

# A Suggestion for President Nixon



**James Kilpatrick**

**P**RESIDENT NIXON has painted himself into a corner on these matters of "executive privilege" and "separation of powers." A way has to be found for him to paint himself back out.

This is not merely for the good of Mr. Nixon and the good of his party. It is simply for the good of the country that the President discover some face-saving way to save his own face. He is the only President we have; the Gallup Poll finds that 49 per cent of the people now disapprove of his conduct of the office; and this is no way to run a railroad.

In refusing to turn over certain tapes and documents to the Senate investigating committee, or to a grand jury, the President conceives that he is acting out of pure principle. He is fulfilling his "constitutional obligation to preserve intact the powers and prerogatives of the presidency."

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**B**UT THE trouble with this position is that the people generally will not see it as pure principle. They will see it as pure baloney. The doctrine of executive privilege is as pietistically misty, in its way, as the doctrine of the Holy Trinity.

A President presumably has the Fourth Amendment right of any other citizen to be secure in his papers against unreasonable search and seizure, but any additional right of privacy has to be inferred from long custom and from extra-constitutional theory.

It is useless, I submit, for Mr. Nixon to keep trying to sell this bill of goods. He is up against a natural, understandable, and

justifiable line of reasoning, to this effect: If the tapes helped to establish his innocence in the Watergate mess, the President would release them; the President refuses to release them; therefore, the tapes would not help to establish his innocence.

The President cannot escape such an inference. He is in roughly the position of a witness who declines to answer questions on the Fifth Amendment ground that truthful answers might tend to incriminate him. Such a refusal doubtless is based upon a proper constitutional right, but its exercise lays down a spoor of guilt. The President's present position is politically untenable. It must be discreetly abandoned.

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**W**HAT NOW? Let me venture a modest proposal. Suppose the President were to create an ad hoc committee of White House trustees. Such trustees, chosen to command public confidence, would be remote from political partisanship and from constitutional inhibitions. The President could make all the relevant tapes and documents available to them without jeopardizing his constitutional position.

The trustees then could transcribe, summarize, include, exclude, suppress or disclose as they wished; and my guess is that a public which is fed to the teeth with Watergate would accept the trustees' report, with relief, as an honest accounting.

This modest proposal is entirely my own. Others may have much better ideas for resolving the dilemma. My point is that the dilemma must be resolved.