

The President and the Law

Adapted from a recent speech by former Watergate Special Prosecutor Archibald Cox at the University of Virginia Law School.

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 lowliest citizens. Two questions of this kind were raised last October—at least as I saw the problem.

One was whether the President would be permitted to set himself above the law by refusing to comply with a court order for the production of documents . . . The second question was whether, on the one hand, our system of government secures opportunity for the full and impartial investigation of wrongdoing at the highest levels of the Executive Branch according to the usual processes of law or, on the other hand, a Chief Executive can thwart the search for fact by a personal fiat inescap-

ably influenced by self-interest and concern for his friends . . .

Last October the people gave unmistakable answers to both questions. Within days, the court was assured that the tapes and the documents would be produced. Within weeks, the independence of the Watergate Special Prosecution Force was restored, the staff unimpaired, and a vigorous and independent Special Prosecutor was appointed. . . . I recall these events because it seems to me that we are near the point where the people have need to express themselves upon these points as clearly and forcibly as before . . .

The President's lawyers say that he may not be indicted and that his guilt or innocence of wrongdoing must be decided by the process of impeachment beginning in the House Judiciary Committee. Plainly, any such investigation will usually depend upon inquiry into what happened in the Executive Offices and much of the evidence will be under the President's control. If impeachment is to be a viable method of inquiring into

alleged executive misconduct, the House must have a right of access to whatever evidence it judges necessary. Here the House is the tribunal; no court can judge the question or enforce the subpoena. Withholding from the House evidence it judges necessary to the inquiry is therefore a defiance of the only process the Constitution provides for dealing with substantial charges against a President.

If the President refused to supply any evidence in his possession, the defiance of constitutional processes would be so plain, that all would perceive it. The principle is exactly the same when he picks and chooses what he will supply. In my view, the refusal to comply with the Judiciary Committee's subpoenas denies presidential accountability through a constitutional process the framers were careful to provide. 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.