

Test of Constitutional Powers

FOR WEEKS the matter had been building to a head until, by last Monday, all other issues in the Watergate case were subordinate to one: The claimed right of a President to withhold information from Congress.

The showdown between the Senate Watergate committee and President Nixon had come over the committee's urgent request for tape recordings made in the President's office.

But the larger issue involved the question of presidential accountability under the law. And it was that question which last week put Congress and the Chief Executive on a collision course towards a constitutional crisis.

What the Senate Select

On This World's cover Senator Ervin is shown reading President Nixon's letter rejecting the committee's request for certain White House tapes and documents relating to Watergate.

Committee on Presidential Campaign Activities wanted were the tapes of certain White House conversations and a number of documents it believed might be relevant to the Watergate case.

Either/Or

The tapes, the committee felt, would either implicate the White House or exonerate it of any involvement in planning the break-in, burglary and bugging of Democratic national headquarters at the Watergate office building on June 17, 1972, along with related incidents of political espionage and sabotage. The documents, the committee felt, might also shed light on whether Mr. Nixon was or was not involved in subsequent efforts to cover up the scandal.

Committee chairman Sam Ervin (Dem-N.C.) contended that nothing in the Constitution either required a President to seek re-election or excused the commission of a crime and that, consequently, any documents related to the 1972 campaign or to violations of the law must be turned over to the investigating committee.

"I can think of no rational reason for the President not turning over the tapes unless the evidence found in them would be against him," Ervin declared. "Those seeking the truth will draw the inference — and a justified inference — that his reason for not producing the tapes is because

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the evidence would be adverse to him."

It was the most skeptical statement that any committee member had made to date about the President's assertions of innocence. And it was against this background of increasing animosity and hostile confrontation that Mr. Nixon last week finally gave his answer.

The President told both the Senate Watergate committee and special Watergate Prosecutor Archibald Cox that he would not turn over to them any tapes of his conversations in the White House.

In a letter to Ervin, Mr. Nixon declared that he had "personally listened" to some of the tapes and they were "entirely consistent with what I know to be the truth and what I have stated to be the truth."

In a Corner

"However," Mr. Nixon's letter continued, "as in any verbatim recording of informal conversations, they contain comments that persons with different perspectives and motivations would inevitably interpret in different ways. Accordingly, the tapes, which have been under my sole personal control, will remain so," he said. "None has been transcribed or made public and none will be."

Mr. Nixon did not write to Cox, who had first requested the tapes in a letter to special presidential counsel J. Fred Buzhardt. Instead, University of Texas Law Professor Charles Alan Wright, a noted constitutional expert and consultant to Buzhardt, wrote the prosecutor denying him the tapes and reminding Cox that as an employee of the Justice Department he was subject to "your superiors — up to and including the President."

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EHRlichman

AP Wirephoto

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Within the hour, both Ervin and Cox announced they would go to court to get the tapes. Ervin, calling the President's letter "remarkable," drew laughter in the hearing room when he said: "If you will notice, the President says he has heard the tapes, or some of them, and they sustain his position. But he says he's not going to let anybody else hear them for fear they might draw a different conclusion."

Most members of the Senate Select Watergate Committee indicated that President Nixon had backed them into a corner and left them no choice but to issue subpoenas for the evidence. Only Senator Howard Baker (Rep-Tenn.), in an hour-long executive session, continued to urge some kind of amicable compromise to avoid a constitutional confrontation.

Separation of Powers

In finally choosing unanimously to exercise its powers to serve a subpoena on the White House, Watergate committee members did so with the clear knowledge that the action would, in all probability, lead to a protracted constitutional confrontation that would ultimately end up in the Supreme Court.

Cox, equally determined to hear those tapes, also saw no alternative but to subpoena them. "Careful study before requesting the tapes," he said, "convinced me that any blanket claim of privilege to withhold this evidence from a Grand Jury is without legal foundation. It therefore becomes my duty promptly to seek subpoenas and other available legal procedures for obtaining the evidence for the Grand Jury."

The problem was that in framing the Constitution, the nation's founders, while spelling out the powers of



STRACHAN

Congress in considerable detail, were considerably more vague in specifying those of the President. For instance, there was nothing in the

Constitution empowering the President to withhold information from Congress.

According to a leading authority on executive secrecy, Harvard Law professor Raoul Berger, the separation of powers doctrine could not legally be stretched to justify withholding information. "Separation of powers does not protect a power," Berger explained. "It mere-

ly protects a power which is granted elsewhere. You go back and look for (presidential) withholding power in the Constitution. It's not there."

'Sophisticated'

So significant was the constitutional confrontation that it overshadowed the week's first witness — Gordon Strachan.

The last in a series of middle-level White House executives, Strachan was the first witness before the committee in a position to confirm allegations made last month by John W. Dean III, the dismissed White House legal counsel, that the President and his senior assistants — H. R. Haldeman and John Ehrlichman — were participants in the cover-up. And indeed Strachan's testimony tended to confirm Dean's.

The 29-year-old former Haldeman aide testified that his boss had been informed

'The Constitution grants no power to withhold...'

more than two months before the Watergate break-in that President Nixon's re-election committee had set up "a sophisticated political intelligence gathering system."

The Shredding

Strachan, who served as liaison between the White House and the Committee for the Re-election of the President, told the Watergate committee that two or three days after the break-in he destroyed a memorandum informing Haldeman of the intelligence system. Strachan also said that after speaking to Haldeman, he shredded a sample intelligence report and "several other documents" that he

feared might link the burglary to the White House.

Enter Ehrlichman

On Tuesday, the tenor of the investigation turned around sharply — as the President's former chief domestic affairs adviser took the witness chair.

From the moment that John Ehrlichman thrust his right hand in the air to take the oath as a witness, he adhered to the tone set in a 30-page prepared statement casting John Dean as the primary architect of the coverup, accusing the Senators of having suffered a "shrinkage of perspective" and blaming the news media for spreading "falsehoods and misunderstandings."

As the most aggressive witness to date, Ehrlichman frequently quarreled with the Senate panel's chief counsel Sam Dash. He "respectfully disagreed with Senator Ervin and he resorted, in reply to several direct questions, to the explanation that he could not "recall" coverup incidents and conversations alleged to have involved him.

Ervin, his eyebrows arching, cast his inquiries in phrases bordering on scorn. "Are we to believe," the Senator asked mockingly, that the Committee for the Re-Election of the President "gave \$450,000 to burglars simply because it felt sorry for them?"

Unruffled by the laughter and applause that the question evoked in the crowded hearing room, Ehrlichman replied calmly: "I'm afraid that I'm not your best witness on that, Senator."

He did acknowledge that he was in overall charge of the so-called "Plumbers" unit, set up by the White House for the purpose of plugging leaks, and that he had approved a "covert operation" to examine Daniel Ellsberg's medical files.

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