

The Emerging Impeachment Scenario

Whistling in the dark, or Wish-Is-Fa-ther-to-the-Thought Department:
The impeachment movement is losing momentum.

The House Judiciary Committee has lost its standing because of "leaks" and internal partisan conflicts.

The President's trips to Moscow and the Middle East have restored his prestige. Sentiment against removing Mr. Nixon from office is gaining ground.

If people believed everything they read and heard, they might well be persuaded that the above reflected what is really going on. In truth, however, it is a far cry from reality, for now at last it is possible to see the emerging impeachment scenario.

In a few days (July 8), the Supreme Court will hold oral hearings on the question of whether Mr. Nixon must yield up scores of White House tapes which both special prosecutor Leon Jaworski and the House impeachment committee want, but which the President has refused to relinquish on the grounds of so-called executive privilege.

The general expectation is that the high court, acting expeditiously, will hand down a decision before the end of July. And, in the opinion of almost all disinterested constitutional authorities, the court will rule against the President—perhaps unanimously, even though four of the justices are Nixon appointees.

Thus, within a month or less, Mr. Nixon will seemingly have to turn over the explosive tapes to the investigators or openly defy the highest court in the land on the question of whether he is above the law or not.

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If the tapes are as damaging as they are reputed to be, their relinquishment would mean certain impeachment. If, on the other hand, the President refuses to obey the court, such judicial contempt would also mean inevitable impeachment, as Republican leaders have already warned Mr. Nixon.

When dealing with a politician as resourceful as Mr. Nixon, however, things are never quite that neat. Time and again he has shown a capacity to worm out of the tightest corners, so he could very well find a way to circumvent the Supreme Court by appearing to obey it without in fact actually doing so.

That's how he got around U.S. District Judge John J. Sirica last October. When the jurist ordered the President to turn over a batch of tapes demanded by Archibald Cox, then the special prosecutor, Mr. Nixon first refused, but when the firing of Cox aroused national indignation, he stilled the storm by saying he would comply with Sirica's order.

Later, however, the White House reported that a couple of the tapes had been lost, another supposedly had never been recorded, and still another

had an 18-minute gap where a crucial conversation had been erased. Naturally, this aroused suspicion and did not help Mr. Nixon's credibility with the public. Nevertheless, it was compliance after a fashion. The free-wheeling with the tapes might be deemed obstruction of justice by some, but the court did not construe it as defiance and contempt. In short, the White House got away with it judicially, even though it suffered in the court of public opinion.

Thus, if the Supreme Court orders Mr. Nixon to turn over another batch of tapes to Jaworski, what is to prevent the President from again resorting to the Sirica strategy? That is, avoid contempt by going through the motions of complying.

That would mean giving up the more or less innocuous tapes (no doubt the great majority) while losing, mislaying, altering or erasing the really damaging ones. Again there would likely be a violent public reaction, but that would not be as bad for Mr. Nixon as surrendering the tapes or flatly defying the Supreme Court.

As Mr. Nixon knows, even his most dedicated supporters on Capitol Hill

cannot afford to back him if he puts himself above and beyond the Supreme Court, but some might go along with him if he puts on a show of compliance, no matter how phony.

Such a course would also assure further delays and make it more difficult for the House Judiciary Committee to draw up its articles of impeachment. As matters stand now, the committee is expected to vote on the impeachment bill before the end of July. If by that time the Supreme Court had ruled against Mr. Nixon, and he had spurned the decision, the House committee would have no problem at all voting for impeachment. But what if Mr. Nixon says he will comply, even if later on the compliance is less than complete?

That is where the scenario becomes cloudy. It is logical to assume that sly circumvention of the court would in the long run be almost as repugnant to the public as open contempt, but the reaction would not be as swift or as certain as in the case of raw defiance.

Mr. Nixon and his lawyers have already shown themselves to be masters of evasion and endless delay, so it is a good bet that he will find some way of rolling with an adverse Supreme Court decision and, for a while at least, blunting its effect. It's an equally good bet, though, that the President will ultimately and inexorably be brought to bay.

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William Raspberry is on vacation. His column will resume on his return.