

Nixon Rejects Subpoena of House Panel

By Richard L. Lyons
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President Nixon refused yesterday to comply with another subpoena from the House Judiciary Committee, saying he invoked executive privilege to protect the office of President from unwarranted intrusion from the legislative branch.

Mr. Nixon's refusal to turn over 45 tapes of presidential White House Watergate conversations demanded for the committee's impeachment inquiry was contained in a lengthy letter to Chairman Peter W. Rodino Jr. (D-N.J.) which was in effect a legal brief arguing the President's right not to comply.

By invoking executive privilege, the President set himself at odds with senior committee Republicans who contend, along with Democrats, that he cannot constitutionally assert a privilege to withhold information from Congress in an impeachment inquiry.

They contend that impeachment is an exception to the separation of powers doctrine that protects each of the three branches of government from domination by another. The impeachment process is an express power to Congress to intrude into another branch to determine whether the President or any other official has committed offenses for which he should be removed from office, committee members contend.

When Mr. Nixon refused on May 22 to comply with two earlier subpoenas for Watergate materials, the committee sent him a letter stating that it was for the committee, not him, to decide what information it needed. The committee also warned him that members could infer from his refusal to comply that he had something to hide and that he might be impeached for defiance.

The President reiterated in his letter yesterday that he had extended "extensive and unprecedented cooperation" to the committee in providing materials on Watergate and stated that

the "issue is not who conducts the inquiry, but where the line is to be drawn" on demands for confidential presidential tapes and documents. Mr. Nixon said that since the committee apparently was not willing to draw a line, he would.

The committee has subpoenaed 98 White House Watergate tapes. The President responded to the first demand for 42 by turning over edited transcripts of most of them. He refused to

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turn over 56 tapes subpoenaed later, and announced last month that he would comply with no more subpoenas for Watergate material.

Mr. Nixon wrote yesterday that "no President could" accept the committee's doctrine that "it should be the sole judge of presidential confidentiality."

Mr. Nixon stated that "executive privilege" is part of the basic doctrine of separation of powers. "Each branch historically has been steadfast in maintaining its own independence by turning back attempts of the others, whenever made, to assert an authority to invade, without consent, the privacy of its own deliberations."

He cited examples where Congress has refused to comply with judicial subpoenas and the courts have refused to comply with congressional subpoenas in defense of their independent status.

"If the institution of an impeachment inquiry against a President were permitted to override all restraints of separation of

powers," wrote Mr. Nixon, "this would spell the end of the doctrine of separation of powers; it would be an open invitation to future Congresses to use an impeachment inquiry, however frivolous, as a device to assert their supremacy over the executive, and to reduce executive confidentiality to a nullity."

This, in greater detail, is the argument Mr. Nixon has made before—that he will not do anything to weaken the office for future Presidents.

The President wrote that he was refusing to comply with the subpoena for two reasons: To preserve the principle that the executive branch like the other two "must be immune from unlimited search and seizure by the other co-equal branches," and because he has already given the committee the "full story of Watergate" so far as his role is concerned.

Any ambiguities that remain in the committee members' minds should be resolved, he said, not by pursuing "the chimera of additional tapes" but by calling live witnesses to testify. This was the same statement, in almost identical words, made recently by House Minority Leader John J. Rhodes (R-Ariz.) who earlier had been urging the President to turn over the tapes.

Mr. Nixon wrote Rodino that it would be legally wrong for members of Congress to draw "negative inferences" from his refusal to comply to the committee's subpoenas. It is established law, he wrote, that no inference may be drawn from the claim of a constitutionally valid privilege.

In closing, the President wrote that "I am determined to do nothing which, by the precedents it set, would render the executive branch henceforth and forevermore subservient to the legislative branch, and would thereby destroy the constitutional balance. This is the key issue in my insistence that the executive must remain the final arbiter of demands on its confidentiality..."

This brought from House Speaker Carl Albert the response: "The presidency is not at stake in this matter, and those who say it is are simply going beyond the realm of reason. We want a strong President, we want a strong Congress, we want a strong judicial system, but all of us must live within the bounds of mutual responsibility under the Con-

stitution." He said the House is acting responsibly, but that "the President has not responded responsibly."

Rep. Edward Hutchinson (R-Mich.), senior committee Republican, declared his belief months ago that executive privilege "must fall" before an impeachment inquiry. But he called Mr. Nixon's response yesterday "a pretty good letter."

Rep. Robert McClory (R-Ill.), second-ranking Republican, said he disagreed with Mr. Nixon's contention that he could invoke executive privilege in refusing to comply with a subpoena in an impeachment inquiry. McClory said he plans to introduce a resolution of inquiry, and seek a House vote, directing the President to turn over all materials the committee has subpoenaed. He said this would have the legal force of a subpoena issued by the full House.

McClory's proposal drew little support from either party, however. Most Republicans don't want to push the President any harder. Democrats, led by Rodino, don't want a premature House vote before all the impeachment evidence is in that might cause a partisan division.

Judiciary Committee Republicans caucused yesterday and agreed to press Rodino to schedule for decision at a business meeting later this week the question of whom to call as witnesses. Witnesses, if any, would be heard after the committee completes, in about two weeks, the examination of staff-assembled evidence of impeachable offenses.

Rodino wants witnesses limited to those needed to fill gaps in the evidence and to resolve contradictions. Republicans want at the least to call such former top White House aides allegedly involved in the Watergate cover-up as John W. Dean III, H. R. Haldeman, John D.

Ehrlichman and Charles W. Colson.

Republican members wrote Rodino that "an impeachment of the President of the United States based not on substantive evidence but on a legal or procedural impasse between the House and the executive would be very unsatisfactory."

After a caucus of committee Democrats yesterday, Rodino repeated that he will not schedule discussion of witnesses until the initial presentation of evidence is completed. He also said again, in response to the President, that the Constitution gives the House "sole"

jurisdiction over impeachment and this carries with it full power to decide what information is needed for an impeachment inquiry.

House Majority Leader Thomas P. O'Neill (D-Mass.) repeated in a televised interview last night his prediction that if the committee recommends impeachment the House will vote to impeach the President by a margin of 80 votes or more. He also predicted that if the committee recommends against impeachment, the House would vote against impeachment by a similar margin.

The committee will re-

sume its closed hearing today to complete examining evidence in the area of personal surveillance, including wiretapping of government officials and actions by the White House leak-plugging "Plumbers."

Ford Sees Slight Gain By President in Battle

Associated Press

Vice President Ford says President Nixon scored a very slight gain in his impeachment battle as the ITT and milk price evidence "sort of fell flat" last week before the House Judiciary Committee.

Ford, in an interview following his weekend trip to Utah, also renewed his offer to act as a bridge between the panel and the President. But he conceded he has no specific ideas which could head off a deadlock.

"I would hope I could be a conduit if either or both the parties want me to be," Ford said.

Neither the President nor the committee has indicated willingness to conciliate and Ford said he sees nothing to conciliate at the moment. Mr. Nixon rejected another of the panel's subpoenas for Watergate tapes yesterday.