

Experts Reject Arguments For Nixon's Defying Panel

By PHILIP SHABECOFF

Special to The New York Times

WASHINGTON, June 23 — The constitutional defense being erected by President Nixon against demands that he produce additional evidence for the Watergate and impeachment proceedings are viewed by a number of experts interviewed over the last week as a flimsy argument standing on shaky factual ground.

In a letter to the chairman of the House Judiciary Committee, Peter W. Rodino Jr., Mr. Nixon said he was basing his refusal to obey the committee's subpoena for evidence on the constitutional doctrine of separation of powers.

"I am determined," the President told the New Jersey Democrat, "to do nothing which, by the precedents it set, would render the executive branch henceforth 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 yesterday.

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.

Disagree on Facts

Of nine experts questioned, all indicated they believed that the President's argument not only was inappropriate for an impeachment proceeding but also misrepresented the facts of the existing relationship between the executive and legislative branches of government.

In various ways, the experts all expressed the belief that for President 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.

They said it was Congress that has been dominated by the executive branch, as recent Presidents have enlarged their powers and prerogatives. The current confrontation, they added, 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, Prof. 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 Com-

mittee.

"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."

If Mr. Nixon were truly concerned with protecting the Presidency against Congress rather than protecting himself, he would act differently, Mr. Kamisar asserted. Mr. Nixon, he said, could follow a precedent set by Thomas Jefferson by affirming the principle of executive privilege and then waiving that privilege and giving Congress the evidence it sought.

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."

Mr. St. Clair also declined to direct a questioner to a constitutional authority who would support the position outlined in the letter. "It would be inappropriate because the matter is before the courts," the spokesman said.

The President's chief constitutional lawyer, Charles Alan Wright, was out of the country and unavailable. 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 inapplicable in an impeachment proceeding.

"Impeachment is the ultimate inquest of the nation," said Senator Charles McC. Mathias Jr., Republican of Maryland, 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.

'Presidency in No Danger'

Prof. 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.

President Nixon, Mr. Bickel contended, "was well on his way to an extraordinary dominance" of the apparatus of government before the Watergate scandal broke.

All of the experts and members of Congress interviewed agreed that there has been a long-term trend toward an increase of Presidential power of opinion as to when this started—estimates ranged from Andrew Jackson to John F. Kennedy. But there was general agreement that President Nixon had speeded up the process.

"While the pattern didn't originate in this Administration, the bloating of executive power has reached its apex under Nixon," said Prof. Philip J. Kurland of the University of Chicago, another leading expert on constitutional law.

Mr. Kurland ticked off a list of actions that he said were taken by President Nixon to enhance his own powers and diminish those of Congress, including Mr. Nixon's impoundment of funds appropriated by Congress for social programs, thereby "taking into himself the power of the purse clearly meant for Congress."

Mr. Kurland said he was not challenging the President's right to exercise executive privilege

on appropriate occasions. But he added, "I have difficulty with the thesis that the President would be threatened" if he complied with the demands of the House in the impeachment inquiry.

Senator Sam J. Ervin Jr., considered one of the Senate's leading constitutional authorities, addressed himself only to the executive privilege issue when asked to comment on the President's separation-of-powers argument.

In a statement issued through an aide, the North Carolina Democrat said that "the Constitution in its separation of powers confers upon the House acting as a whole, or any of its committees, the power to impeach the President for any one of its enumerated reasons, and it confers the power to decide what evidence to receive to determine the impeachability of the President."

Senator Ervin is chairman of the Separation of Powers Subcommittee.

Senator Jacob K. Javits, Republican of New York, said by telephone that there was "no danger whatever" that the Presidency would be eroded if the President complied with the demands of the Judiciary Committee, noting that the trend for many years has been "to vest more and more authority in the chief executive."