

Defiant President

In the face of President Nixon's defiance of the law, the courts, the House and Senate, and the American people have to ponder and act upon their responsibilities in this grave time.

United States District Judge John J. Sirica, who ordered the President to make tapes of nine Watergate-related conversations available to him, has the most immediate duty. Normally, a judge decides whether the defendant is in compliance and whether to give him further time in which to comply. Judge Sirica today may grant the President time to make the tapes available to him or rule immediately on the President's proposal to submit summaries of the tapes and partial transcripts after they have been laundered by the White House and the laundering attested to by Senator John Stennis of Mississippi.

Former Special Prosecutor Archibald Cox has expressed his opinion that it is "highly unlikely" that any trial court would accept a summary or a partial transcript without examining the tape itself. If that is Judge Sirica's view, he can reject the President's "compromise" and hold him in criminal contempt for noncompliance. Since no President has ever been held in criminal contempt, there are no precedents as to how such a contempt citation could be enforced although, conceivably, the judge could levy a fine for each day in which the President was in noncompliance.

The Watergate grand juries in Washington that have been hearing evidence cannot return indictments because, with the firing of Mr. Cox, there is no prosecutor available to sign the indictments and thereby make them valid. Under the Constitution, the decision to seek an indictment lies within the discretion of the executive branch of the Government.

As matters now stand, Judge Sirica could appoint Mr. Cox or some other distinguished attorney to act as counsel to the grand juries and guide them in issuing a presentment. A presentment is less than an indictment

but its factual revelations could have substantial public impact.

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The willingness of Senator Stennis to "authenticate" the President's summaries and the willingness of Senators Ervin and Baker of the Watergate committee to accept this dubious arrangement have provided Mr. Nixon with his only political cover for his moves of last weekend. But in firing Mr. Cox and abolishing the office of special prosecutor, the President violated the commitment he made to the Senate last May when it confirmed Elliot Richardson as Attorney General. Since the President betrayed Mr. Richardson and broke his word to the Senate, it is difficult to understand on what basis of trust Senators Stennis, Ervin and Baker are now proceeding.

Senator Mansfield, the majority leader, in asking the Senate Judiciary Committee to meet tomorrow, recalled that the Senate "proceeded in good faith on the basis of those promises, pledges and commitments." The committee could vote to subpoena the files of the special prosecutor's office in an attempt to prevent the White House from destroying that accumulation of evidence—evidence apparently so dangerous to Mr. Nixon's interests that he risked this crisis to gain control of it.

The House of Representatives has its own responsibilities. It ought now to instruct its Judiciary Committee to consider the case for Mr. Nixon's impeachment and to report back within a reasonable time. Unless the District Court finds Mr. Nixon's "compromise" acceptable or he reverses himself and decides to comply with the existing order, the House cannot procrastinate in meeting its constitutional duty to protect the nation against a lawless President.

Mr. Nixon has brought the nation to its most severe crisis since the Reconstruction era, when one President stood trial for impeachment and another took office after the disputed election of 1876. The leaders of both parties and citizens in all walks of life have now to work together to maintain this government of law—to which every officeholder, starting with the President, is responsible and accountable.