

Experts Attack Nixon's Constitutional Defense

Washington

The Constitutional defense being erected by President Nixon against demands that he produce additional evidence for the Watergate and impeachment proceedings is viewed as a flimsy argument standing on shaky factual ground by a number of experts interviewed recently.

In a recent letter to the chairman of the House Judiciary Committee, Peter W. Rodino Jr. (Dem-N.J.), Mr. Nixon said he was basing his refusal to obey the committee's subpoenas for additional evidence on the Constitutional doctrine of the separation of powers.

"I am determined," the President wrote, "to do nothing which, by the precedents it set, would render the executive branch hence-

forth and forevermore subservient to the legislative branch and would thereby destroy the constitutional balance."

The White House made a similar argument with regard to the power of the presidency in relation to the judiciary as part of a brief presented to the Supreme Court Saturday.

But Constitutional experts in the academic community and members of Congress concerned with constitutional matters, when asked for comment on the President's letter to the judiciary committee, flatly rejected Mr. Nixon's argument.

Of several experts questioned, all indicated they believed that the President's argument was not only inappropriate for an impeachment proceeding but, even more significantly, that it misrepresented the facts of the existing relationship between the executive and legislative branches of Congress.

In various ways, the experts all expressed their belief that for Mr. Nixon to warn that the Presidency was in danger of being destroyed by Congress was like the wolf warning that it was in danger of being devoured by the lambs.

In fact, they said, it is Congress that has been dominated by the executive branch as recent Presidents — particularly Mr. Nixon — have enlarged their powers and prerogatives. If anything, they added, the current confrontation may offer Congress a rare opportunity to redress what has been a widening imbalance in the Constitutional system of checks and balances.

One Constitutional expert, Professor Yale Kamisar of the University of Michigan School of Law, commented that "it is hard to take seriously" the President's argument that the presidency is

threatened by the demands of the judiciary committee.

"If anything," he said, "the danger is the other way. If Congress had not acted in this situation, it would have been made completely subservient to the executive branch."

The White House did not respond directly when asked for comment on the criticism of the President's constitutional argument. The question was referred to the President's lawyer, James D. St. Clair, who answered through a spokesman that "we'll stand on the letter."

No expert opinion supporting the President's constitutional argument could be found over the last week.

The President's argument was rejected by those questioned on two counts. One was a contention — made often by critics of Mr. Nixon in recent months — that the separation of powers doctrine is not applicable in an impeachment proceeding.

"Impeachment is the ultimate inquest of the nation," said Senator Charles McC. Mathias Jr. (Rep-Md.), ranking minority member of the Senate Separation of Powers Subcommittee. "In an impeachment proceeding authorized by the House of Representatives there can be no barriers to access to information."

The President's argument was rejected even more sharply on the ground that it is specious to assert that the claims of the House committee make the presidency "subservient" to Congress.

Professor Alexander Bickel of Yale University law school said in an interview that the President's compliance with the demands of the judiciary committee would in no way constitute a threat to the separation of powers. "It may destroy Nixon, but the presidency is in no danger," he said.

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