

President Nixon is making a persistent, determined effort to delay the House impeachment inquiry and the Special Prosecutor's multiple investigations. Rightly or wrongly, he believes that time is on his side. He has boldly asserted that he will provide no further evidence to the House Judiciary committee, no matter how many subpoenas it may issue. With regard to special prosecutor Leon Jaworski, he has adopted the more subtle strategy of insisting that Mr. Jaworski has no legal standing to subpoena evidence in the President's possession.

On both fronts, Mr. Nixon is bluffing on a grand scale. In their responses to the President's bluff, however, Congress and the Special Prosecutor are proceeding on significantly different lines. Mr. Jaworski having won his case before Judge John Sirica in the District court, wants to bypass the Court of Appeals and obtain an early ruling by the Supreme Court on this right to subpoena the President's evidence and on the extent to which the President can claim executive privilege to withhold evidence in a criminal case.

The Supreme Court has precedent for granting Mr. Jaworski's plea for accelerated action. Similar pleas were honored in the Pentagon Papers case and in President Truman's seizure of the steel mills during the Korean war. With President Nixon facing possible impeachment and with two major criminal trials involving several of his former aides about to begin, a comparable emergency exists now.

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If the House Judiciary committee were engaged in a normal investigation, it too would turn to the courts to enforce its subpoenas. But the Judiciary committee is properly adamant against enlisting the aid of the courts. Impeachment is a unique Constitutional enterprise. It is the one occasion defined by the Constitution when the normal separation of powers among the three branches of Government breaks down.

When the House of Representatives draws up an impeachment, it is performing a grand inquest for the whole nation. When the Senate sits as the jury in an impeachment trial, its verdict is final. In both stages of an impeachment, the substance of the decisions reached by the House and Senate are not reviewable by the courts.

If Mr. Nixon persists in ignoring the Judiciary committee's subpoenas, the committee can note his non-compliance and draw "negative inferences" from his refusal to comply. It would be pointless to cite him for contempt of Congress and it would be supererogatory for Congress to seek the court's help in enforcing its subpoena. Congress's own authority is Constitutionally sufficient.

Similarly, if there is an impeachment trial, the Senate can reasonably infer that if the President refuses to make available tapes or documents that may be requested, it is because those materials would not exonerate him. Mr. Nixon cannot have it both ways. He cannot withhold evidence from the House and Senate and also assert that the hidden evidence would clear him.