

# Court And Congress

By Anthony Lewis

WASHINGTON—After a slack month, the tide of impeachment is rising again. The Supreme Court argument in the case of the President's tapes, the House Judiciary Committee's volumes of evidence, the conviction of John Ehrlichman, the Senate Watergate report: These dramas in quick succession have had their impact.

At this stage, one risk to guard against is confusion in the roles of the Congress and the courts. There may still be members of Congress who hope that the Supreme Court will bail them out—relieve them of responsibility. That is, the Court will force the President to disgorge some clinching piece of evidence, making it easy to vote for impeachment, or alternatively Mr. Nixon will make it easy by defying the decision.

Those are tempting notions, but they are dangerous. Reliance on the Supreme Court would be wrong in practical as well as philosophical terms.

Assume that the Court upholds the Special Prosecutor's subpoena for tapes of 64 Watergate-related conversations. Would Mr. Nixon refuse to comply?

He has claimed the right to ignore judicial orders, and defiance would fit the life-long Nixon self-image of the lonely fighter against overwhelm-

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## ABROAD AT HOME

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ing odds. But his lawyer, James St. Clair, would probably advise another course: Agree to give the tapes to the Special Prosecutor as a matter of Presidential "discretion," thus preserving the claim of final constitutional power, and then use the very delivery of these tapes as another device in the strategy of obstruction and delay.

There would be ample room for delaying tactics. First the requested conversations have to be picked out of six-hour tape reels and checked by Judge John J. Sirica for relevance. The proc-

ess took weeks for 10 tapes obtained by the Watergate grand jury, and in the judgment of insiders it could go on for months with these further tapes. Mr. St. Clair might appeal to the higher courts again on issues of relevance or procedure.

And how would the tapes get to the House Judiciary Committee? If the committee asked the Special Prosecutor for them, Mr. St. Clair would doubtless try to litigate that question.

Nor can the Supreme Court be expected somehow to arrange for delivery of the tapes to the House inquiry. At the argument of the case, the Justices indicated that they regarded anything to do with impeachment as a "political question" beyond their competence. (On the same reasoning, the Justices are likely to reject as none of their concern Mr. St. Clair's argument that the tapes should be withheld from the Special Prosecutor because they might afterward get to the House.)

A Supreme Court decision against Mr. Nixon could of course have a significant psychological impact on the impeachment process. An institution respected by most Americans as the ultimate voice of the law would have rejected his claim that the Presidency will be fatally weakened unless he alone sets the limits on its trust.

Such a decision might, specifically, stiffen the backbone of the House Judiciary Committee. The unhappiest chapter in its proceedings so far has been its tepid reaction to the President's defiance of its subpoenas—a stand that, unless corrected, could make the impeachment clause of the

Constitution a nullity. If a prosecutor is entitled to Presidential evidence, the committee may reason, surely an impeachment inquiry must be.

But in the end Congress must look to its own resources. To wait upon courts or prosecutors in a search for further evidence could bring disabling delay. If the President continues to defy the committee, the remedy is to add that defiance to the grounds for impeachment.

The truth is that the committee already has the evidence it needs: Much more than a grand jury would ordinarily have to bring the most serious of indictments, and more than a petit jury needed to convict John Ehrlichman—evidence not only of criminality but of a pervasive abuse of power.

"I don't give a ---- what happens. I want you all to stonewall it, let them plead the Fifth Amendment, cover up or anything else, if it'll save it—save the plan. That's the whole point."

Those are the words of Richard Nixon on March 22, 1973. They are on a tape, somehow preserved and accidentally obtained by the House Committee after Mr. Nixon ordered the passage omitted from edited transcripts as, in his press secretary's phrase, "of dubious relevancy."

Any member of Congress who needs more than that, more than the mass of evidence recorded in the dispassionate volumes just published, is looking for an escape from the responsibility of judgement. But there is no escape, in some avenue of the law or politics, from the duty laid by the Constitution upon Congress.