

Breaking the Watergate Impasse (I)

Post 11/17/74

IT SOUNDED less like Vice President Ford than President Nixon, and, for once, first impressions turned out to be right: the Vice President's combative Watergate remarks in Atlantic City the other day were reportedly drafted by none other than the President's own White House speechwriters. Whatever its background, the speech certainly didn't say much for the Vice President's own position or for his potential as an inheritor of the Nixon presidency. Thus there were gloom-and-doom suggestions that somehow the presidential "philosophy"—not to mention the good sense of Congress—was likely to be a victim of any presidential downfall.

● We reprint some of Mr. Ford's remarks elsewhere on this page today, and ask ourselves a couple of questions about them. Can Mr. Ford really think that his own succession to the presidency would mark some stage along the way to a discrediting or rejection of the conservative programs which Mr. Nixon espoused as a candidate? Can he really believe that the principal danger to which the President is now exposed comes from some irresponsible and power-hungry band of conspiring political opponents? Will he not at least entertain the proposition that it is not Mr. Nixon's partisan opposition, but Mr. Nixon himself who has endangered the mandate of 1972 and let down the constituency that provided it? Although we were hardly in the forefront of that constituency ourselves, we will offer it as our opinion that its objectives and desires would stand a much better chance of fulfillment under Gerald Ford than they do under Richard Nixon.

Which brings us to a far less theoretical aspect of the Vice President's speech: his enunciation of the now familiar White House line that the President's critics and would-be impeachers are dragging their feet and that duty compels them to cease doing so and to resolve the question of Richard Nixon's innocence or guilt and his fitness to serve or lack of it speedily and once and for all. This line of reasoning, along with the companion observation that Mr. Nixon has yet to be proved guilty of any indictable offense, has something to it—but not what Mr. Ford seems to think. The point is that there has been delay and there has been difficulty and there has been diversion all right, but practically all of it has emanated directly from Mr. Nixon's White House. At Disney World a few weeks ago, the President himself managed to complain of how slow Archibald Cox had been in even getting to the indictment of the Nixon associates under investigation, an assertion that owed what truth it had to the fact that Mr. Nixon had been battling Mr. Cox in court every step of the way.

So in the interest of understanding who is prolonging the agony and why it has proved so hard to establish conclusive findings one way or the other, let us review Mr. Nixon's own contribution. At the outset, in the interest of getting to the bottom of the Watergate affair,

Mr. Nixon explained to us that he had authorized an investigation by—yes—John Dean. Only John Dean never conducted an investigation, and the President never bothered to find out whether he had before proclaiming it a success. Previously, of course, he and his now deposed chief advisers had been secretly trying to limit severely the criminal investigation into Watergate, in part by invoking the good offices of the CIA. There followed a series of White House efforts to stymie or delay congressional inquiries into the affair and to delay court action.

In early 1973 when things began to hot up, Mr. Nixon sought to invoke the strictest kind of executive privilege—strict in the paradoxical sense of being so loose and broad as to cover practically everyone in the executive branch and everything everybody did. Then, after James McCord, one of the actual Watergate burglars, announced to Judge John Sirica that he was prepared to provide an account quite different from

that which had been sworn to in court, Mr. Nixon finally got around to announcing that it seemed to be a serious business after all and that he was taking charge of the investigation. On May 22 he issued what was supposed to be his definitive statement on Watergate, in which he denied any involvement on his own in either the burglary or the cover-up, conceded that he had authorized a short-lived program of burglary and illegal wiretapping for national security reasons, acknowledged that he still did not know all the facts and promised that "executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct in the matters presently under investigation, including the Watergate affair and the alleged cover-up."

At that time, of course, only the President and a very few people around him knew that Mr. Nixon in fact had an enormous cache of potentially vital evidence bearing on the very crimes and improprieties he was claiming to be investigating so thoroughly and to wish to have resolved in court. In the same May 22 message, the President hailed the appointment of Special Watergate Prosecutor Archibald Cox and vowed his full support for the efforts of Attorney General Elliot Richardson to "see the truth brought out."

When one particular truth was in fact brought out—namely the revelation of the existence of the tapes—the President resisted the immediate efforts of both the Senate Watergate Committee and the Special Prosecutor to gain access to any of this evidence: the grounds were executive privilege. Invoking a high constitutional principle, the President then vowed to take the conflict over the first batch of subpoenaed tapes to the Supreme Court. After losing in two lower courts, he abrupt-

ly abandoned this principle, having expended another two months on futile legal wrangling. When it became apparent to him, however, that Mr. Cox was determined to pursue a wealth of other tapes and presidential papers, the President tried yet another maneuver; he contrived to bring about the firing of Mr. Cox and in the process lost both his Attorney General and his Deputy Attorney General.

Since then we have had a concerted effort to shut down the Watergate Committee and another statement of high constitutional principle from the White House—namely that the President is immune from the very prosecution which is specifically included in the charter of Mr. Cox's successor, Leon Jaworski. That is to say, immunity is being claimed for Mr. Nixon from indictment by the grand jury or prosecution in the courts prior to impeachment. Impeachment, we are told, is the only proper process by which a President can be investigated or called to account for misconduct. But that is only part of this high principle. The other part, enunciated in Mr. Nixon's behalf, is that he will claim executive privilege so far as crucial information is concerned in the impeachment hearings too, presumably a privilege invoked to cover his papers and tapes.

By all this artful dodging the White House is in fact proclaiming (and has been over the past 18 months) that the President is beyond the effective reach of any arm of government. The principle isn't stated that baldly, to be sure. Rather it emerges from the bobbing and weaving in relation to which setting—which instrumentality—is the appropriate one for the inquiry Mr. Nixon seems determined to avoid. Can it be an accident that the "preferred" venue changes so regularly and always at precisely the moment when some conclusive finding seems within grasp?

We think the answer is, no. And we think it is now clear that the presidential evasion, and diversion must be dealt with by some combination of effort by the House Judiciary Committee, the Special Prosecutor, the grand jury and the courts. How this artificially contrived impasse can be broken will be the subject of another editorial.