on a coup: offering partial transcripts and firing Archibald Cox. The gamble failed in massive public outrage, and Mr. Nixon was forced to

ABROAD AT HOME

give the grand jury some tapes. Those in turn went to the impeachment inquiry, and in an attempt to soften their impact Mr. Nixon published edited transcripts.

With publication, Mr. Nixon tried to shut the door to any further disclosure. He ordered his chief of staff, Alexander Haig, to refuse to answer questions about the \$100,000 given by Howard Hughes to Charles Rebozo. And he said no to a subpoena from Special Prosecutor Leon Jaworski.

The strategy of resistance is again proving disastrous. The House committee, backed by the specifics it has learned, has voted overwhelmingly to subpoena more evidence; in due course it will have to press for better ways of checking those doubtful transcripts against original tapes. General Haig has backed off the absurd position of claiming privilege on what Mr. Nixon, says was purely political money, unconnected with official business. The Jaworski subpoena is before the courts, with all odds on enforcement. The Watergate tide sweeps on.

Anyone who can lift his eyes from Watergate must regret what has happened, and is happening, to the old problem of adjusting the needs for information and privacy in a government of separate powers.

For Presidents, like everyone else, are ordinarily entitled to confidential advice and discussion. There is a public interest in that privacy. The interest suffers when a President abuses his power by trying to claim privilege where none can apply—to conceal evidence of crime, or to limit an impeachment inquiry.

Underneath all the legal talk about power and privilege there is a fundamental requirement of democracy: that a President be accountable. If we are not to have a four-year monarchy in this country, Presidents must account for their actions, above all when Congress invokes the ultimate remedy of impeachment.

That was understood from the beginning. In 1788 James Iredell of North Carolina, who later became a Supreme Court justice, urged his state to ratify the Constitution. As one example of its safeguards he said the President could be impeached if he "concealed important intelligence" on foreign affairs from the Senate.

It is open to the House committee now to make the President's non-cooperation one count in a bill of impeachment. A wiser approach, requiring separate discussion, might be to see Mr. Nixon's whole course of conduct since Watergate—the course of concealment and deception—as an attempt to obstruct the law.