

Why Should Mr. Nixon Cooperate?

Let me acknowledge, even before asking it, that the question is irrelevant. Still it may provide some insight into what is going on in these pre-impeachment days to ask: What should the President be doing about the demands for Watergate evidence?

What would you, as a friend, adviser or lawyer have him do?

Increasingly the responses of the President and his lawyer are weighed only in legal, constitutional terms, and we keep concluding that Mr. Nixon should stop holding back information, or trying to tone it down. He should stop trying to limit the scope of the impeachment inquiry.

He should spare the country the agony of a needless constitutional crisis; he should do everything he can to uphold the plain words of the Constitution.

He should, in short, cooperate with the House Judiciary Committee and with his own special prosecutor.

But the one would kick him out of office and the other would throw him in jail. That is why it is almost silly to ask, in legal or constitutional terms, what the President should be doing about the evidence.

As his lawyer, or as his friend, you would have one basic question: Would release of the evidence hurt him more than the refusal to release it? If the answer came back Yes, you wouldn't waste time discussing the legal limits

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of subpoenas or the historicity of the doctrine of executive privilege, except to divert the press.

You would look balefully at Vice President Gerald Ford, who says in one breath that he doesn't know what the tapes and other documents contain and in the next that the President should release them to the House Judiciary Committee.

To follow Ford's advice could be good for the country, but would be disastrous for your friend and client.

Nor could you in good conscience ask him to resign. Again, that would save some wear and tear on the American political system. But it would lay your friend and client open to subpoena in scores of Watergate trials and to his own prosecution as a common criminal.

No. If you were to advise the President to do what is best, under the circumstances, for Richard Nixon, you would advise him to do pretty much what he is doing: shifting the burden

of proof away from himself onto those who would impeach or jail him; in effect, taking the Fifth Amendment.

But, as I said at the beginning, the question is irrelevant. The only reason anyone would ask what Richard Nixon should do about the subpoenas is that Richard Nixon is President of the United States, and we've come to think of the President as the leading actor in every important political drama.

We've grown used to arguing that, yes, the President should have done this, or, no, he was ill-advised to do that, or, in light of thus and such, he is virtually certain to do the other.

Everything has always turned on the President's action or nonaction. Our news stories routinely begin, "President Nixon yesterday . . ."

But not this time. This time the President's role is not to act, but to react. He is not in charge of the proceedings; he is the target of the proceedings. It is, therefore, pointless to ask what he should be doing. The

question may have some moral content, but it is pragmatically empty.

As a purely practical matter, the President should be doing precisely what he is doing: trying to save his own hide. And we're insane to expect him to cooperate in anybody's efforts to the contrary.

There's nothing wrong with trying to save your own hide, of course. But it does get to be confusing when you are both the pursuer and the quarry, when you are at once chief of the law enforcers and chief suspect.

It is in the President's best interest to maximize that confusion. It is in ours to reduce it to a minimum. The way to do that is to remind ourselves that he is not in charge, except of his own defense.

Fortunately, there are some people around who are bright enough to see that. Leon Jaworski and Judge Gerhard Gesell, to name two, are demonstrating that once you can get it through your head that Richard Nixon is the suspect, not the D.A., you can use his noncooperation and his dilatory behavior against him.

What should the President do? It may be that he should leave office and go to jail — and there is an increasing chance that he will do at least one of the above.

But not voluntarily. Those who persist in asking what the President should do had better realize that it is not in Mr. Nixon's power to supply the answer.