

W 655 10/24/73

# The Tapes: What Has—And Has Not—Been Resolved

Well, the President of the United States has finally let it be known that in one particular matter affecting an inquiry into allegations of criminal behavior in his government, he is prepared to respect a command of the federal courts. But look at what it took to bring about the President's compliance in this instance: the resignations, in protest, of the two top officials of the Department of Justice; the firing of the Watergate Special Prosecutor and the abolition of his office; the breaking of a solemn compact with the United States Senate; a call for the President's removal from office on the part of his erstwhile supporters in organized labor, including leaders of AFL-CIO unions representing 13.6 million workers; a virtual breakdown of the machinery of Western Union under the weight of an avalanche of telegrams to Congress calling for presidential impeachment; the formal beginnings of an impeachment process in the House; an outpouring of critical editorial opinion from around the country; and a raw warning from his own party's congressional leaders that they could not save him unless he changed course. When you add to all this upheaval the anguish, controversy, uncertainty and general demoralization and debilitation of both the government and the country over the last three months, you have to temper somewhat your applause for the ultimate and obvious rightness of yesterday's decision.

This is all the more so when you consider the relative importance of the tapes in the crisis of government that has grown out of the Watergate, and in the criminal prosecutions themselves. For just as the public furor had its evident impact on Mr. Nixon's final decision, so the President's own prolonged intransigence concerning the release of the tapes, and the fierce attention he focused on the tapes alone, have given the public a distorted impression of their importance. The distortion is twofold. First, the contents of this relative handful of recordings have come to be seen as decisive in determining the President's own role in Watergate events, one way or the other. But the President himself has said that the tapes "would not finally settle the central issues" of the Watergate investigations, and Mr. Cox made no larger claims for their significance. In addition to the probable inconclusiveness of these nine tapes by themselves, it should be remembered that they are only a fragment of a large body of potential evidence which Mr. Cox was seeking to obtain and related to only a single episode—the Watergate cover-up—in the great catalogue of crimes and improprieties which go under the name of Watergate. It is thus nonsense to claim, as the President did in his statement on Friday night, that their release would resolve "any lingering thought that the President himself might have been involved in a Watergate cover-up," and still more so to suppose that their release can, in any sense, close the larger Watergate case.

This leads us to a second distortion, which has to do not with the contents of the tapes but with the President's willingness or unwillingness to make them available pursuant to a court order. Indeed, the whole question of Mr. Nixon's suitability to continue in office had

come to rest a short time ago on whether he would or would not defy the federal courts. Defiance or non-defiance of the courts had become, in other words, for many people the exclusive test of the President's conduct of his office so far as the whole morass of Watergate and related matters is concerned. But to think this way is to fall into the same trap as to conclude that a President who is not found guilty of a criminal offense has thereby demonstrated his fitness for office, or to argue that the President was justified in his performance last weekend by reason of his technical authority to fire Archibald Cox.

In fact, the long, tawdry history of the White House tapes issue makes it clear that these other tests offer only minimal and inadequate standards by which to judge a President's fitness and capacity to govern. Surely, the people require more of their President than the knowledge that under the most severe political duress he is prepared to obey a federal court order.

Surely we are obliged to examine the history of the President's handling of the tapes issue and to count the costs incurred along the way. That history isn't all that ancient, either. As recently as Friday night, judging from Elliot Richardson's account of his own role in the so-called bargaining with Mr. Cox, the President was grossly misleading the American people as to the sponsorship of and support for the arrangements he attempted to force upon the Special Prosecutor. He was suggesting that partisan exploitation of Watergate in general, and the tapes issue in particular, was—would you believe?—somehow responsible for the aggressive Soviet mood of the moment in the Mideast. And he was still wreaking an enormous amount of needless damage, wantonly inflicted in the name of a principle on which, within three days, he was to yield.

We have no doubt that as a consequence of so yielding Mr. Nixon will have managed to diminish the intensity of the highly emotional drive to oust him from office that was getting under way. And should he go further and take such vital steps as reconstituting the office of Special Prosecutor and reinvigorating and cooperating with the investigations themselves, he would certainly lower the temperature even further. That is just as well. For the events of the past many months that have been and remain so profoundly troubling can not be appraised and dealt with in the kind of turmoil that Mr. Nixon's most recent actions had created. That they remain to be dealt with is, in our view, not open to question. The President said last Friday night that he wished to "bring the issue of Watergate tapes to an end to assure our full attention to more pressing business affecting the very security of the nation." We share that aim. But we think there is no more "pressing business affecting the security of the United States" than the business of deciding whether Richard Nixon, by his performance across the whole range of Watergate-related matters, has not proved himself incapable of governing. And that issue, we would argue, has scarcely begun to be resolved by yesterday's decision to surrender the Watergate tapes to the court.