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Operation Defiance

In ignoring the Senate Watergate committee's subpoena of the White House tapes and documents, President Nixon has once again shifted from earlier promises of maximum disclosure to his original posture of defiance. Having allowed yesterday's deadline to pass without either compliance or comment, Mr. Nixon has moved at least the Senate's part of the investigation back to that earlier stage of a potential constitutional confrontation.

Two factors make the return to such a posture of defiance more than a rerun of the earlier drama. Congress has enacted legislation to give to the Federal courts the jurisdiction over the Senate subpoena which, according to Chief District Judge John J. Sirica, they had lacked in the initial encounter; and Mr. Nixon himself had let it be known earlier that he doubted whether the Supreme Court would have upheld his right to defy a subpoena.

There is room for questioning, on tactical as well as on legal grounds, the Senate committee's wholesale subpoena of more than 500 items. In fact the committee's counsel has indicated that, in preparing next week's action to press the subpoena before Judge Sirica, the staff is undertaking to pare its demands "to the essentials." This admission suggests that the original list may have exceeded the bounds of propriety and good sense.

However, it has to be recognized that the investigations must necessarily range over an exceedingly wide area of suspected abuse of governmental powers. Such issues as the alleged White House role in manipulating milk prices, the secret donations by industrialist Howard Hughes, the charges of political interference with the I.T.T. antitrust case, the illegal activities of the White House plumbers—quite apart from the sprawling cover-up activities in the wake of the Watergate break-in—make it difficult for the uninitiated to judge how many documents are sufficient to determine the extent of the Administration's wrongdoing.

Last July, Mr. Nixon wrote to the Senate committee: "I cannot and will not consent to giving any investigatory body private Presidential papers." None of the technical questions at issue in the President's latest move can justify a return to such a blanket invocation of executive privilege—a claim that has long since been exploded by events, including the President's reluctance to take the matter to the Supreme Court. Both Judge Sirica and the United States Court of Appeals have made it clear that documents required as evidence in criminal proceedings cannot be considered private or privileged.

While the case of the tapes and documents is now once again in Judge Sirica's hands, the manner in which the White House has dealt with the subpoena suggests that the President still prefers Operation Defiance to Operation Candor.