

The President's 'Big Play'

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From the President's point of view, the timing was perfect:

1. Elliot Richardson, who in the Agnew case showed himself to be the most Solomon-like compromiser since Henry Clay, had come up with a plan to respond to the Court of Appeals recommendation that the Executive branch work out a compromise on Archibald Cox's demand for the tapes.

2. Judge Sirica had dismissed the Senate's case demanding the tapes, saying his court lacked jurisdiction — at that point the Senate had nothing and was receptive to anything the President might offer.

3. If Mr. Nixon carried the Cox case to the Supreme Court, the President would probably lose.

4. War was raging in the Mideast, providing dramatic evidence that the President needed to put the Watergate behind him so as to contain and end the war.

That was the moment for what Mr. Nixon likes to call "The Big Play" — the dramatic gesture that seizes the initiative and transforms the situation; shaping rather than reacting to events.

Mr. Nixon's "big play" focuses attention where he wants it, on the tapes, which do not worry him as much as less publicised targets of investigation. Predictably, the fuss being raised is about what is to be summarized and what quoted verbatim (the independent "verifier" is to take care of that) and whether the tapes have been tampered with (Senator Stennis is permitted to have the world's greatest tape technician sitting at his side.)

The big play also keeps the matter in the lower courts, which have shown a desire to conciliate rather than confront.

Hysterical charges are being made about defiance of the law, but Mr. Nixon's lawyers will be back in Sirica's court tomorrow morning citing the court of appeals suggestion and asking for the time to deliver the summaries — with — tran-

script — inserts as soon as Stennis can deliver. If Sirica says no, back go the President's lawyers to the court of appeals — all of which is staying inside, not outside, the law.

Finally the big play solved the problem of the relentless force who could not be stopped with "separation of powers" argument: the special prosecutor.

Since Richardson, the Senate leaders and the courts would probably go along, Mr. Nixon believed, this play would effectively isolate the force that was effectively storming the citadel from within.

Mr. Nixon crossed the Rubicon when he directed Cox not to challenge him in court: he was aware that Cox would probably defy him, and that he would then have the excuse to fire him.

As a power play, it

seemed to make sense:

It isolated and purged the one really dangerous threat to whatever secrets the President wanted kept secret, and it divided the Senate. Senators Stennis Ervin and Baker, and the senators who listen to them, are more powerful than the firebrands of the Judiciary Committee and others — the Kennedys, Bayh, Mondales — who were doublecrossed in their Richardson confirmation by the dismissal of Cox.

SENATE

With one hand, the Senate is being given information the courts would not help it get; with the other, the Senate is being double-dealt by the abrogation of the agreement to let Cox operate independently.

Result: An internal Senate fight.

The one unexpected development in the big play was the sudden change of heart of Richardson: White House officials claim he was "on board" until Saturday afternoon, when Archy Cox threw grapplers around him and took him over the side.

This is what should (and not necessarily will) happen next.

After hot-headed impeachment demands and the venting of political fury, there will be a waiting-to-see how the courts will respond to the Nixon offer. If the President is held to be in contempt, and he does not purge himself, then the President will be impeached, whether or not the Supreme Court decides a president can be held in contempt.

My guess is the lower

courts, perhaps with some modifications, will accept the offer; if not, the President will cave in the rest of the way on the tapes. (Remember: the tapes are the least of his worries.)

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Then a more realistic plan of "special prosecution" should be adopted by the legislative and judicial branches. The Department of Justice, an arm of the President, cannot properly investigate the President: Henry Petersen is not about to drag Al Haig and Henry Kissinger in front of a grand jury and demand to know who broke what laws on wiretaps and other plumbing.

TIME

Now is the time for the establishment of a joint House-Senate investigating committee, enabling the Congress to raise the rumpus it is entitled to raise as a result of the Richardson confirmation doublecross.

More important, in terms of getting to the truth and re-establishing faith in the self-cleansing process of the American system, the time has come for the courts to create the gutsiest, most leakproof "runaway grand jury" in American history.

The President has shown he knows how to concede and survive; but in offering a new deal, he has reneged on another. It is not always smart to put the smart thing ahead of the right thing; his adversaries would do better to stop gurgling in outrage and start fashioning investigatory tools to find out what lies beyond the tapes.