

The Washington Post

AN INDEPENDENT NEWSPAPER

WXPost

JUL 24 1973

Mr. Nixon's Constitutional Duties

President Nixon's refusal to accede to the request of the Senate Watergate Committee to make some presidential papers and certain tapes of his conversations available to the committee and his parallel refusal of Special Watergate Prosecutor Cox's request to make some specific tapes available to that office have precipitated a Constitutional crisis for no real Constitutional or legal reason. In his most recent letter to Sen. Sam Ervin denying access to the tapes, the President refers to his earlier letter of July 6 denying the committee access to presidential papers.

Mr. Nixon's letter of July 6 contains not only the essence of his reason for refusing the requests by Senator Ervin and Mr. Cox but also a passage which effectively refutes his argument. The heart of the July 6 letter was that to turn over the requested papers "would inevitably result in the attrition, and the eventual destruction of the *indispensable principle of confidentiality of presidential papers.*" Later in the same letter, in discussing his reasons for refusing to testify before the committee, he put his constitutional duty rather succinctly and, in our view, destroyed all his lesser arguments when he spoke of "the duty of every President to protect and defend the constitutional rights and powers of his office [as] an obligation that runs directly to the people of this country." This latter obligation is far larger than any "principle" concerning the confidentiality of presidential papers.

What is at issue here is not a question which may be resolved by legal needlework as, for example, it would be if the issue concerned how far the legislative branch can inquire into the thought processes and confidential exchanges within the executive as it administers, under the Constitution, the laws of the United States. Senator Ervin and Mr. Cox are not asking whether criminal activity has in fact, touched and tarnished the office of the President. We know it has because we have heard about it from Messrs. Mitchell, Dean, Magruder, et al. What is at issue is only to what extent those crimes we already know about have corroded and compromised that high office.

In other words, the Presidency—and with it the country—already have been badly damaged. The question now becomes, how that office—and thereby the country—can best be served by all who are involved, including the President. It is the integrity of the office—not the sanctity of presidential papers or tapes or conversations—which the confessed actions of the Deans, Mitchells and Magruders have put at issue, and it is that integrity that the various governmental processes now at play must salvage. Mr. Nixon, more than either Senator Ervin or

Mr. Cox, is in a unique position to do this. And he was right, we think, when he argued that his duty to protect and enhance that office ran "directly to the people of this country."

The narrow considerations of separation of powers and executive privilege—whatever their applicability in other contexts may be—simply do not apply where the actions under investigation relate not to papers or conversations having to do with the execution of the laws under the Constitution, but rather with criminal activities at the core of government which erode both the moral and the political authority of the presidency. A one-time waiver of these principles in the effort to clean up the presidency can in no sense be deemed a permanent waiver, nor indeed can it be deemed to diminish the office or to prejudice future claims to executive privilege.

On the contrary, opening up the papers at this time would be an act of courage born of confidence on Mr. Nixon's part which would immeasurably enhance the people's trust in him—as distinct from those who have served him and the country so badly in his name. This is particularly so if the tapes, as he says, are consistent "with what I know to be the truth and what I have stated to be the truth." The country is prepared to accept, we would suppose, the reasonable amount of ambiguity that the tapes would necessarily contain. But it is not prepared for the President of the United States to allege, on the one hand, that he has it within his power to produce evidence which could help clear up one of the most dismal episodes in American history and then to refuse, on the other hand, to do so.

Mr. Nixon can still uphold his duty to his office and to the public by reversing himself and producing his evidence. That it might not "settle" anything, as he contends, does not distinguish it from most of the other evidence that has been presented in this case so far. That it would help us get to the bottom of the Watergate affair—which the President earnestly insists is what he wants most to do—seems undisputable. The alternative would seem to us to serve nobody's purpose—not even the President's. For if there is something in this evidence which conceivably might be misconstrued by the public to his disadvantage, there is something in withholding it which is certain in the end to be far more damaging. His choice, in short, is between a risk which is marginal by his own estimate, and the certainty that by suppressing his evidence he will inflict upon himself the incriminating inference suggested by Senator Ervin that he has something to hide—something so harmful to his case that he is determined to hide it indefinitely.