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Nixon's Letter Is Good Law But Bad PR

Washington

IT IS understandable, but it is also regrettable, that so little public attention has been paid to President Nixon's letter of June 10 to Peter Rodino. The letter provides an excellent statement of Mr. Nixon's reasons for refusing to surrender further tapes and documents to the House Judiciary Committee.

Unfortunately, this long letter was released at a time when editors were struggling with a torrent of news. The President was off to the Mideast. Henry Kissinger was erupting in Salzburg. In Washington, the Judiciary Committee was leaking like a rusty bucket.

James Kilpatrick

Few newspapers had space to print the text of Mr. Nixon's letter, and few readers would have had time for it anyhow. The letter deserved something better.

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THE situation, in brief, is that the House committee had issued subpoenas demanding that the President surrender certain records. The President refused to honor the subpoenas. His reasons are solidly rooted in the doctrine of separation of powers.

"While many functions of government require the concurrence or interaction of two or more branches," Mr. Nixon wrote, "each branch historically has been steadfast in maintaining its own independence by turning back attempts of the others, whenever made, to assert an authority to invade, without consent, the privacy of its own deliberations."

Mr. Nixon supplied examples. In 1962, a federal district court issued a subpoena to the Senate, demanding certain evidence for use in the trial of James Hoffa. The Senate, by formal resolution, flatly refused to comply. More recently, in the case of Lieutenant William Calley, the House Armed Services Committee refused to provide evidence demanded by Calley's attorneys. Chairman Edward Hebert based his refusal on precisely the same grounds invoked by Mr. Nixon today.

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THE JUDICIAL branch has taken the same view. In 1953, the House Un-American Activities Committee attempted to subpoena Justice Tom Clark. He refused to obey the subpoena. "The independence of the three branches of our government," said Clark, "is the cardinal principle on which our constitutional system is founded."

In his letter of June 10, Mr. Nixon cited a further example. In 1962, a Senate subcommittee demanded certain information from President Kennedy. When he refused to supply it, Senator John Stennis of Mississippi upheld Mr. Kennedy's position: "I know of no case where the Court has ever made the Senate or the House surrender records from its files, or where the Executive has made the Legislative branch surrender records from its files — and I do not think either of them could. So the rule works three ways. Each is supreme within its field, and each is responsible within its field."

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THIS STRIKES me as sound doctrine. It is not the power of the law, it is only the power of public opinion that makes presidents obey court orders. As the Supreme Court long ago acknowledged in Mississippi v. Johnson, a Reconstruction case, a federal court is powerless to enforce any order a president chooses to ignore.

It is universally assumed that if Rodino's committee were to ask a federal court to approve its subpoenas, and if a court should order Mr. Nixon to comply, Mr. Nixon would obey. But Rodino's refusal to seek judicial aid is in itself a reflection of the doctrine of separation of powers. A House committee does not want to leave an impression that it is subject to court orders.

Mr. Nixon is right in the position he has taken. He is right, that is, as a matter of law. The presidential office simply cannot be made a happy hunting ground for grandstanding federal judges and bloodthirsty congressmen, not even in the name of impeachment. The presidency could not survive as we know it.

But if Mr. Nixon's law is fine, his public relations are awful. By refusing voluntarily to give the House committee what it wants, Mr. Nixon creates the impression that he has something to hide. The most beautifully reasoned letters ever composed will not dispel that inference now.

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