

# Keeping the Tapes

Immaculately innocent or guilty as midnight in the Watergate scandals, wise or unwise as a matter of politics, President Nixon is absolutely right in refusing to hand over tapes of his private conversations to the Ervin Senate committee.

No matter his motive, he is here defending the very heart of the American constitutional system, which requires the separation of powers between the presidency, the Congress, and the courts—that is to say, the independence of each and every one from the other two.

Had he submitted to the Senate here he would have set a precedent which at the very least could endanger orderly government for all the unknown future and which at the worst could destroy the effectiveness of the presidency as an institution.

It is hard in the present climate to say these things. For to defend our constitutional system, the noblest ever devised, one must open himself to the charge that he is defending corruption, or simply a man named Richard Nixon. One becomes in favor of conduct within the White House establishment that is intolerable and unforgivable to any civilized man. Nor it is any way to promotion and pay in my profession, where so many of my colleagues are running foot races to see

who can be more morally outraged than whom. Well, so be it.

The President's refusal to open confidential White House files of course invites the suspicion that he has not merely something, but possibly a great deal, to hide. For that matter, the suspicions may be valid, though on this point I for one should like to wait for all the evidence before returning any personal verdict of guilty. Even a President of the United States—even a President some of whose associates, at least, have so profoundly ill-used their country—is entitled to another constitutional protection guaranteed to all Americans. This to be presumed innocent until proved guilty.

But the point is that what Richard Nixon did or did not know about Watergate is irrelevant to the great and fateful issue that now lies before the country and ultimately before the Supreme Court. Nor is it relevant as to what the tapes might or might not prove in this connection. Indeed, the President himself introduced an irrelevancy in injecting the secondary claim that the tapes at any rate could not be conclusive.

On his side, Chairman Sam Ervin of the Senate committee responded with an irrelevancy of his own in arguing that whatever the "abstruse" constitutional situation, the President owed a "moral" obligation to surrender the files.

No, the issue is terribly simple—and in its implications simply terrible. Can the right of confidentiality for presidential files which for two centuries has been sustained be breached now because of Watergate? If this can be done to an unpopular and a suspect President it can be done tomorrow to quite another kind of President. Here is the plain, the bedrock, and the far from "abstruse" reality:

If a President cannot maintain confidentiality he cannot usefully negotiate with foreign powers, for they will know that anything they say might become public property and might moreover be torn out of all context. He cannot protect genuine, as distinguished from dubious, matters of national security. He cannot, in short, effectively govern; and he is at the mercy of any Senate committee, whether honorable and integrious this time or demagogic and destructively vengeful next time.

Is finding out "the whole truth" about Watergate, or a dozen Watergates, assuming these famous tapes could in fact find it out, really worth this much? Even the great step in the dark of a presidential impeachment would be far less dangerous to the whole future of the United States. Say if you will that Richard Nixon is right for the wrong reasons; he is still right all the same.