

Mr. Nixon and the Watergate Committee

PRESIDENT NIXON'S strongly worded rejection of the Senate Watergate Committee's latest subpoenas presages another bruising constitutional conflict in the federal courts, testing once again the elasticism of our basic charter. It is a fight we would rather not have to witness, but considering the scope of the material the committee sought and the strength with which Mr. Nixon had stated his views on separation of powers and presidential confidentiality in the past, the fight was almost inevitable.

The first time the committee attempted to enforce its subpoenas of material from the White House files, Judge John Sirica ruled that the committee did not have standing to seek enforcement in the courts. However, before its recent adjournment, Congress passed a bill giving the committee the right to go to court to attempt to enforce its subpoenas. The committee then promptly issued subpoenas seeking records of almost 500 White House meetings and telephone calls on matters relating to the Watergate burglary, the cover-up, the milk price decisions and the ITT case. Deputy Press Secretary Gerald Warren immediately called the committee subpoenas "incredible" and Attorney General William Saxbe said on Thursday they were a "fishing expedition" designed to keep the committee in business.

On Friday, in rejecting the subpoenas, the President came out swinging. He wrote Sen. Sam Ervin that "under the circumstances, I can only view your subpoenas as an overt attempt to intrude into the executive to a degree that constitutes an unconstitutional usurpation of power." The President also said that the subpoenas "serve no legislative purpose I can discern." In opposing the enabling legislation on the floor of the Senate, Sen. Roman Hruska (R-Neb.) said it was unwise because it makes the courts "umpire or referee between Congress and the Executive in disputes over the production of documents and information."

Whatever the merits of his constitutional argument on separation of powers, we think Mr. Nixon was wrong about the legislative purpose supporting the subpoenas and that Senator Hruska's comment missed the mark as well. And we feel the same way about those who would summarily dismiss the subpoenas as a "fishing expedition." The Senate Watergate Committee has about as serious and important a legislative purpose as we can imagine: it is to examine abuses of the process by which we elect our Presidents, with an eye toward developing legislative safeguards for America's most fundamental instrument of self-government. The committee has not completed its work and has, in fact, been hampered in the task because some of the most important pieces of evidence bearing on its inquiry have been unavailable in White House files.

It was, therefore, in our view, neither irresponsible nor unwise for Congress to give the committee the authority to go to court to try to enforce its demand to produce that evidence. That is not to say that we believe Mr. Nixon's claim of privilege to be groundless or to have been settled by his litigation with former Special Prosecutor Archibald Cox. Indeed it may be

argued—and doubtless will be—by the White House that a prosecutor acting on behalf of a grand jury has a more powerful claim on every man's evidence than does a congressional committee. Moreover, Mr. Nixon's argument about separation of powers may take on more force as he asserts his claim against a congressional committee.

The recent enabling legislation does not settle those issues. It merely gives the committee the power to go into court and to take its arguments about why the material is relevant to its inquiry and why Mr. Nixon's claims of privilege are no bar to the production of this evidence. And, contrary to Senator Hruska's view, it is precisely the province of the courts of the United States to resolve large and conflicting constitutional claims.

That brings us finally to those who would argue, merely from the amount of material requested, that this is a "fishing expedition." A cursory review of the subpoenas themselves gives the lie to such charges. The investigators could not know the precise nature of each and every meeting and phone call in which the President has been involved over the past year and a half. It does know something about the dates on which major Watergate and campaign related events took place and the names of presidential assistants who would most likely have been involved in handling those matters. Thus, it does not seem unreasonable to us for the committee to subpoena the records of Mr. Nixon's five contacts with Rose Mary Woods, his eleven contacts with Ronald Ziegler and his two contacts with Stephen Bull on Nov. 15, the day he is said to have learned of the 18 minute gap on one of the tapes which Mr. Cox had subpoenaed.

But, there is another and more ominous note to the "fishing expedition" complaint which Mr. Saxbe and others have made. It is generally linked with the notion that the committee should pack in its files, write a report and quit. That seems to us exactly wrong. Whether the committee is driving toward an answer to Sen. Howard Baker's perpetual question ("What did the President know and when did he know it?") or whether it is driving at information about the financing and control of the campaign and its abuses in order to serve the larger legislative purpose of writing better campaign laws, its work is by no means complete. It is also quite clear that the information sought in the subpoenas could very well be helpful on both scores.

It is one thing to be "tired of Watergate" and quite another to be oblivious of the impairment to the electoral process which occurred in 1972 and which might recur in the absence of any remedial legislation. Whatever the outcome of the litigation that is almost sure to come, the committee is working on one of the most fundamental assets of a free people—their right, free of skulduggery, to choose those who will govern them. That business is much too important to be pushed off into some back corner just because some people, for assorted reasons, find the scandal too dreadful to contemplate any more.