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Mr. Nixon's Contempt for the Courts

In Congress and across the country there is increasing talk of a variety of responses to President Nixon's firing of Watergate Special Prosecutor Archibald Cox in the contest over the President's tapes and other material which may or may not be relevant to the criminal prosecution of the Watergate case. Impeachment, the resignation of the President, the establishment of a new special prosecutor by Congress—these remedies are now being freely discussed by politicians and others, and with good cause. But, before considering how to go about resolving the crisis in government which the President has brought down upon us, it is going to be necessary for all concerned to be clear about the essential nature of the conflict which the White House would have us believe has now been neatly resolved by an agreement between the President and assorted leaders of Congress over the narrow issue of the President's tapes. It is necessary, to begin with, to bear clearly in mind that the President's quarrel is not just with the ranking members of the Watergate committee or even with Congress. His immediate conflict is with the courts, whose unambiguous command the President seems determined to defy.

The next move, in short, may well be up to Federal District Judge John Sirica, to whom the President has been told by the U.S. Court of Appeals to submit the tapes and other notes and memoranda subpoenaed by Mr. Cox. And the first question to be answered may well be whether Mr. Nixon may not in fact be in contempt of court. In order to see why this may be so, it is vital to sweep away the fog with which the White House has enveloped the proposals which emerged from the Oval Office with great clarity Friday night. Not only Congress but Judge Sirica himself should have clearly in mind the precise wording of Mr. Nixon's original offer, the actual reasons for Mr. Cox's refusal and his legal reasons for doing so, the nature and seeming purpose of subsequent White House "clarification"—and the consequences that would almost inevitably follow if Mr. Nixon is permitted to perpetuate the fog.

The White House is now attempting to characterize the offer to Mr. Cox as one he couldn't in fairness refuse. In fact, it wasn't an offer at all. It was a proposition he couldn't possibly have accepted—so much so that one is forced to conclude it was designed that way in order to force Mr. Cox's departure from government. The original deal, as described in Mr. Nixon's own Friday statement was that Mr. Nixon himself would prepare a "summary" of the subpoenaed tapes, meaning that he would decide both what material on those tapes should be mentioned and how that material should be paraphrased or portrayed. Sen. John Stennis (D-Miss.)—and he alone—would actually hear the tapes and judge whether or not the President had described their contents fairly and comprehensively. If "authenticated" by Senator Stennis, this "summary" was then to be pre-

sented to the Watergate Committee and to Judge Sirica. In other words, Mr. Nixon was not saying "All right, I'll let you hear some of the tapes." He was saying, "All right, I'll tell you what they say—or at least what parts of them say and Senator Stennis will vouch for the fairness of my account."

It should also be noted that Mr. Nixon's bargain didn't include the memoranda and notes of conversations which were also subjects of the grand jury subpoena and

which Mr. Cox deemed as important as the tapes themselves. Finally, presumably by way of making his offer still more unacceptable, Mr. Nixon required, by his account, that "in return . . . it would be understood that there would be no further attempt by the Special Prosecutor to subpoena still more tapes or other presidential papers of a similar nature."

That is the proposed arrangement which presidential adviser Melvin Laird characterized on Sunday as a "victory" for Mr. Cox and which White House sources are now describing as so generous they are *astonished* that Mr. Cox should have had the temerity or the arrogance to turn it down. But just what was it that Mr. Cox had to give up in order to obtain a summary which, in Mr. Cox' mind, was "most unlikely" to be admissible as evidence at any subsequent trials? He was to forego the notes and memoranda which were also covered by the subpoena and to forego any attempts to obtain any other similar evidence relating to the other aspects of his investigation. Thus, with respect to the investigation of the activities of the "plumbers," campaign financing, the ITT case, dirty campaign tricks and political use of the Internal Revenue Service, his hands were to be tied if critical evidence was in Mr. Nixon's possession and Mr. Nixon did not want to part with it.

Sens. Sam Ervin (D-N.C.) and Howard Baker (R-Tenn.) obviously think they were offered something better than Mr. Cox was offered—they think they were to get summaries of all the tapes plus verbatim transcripts of portions relevant to Watergate. It is a clever double deal, by which a bad proposal designed to get rid of Mr. Cox is now being improved in White House descriptions to obtain maximum congressional support. What this overlooks—and one suspects deliberately—is that the Watergate committee is irrelevant to this transaction. For its own legislative purpose, it had filed a lawsuit to obtain the tapes and had lost. But Mr. Cox was acting on behalf of a grand jury—and he didn't lose. It was in the interest of the grand jury, in fact, that the appeals court ordered the President, in the absence of an out-of-court settlement with Mr. Cox, to turn over tapes and other evidence to Judge Sirica for *in camera* hearings on his claims of privilege and inspection by the court. No amount of quick political cosmetics or talk by White House aides about "total surrender" can obscure the fact that Mr. Nixon has announced his intention to defy that court order.

So, in firing the special prosecutor and abolishing his office—and incidentally losing his Attorney General and Deputy Attorney General along the way—Mr. Nixon has hurled an unprecedented challenge not only at Congress but at the courts. In the past, Judge Sirica has demonstrated strength, flexibility, a reverence for the law and a resolve not to be hoodwinked by anyone—no matter what his station—who chooses to obscure the facts in the Watergate case. Though we do not envy him the task he now confronts, we have no doubt that he will continue to pursue, with the same integrity he has already shown, his duties as a judicial officer of the United States. His actions alone cannot resolve the current crisis in government. His actions will, however, clarify the alternatives available to Congress which now must assume the burden of dealing with unmistakable evidence of high crimes in the government over which Mr. Nixon presides.