

Joseph Kraft

Maneuvering With the Tapes

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President Nixon has dealt with the issue of the White House tapes in the tricky kind of way we should have been expecting all along. He has come up with a procedure of his own which, while seeming to make the tapes available, is actually apt to get the worst of the Watergate offenders off scot free.

He makes everything rest on Sen. John Stennis, a man long used to rising above principle in the interests of "national security." And he pulled off the whole operation under cover of the war in the Mideast, late on a Friday after the evening news shows were off the screen.

There was never serious doubt that Mr. Nixon was going to have to turn over the tapes. Even if the Supreme Court, by decision or indecision, had upheld his view that he was not legally obligated to cough them up, he would not have been home free. There would have been irresistible public pressure for him to make available evidence concerning allegations of criminal action by the highest officials.

The real issue was through whom the President was going to make the tapes available. District Court Judge John Sirica ordered Mr. Nixon to turn the tapes over to him for inspection as to their relevance to criminal procedures growing out of Watergate.

The appeals court broadened the Sirica decision. It ordered the President to turn the tapes over to the judge and to Special Watergate Prosecutor Arch-

bald Cox. The two men were to judge what material in the tapes was relevant to the Watergate case and what had to be protected for national security or other reasons.

The odds are that the Supreme Court would have upheld the court of appeals decision. It was written in a way that emphasized the special, non-precedent-making character of the case. The decision, therefore, invited the support of the swing men—Justices Byron White and Potter Stewart—on the court.

Had the Supreme Court ruled against him, President Nixon would have faced two awkward outcomes. If he defied the court, he was asking for impeachment. If he complied with the court, he would have had to turn the material over to Prof. Cox, a rigorous lawyer fully conversant with every aspect of "national security" can be used as a cover for hiding embarrassing material.

In the situation, the President and his lawyers moved adroitly. The White House Watergate counsel Fred Buzhardt had previously—and somewhat contemptuously—refused an offer by Mr. Cox. That was before the decision by the appeals court.

After that decision, negotiations with Mr. Cox were reopened by Attorney General Elliot Richardson. Mr. Richardson approached Mr. Cox a week ago Friday. In the course of their

discussions, the Attorney General raised the possibility that the tapes might be filtered through Senator Stennis. Cox never turned down Senator Stennis. But he had obvious reservations about hinging the whole issue on the judgment of a single individual entirely partial to the national security side of arguments, unfamiliar with Watergate and weakened by operations growing out of the attack upon him early this year.

Mr. Richardson then broke off the negotiations and passed the baton to the President's special Watergate counsel, Charles Wright. Prof. Wright took up the negotiations in a way that seemed to threaten that the President would fire Mr. Cox.

With the special prosecutor thus supposedly cowed, the President made his move. He took in tow the ranking members—Sam Ervin and Howard Baker—of the Senate Watergate committee which had been denied its request for the tapes in the courts. He won their approval for the principle of passing "authentic versions" of the tapes through their colleague, Senator Stennis. Then the President announced his decision and ordered Mr. Cox to forget about the tapes and get on with the business of Watergate prosecution.

It was all very clever. Only it won't wash. Mr. Nixon's procedure for making the tapes available would yield summaries, not evidence admissible in

court. The charges against such top Watergate figures as former Attorney General John Mitchell and former White House aides H. R. Haldeman and John Ehrlichman would probably be dropped on grounds that evidence was withheld.

In any case, it is not for Mr. Nixon to pick and choose about how the tapes should be made available. He is under a specific court order on that matter. So Mr. Cox and other decent men have to fight the President all the way. For if Mr. Nixon gets away with this maneuver, he will have made the biggest score yet in his long vendetta against the spirit of fair play.

