

Beyond Compromises

In granting President Nixon a delay in responding to its subpoena, the House Judiciary Committee acted with the courtesy and restraint that from the outset have marked its conduct of a difficult assignment. In view of his deliberate delays, his obfuscatory distortions, his withholding of evidence, and his own verbal attacks and those of his spokesmen, Mr. Nixon can hardly be said to have reciprocated the committee's model behavior.

More than manners or orderly procedures are at stake. There has been from the outset of the Watergate legal controversies a persistent refusal on the part of the President to recognize that he is not a sovereign power unto himself. His authority is hedged about by the Constitution and the laws. Specifically, he cannot be a judge of what is evidence in his own case. There is no "principle of confidentiality" that can conceal Presidential conversation in whole or in part from an impeachment inquiry.

Indeed, this so-called principle, more commonly known as executive privilege, cannot protect Presidential conversations in an ordinary trial. Mr. Nixon discovered that last fall when he jostled in the courts with the then Special Prosecutor Archibald Cox over the first nine tapes requested by Mr. Cox. The United States District Court and the Circuit Court for the District of Columbia both held that Mr. Nixon's claim of executive privilege could not be sustained; they ruled that he had to yield the tapes to the District Court for its examination and possible referral to the grand jury.

Rather than carry that losing fight to the Supreme Court, Mr. Nixon gambled on firing Mr. Cox and submitting only edited transcripts of the tapes that were to be verified for accuracy and authenticity by Senator Stennis of Mississippi. When the Stennis compromise

collapsed, the President announced that two of the nine tapes had never existed and that there was a mysterious 18-minute gap in one of the remaining seven that he reluctantly yielded to the District Court.

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If there was no sound constitutional basis for the President's effort to withhold those tapes from the courts, there is none whatever for his more recent attempts to withhold others from the Judiciary Committee. The authority of the House to institute an impeachment inquiry is clearly spelled out in the Constitution. An impeachment is not a criminal proceeding even though criminally indictable acts may have been committed. It is a civil proceeding intended to protect the nation against unique political crimes by elected and appointed officials as distinguished from ordinary crimes such as murder or theft. Thus, the Constitution speaks of "treason, bribery, or other high crimes and misdemeanors."

In trying to determine whether bribery was committed in the I.T.T. antitrust case, the milk price support case, and the mysterious Hughes-Rebozo transaction and whether other high crimes may have been committed by the President in the Watergate obstruction-of-justice conspiracy, the House can recognize no barriers to its search for evidence. It would be illogical nonsense if Mr. Nixon, in the name of protecting the integrity and viability of his office, were able to set limits to the committee's search for evidence inasmuch as his alleged abuse of office is exactly the question under inquiry.

The Judiciary Committee's request for evidence as set forth in its subpoena is as beyond compromise as was the District Court's order last fall. A refusal to yield all the evidence in his possession can only be further ground for Mr. Nixon's impeachment.