

Now that both Special Prosecutor Archibald Cox and the Senate Watergate committee have taken their cases to the United States District Court for the District of Columbia, we may be in for a pronouncement of unprecedented scope on the constitutional shape of our government. The issues are certainly there. What, for instance, is necessary to the proper functioning of the presidency and what is the proper role of confidentiality in a government not only of separated powers, but also of checks and balances? What is the right of the prosecutors acting on behalf of the people of the United States to be fully apprised of all facts surrounding an alleged cluster of crimes and, conversely, what is the duty of every citizen—even the President—to give his evidence about such matters? What is the right of the Congress in its role as grand inquisitor of government—as well as legislator for the nation—to require information on the functioning of the executive branch or, conversely, to what extent can the duty of the Executive to inform the people appropriately be limited by the President's need for full and private consideration of great issues of state?

All these questions and more have been handed to the judiciary. One might wish that this constitutional clash could have been avoided by the normal give and take of politics or by some ingenious initiatives and responses by both sides. We have noted before in this space that, early on, it seemed that the spirit of accommodation was at work in the Watergate maneuverings. Sen. Sam Ervin and his committee seemed to be hinting at some arrangement under which the committee could receive the President's evidence informally without the necessity of a showdown in court. The President, for his part, substantially limited the scope of his previous assertion of executive privilege and permitted his former aides to testify. Prosecutor Cox made quiet attempts

to negotiate with White House lawyers for the information he sought.

All of these efforts were within the tradition of accommodation that has generally spared us constitutional crises. Perhaps the revelation of the existence of the President's tapes, his determination not to make them public and the disclosure that H. R. Haldeman had some of them in his possession as a private citizen at his home made it inevitable that accommodation wouldn't work. Perhaps, however, the district court even now can work out some compromise which would avoid the necessity for a showdown. But from the ring of the papers filed by the President's lawyers in opposition to Mr. Cox's motion, we doubt it.

So that will leave it up to the courts. The question is how well they will serve this nation at a time when murky answers and evasions on matters of great importance have diminished the people's respect for government. Will they, in other words, grasp the constitutional nettles involved in the Watergate cases or will they duck the issues by finding some procedural irregularity in one or both of the cases? We think the latter course would be wrong. The issues are of enormous importance; perhaps even greater importance is the people's expectation that their government can function sufficiently well to resolve even the most difficult questions.

Accommodation is a political process, but when the two political branches have failed to solve constitutional problems by their traditional means, the system can function only if the third branch of government carries out its responsibility to resolve them. The people are now dubious about government and are interested in the merits of the cases, not in lawyers' quibbles about technicalities. In the end, a murky and inconclusive result which reinforced the public's apprehension about the strength of its institutions would be the worst result of all.