

# In Virginia

By James Reston

CHARLOTTESVILLE, Va., May 28—When President Nixon dismissed Archibald Cox as his special prosecutor in the Watergate case, he not only misjudged the public outcry that followed but liberated Mr. Cox to speak out on the rules of law and impeachment. This may very well prove to be one of Mr. Nixon's most fatal mistakes.

For there is confusion in the country and even in the Congress now about the rules of law and impeachment, and Mr. Cox is using his freedom to write and speak, to clarify the issues to the press, the television, and the Congress.

Many other men in his situation might have destroyed their influence by roaring around the country like a loose cannon, firing at the man who fired him, but not Mr. Cox. He appeared here to address the law graduates at the University of Virginia the other day and talked with the sweep of the centuries and the kindness of a neighborly judge: No rancor. No vindictiveness. No pessimism about the law or the Republic. But on fidelity to the Constitution and the process of applying it to the President, as to any other citizen, he was unyielding.

On a personal note, he told the graduates that the ideal of their profession was precisely as Oliver Wendell Holmes Jr. had defined it: "To live greatly within the law." Central to the law was the life of the mind.

But the law was paramount, he insisted, for the President as for every other citizen. It was concerned with the rules and forms of human organization—to put it most simply, with helping people to live together.

In this sense, he said, law depends upon voluntary compliance, and compliance upon the notion that the law binds all men equally, the judges no less than the judged, the Governors no less than the governed, the highest officials equally with the lowest.

"We inherit the tradition of seven or eight centuries of continuous concern for the institutions and aspirations . . . that make for a free and civilized society. It is not the age of the profession that matters . . . what matters most is that through the centuries the men of law have been persistently concerned with the resolution of disputes . . . in ways that enable society to achieve its goals with a minimum of force and a maximum of reasons. . . ."

Then, and only then, did he address the graduates on the application of these principles to Watergate and Mr. Nixon, whom he seldom mentioned.

The question raised now, he said, stripped of legal jargon, was very simple: "Shall guilt or innocence in the criminal trials of White House aides be determined upon full consideration of all the evidence found relevant, competent and unprivileged by due process of law; or shall the evidence from the White House be confined to what a single individual [the President] highly interested in the outcome, is willing to make available?"

Mr. Cox, with his mortar board back on his head talking quietly to this company of graduates and friends, seemed now to be back in his old role as Solicitor General addressing the Supreme Court. His language was decorous, his sentences long, but his meaning unmistakable: Should the President have the right to define what was an impeachable offense; should he have the power to decide what evidence the House of Representatives should have, and to refuse the evidence requested, and select, edit, and fiddle with the evidence he produced?

Mr. Cox took up the President's arguments one by one, and proceeded to argue against them. He rejected the argument that the President could avoid the jurisdiction of the courts or disobey their ruling if they made one.

"Should the courts order production [of the tapes], failure to comply would, in my judgment be the most serious of impeachable offenses. . . . It would assert an arbitrary, executive power to block full and impartial inquiry into executive wrongdoing. . . ."

And refusal to supply evidence to the House Judiciary Committee in its impeachment proceedings, Mr. Cox argued, would be even worse. "The President's lawyers say that he may not be indicted," Mr. Cox observed, "and that his guilt or innocence of wrongdoing must be decided by the processes of impeachment. If impeachment is to be a viable method of inquiring into alleged executive misconduct, the House of Representatives—the grand inquest of the nation—must have the right of access to whatever evidence it judges necessary. . . ."

Here Mr. Cox reached his conclusion: "In my view," he said, "the refusal to comply with the Judiciary Committee's subpoenas denies Presidential accountability . . . failure of the committee to treat the refusal as a major ground for impeachment would go far to concede that executive wrongdoing is beyond the reach of any form of law."

It would be easy to underestimate the effect of this quiet man with his courteous amiable manner, but Archibald Cox was something of a triumph here on commencement day.

The press brushed him off, but Fred Graham of CBS put him on the Cronkite show and the full text will be in The Congressional Record. So the Saturday night massacre of Archibald Cox and Elliot Richardson goes on. While the courts and the Congress loiter along, these quiet cannons keep talking and defining and adding evidence and historical perspective to the impeachment process.