



## White House Tapes: What Is 'Definitive'?

To the Editor:

In President Nixon's press conference, he stated that he would obey a "definitive" decision of the Supreme Court if it ruled against his position on the tapes. What is immediately worrisome about his answer is the apparent emphasis on the word "definitive."

One would hope that the word "definitive" was superfluous and that the President would abide by any decision directing the turn-over of the tapes—whether to special prosecutor Cox or to Judge Sirica. However, if the President intended to describe what kind of decision he would obey and, by implication, what kind he would not obey, then the word "definitive" takes on ominous significance.

Many decisions are made and orders entered in which a majority of the Supreme Court do not agree on a single theory but do agree on the result. The obscenity decisions come readily to mind. In such a situation, is the decision and order of the Court "definitive" or does it lack that quality because the majority did not agree on a single theory to support the result ordered?

Did the President mean that he would obey a decision to turn over the tapes only if a majority agreed on the proposition that executive privilege did not protect the tapes? Did he mean that he would not accept a decision if, for example, four justices ruled that executive privilege did not protect the tapes and they must be turned over, four justices stated that executive privilege protected the tapes and the ninth justice wrote that executive privilege had protected the tapes but that it had been waived and therefore concurred in the order that the tapes must be turned over?

Such a decision would, in fact, have five justices supporting the President's view that executive privilege protected the tapes but another combination of five justices ordering that the tapes be turned over. Is such a decision "definitive" by the President's standard?

Although the prevailing mood of the President has been described as "combative," one hopes that such a mood would not impel the President to flout a lawful order of the Supreme Court if it did not meet that personal standard.

DAVID M. BRODSKY  
Brooklyn, Sept. 2, 1973