



Cox Has Best Case For Getting Tapes

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PRESIDENT NIXON might have half a leg to stand on if he were only battling the Senate Watergate committee over access to the tapes of his phone and office conversations. But unfortunately for the President, special Watergate prosecutor Archibald Cox is also after the tapes.

Cox has an overwhelming case. If he is forced to press it all the way, he is in a position to engage the Supreme Court, divide the administration and push the Congress further down the road to impeachment.

The Cox case for access to the tapes is more weighty than the case of the Watergate committee for a variety of legal and political reasons. For one thing, there is the separation of powers issue.

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MR. NIXON is the head of the Executive Branch of government, and the Senate committee is part of the Legislative Branch. Each branch is entitled to a certain confidentiality in its deliberations.

Thus there is at least the color of an argument for the proposition that Mr. Nixon can keep the inner deliberations of the White House away from the Senators. If nobody else, tendentious lawyers can confuse the issue by arguing that the doctrine of executive privilege entitles the President to withhold the tapes from the committee.

But Cox is a part of the Executive Branch. He was appointed by Mr. Nixon's Attorney General, Elliot Richardson, with the assent of the President. To claim, as the White House is now doing, that he would breach the separation of powers by using the tapes for proceedings in court is

absurd.

For apart from eliminating the phony constitutional issue, Cox's position heightens the true issue — the criminal issue. The basic fact in the fight for the tapes is that they contain evidence of criminal action. There is no excuse in the common law or the Constitution for any person to withhold evidence of a crime.

But Cox's mandate, as an official of the Justice Department, is precisely to investigate crime. His directive from Attorney General Richardson gives him "full authority for investigating and prosecuting . . . all offenses arising out of the 1972 presidential election." Thus in resisting Cox's demand for the tapes, the President is standing on the weakest possible ground. He is refusing the most fundamental of his duties. He is refusing to execute the laws.

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IN THESE circumstances, Cox is in a strong position to go after the tapes. He has already asked the courts to subpoena the material. He will surely be able to take the case to the Supreme Court, perhaps convoked in extraordinary session this summer. It is hardly thinkable that his request will be denied even by the Nixon court.

What all this means is that Cox, not the Senate committee, should lead the battle of the tapes. He has by far the best case. If he does not finally acquire the tapes, he can dramatize what more and more people are coming to understand — that the fit place for dealing with the President's role in Watergate is an impeachment proceeding.