

The Imperatives of Law

Court's Decision Against Nixon Cuts Through to Heart of Issue

By JAMES RESTON

The Supreme Court, without ever mentioning the word "impeachment," has changed the atmosphere, and maybe even the balance of power, in the impeachment debate in the Congress of the United States.

News Analysis

For the Court has done what neither the executive nor the legislative branches of the Government have been able to do: It has cut across all the leaks, the television opinions of Ronald L. Ziegler and James D. St. Clair, the conflicting judgments of the press, and the squabbles within the House Judiciary Committee, and insisted on the imperatives of the law and the Constitution.

The problem in Washington,

until the Supreme Court spoke, was that everybody was overwhelmed and confused by a torrent of contradictory evidence. Almost every day in the last couple of weeks, as the Judiciary Committee finished gathering the evidence, the debate has been dominated by men of strong opinions.

John M. Doar, the counsel for the Democrats on the committee, felt he had to sum up the evidence, and concluded that "reasonable men" would have to conclude that President Nixon was guilty of impeachable offenses.

The President's public relations man, Mr. Ziegler, denounced this as an unfair outrage and attacked the Judiciary Committee as a prejudiced, po-

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litical jury, and the President's lawyer went on television and accused Mr. Doar of "prosecuting" the President.

Thus, until the Supreme Court handed down its unanimous opinion, Washington was in the midst of a propaganda war. It was not concentrating on the facts. Political pressures were being brought to bear to support the President, to be "loyal" to the President and the Republican party.

Not only Mr. Doar but also Albert E. Jenner Jr., the Republican lawyer on the committee, were accused of playing politics with the evidence, both against the President.

The Supreme Court has not put an end to this propaganda war, but it has brought the question down to the objective facts. It has challenged the President's claim of executive privilege. It has said, unanimously, that he cannot withhold conversations and tapes that bear criminal evidence.

Confidentiality the Issue

It has not said what should be done about impeachment. It has been very careful to avoid judgment on that. It has merely said that the President cannot decide on his own what will be "confidential," that the court must have the decisive voice on this question, and that he must hand over whatever evidence he has of any potential criminal activity by members of his staff, or even by himself.

The way in which the Supreme Court reached this decision, the fact that the decision was unanimous by a Court thought to be sympathetic to the President, and the timing of its decision were all important.

Unlike most of the opinions on the evidence out of the White House and the Congress, the majority opinion written by Chief Justice of the United

States Warren E. Burger was totally devoid of sentiment or excessive rhetoric, but plain and factual. He defined the case chronologically and came to a clear decision, supported by all other members of the Court (except William H. Rehnquist, who did not participate), even without ambiguous supporting opinions.

President Responds

Confronted by this unanimous judgment of the Court, which went directly against his opinions in the past, President Nixon said he thought he was trying to "protect the principle of Presidential confidentiality in a system of separation of powers."

But, he added, "while I am, of course, disappointed in the result, I respect and accept the Court's decision."

At one point in the statement, read by the President's lawyer, Mr. Nixon said he would comply "fully" with the Court's decision. But there is a question of time. How long will this take? The televised hearings in the Judiciary Committee started last night. How long will it take to transcribe and turn over the 60 tapes the court says should be examined for criminal evidence?

The main thing about this extraordinary series of judgments by the Supreme Court and reactions by the White House, is what effect they will have in the House and Senate, where the questions of impeachment and conviction have to be decided.

Here the imponderable may be more important than anything else. The Supreme Court has really changed the question. It has made opposition to the President not only legal, but respectable. And this could be decisive.

Court Guidance

For the last few difficult weeks, the swinging votes in the House Judiciary Committee

and in the House and Senate, the worriers and doubters, have not known what to do, but the Supreme Court, without even mentioning "impeachment," has given them a lead. By a unanimous decision, it has said, just when the whole debate was going on television, follow the evidence, turn over the tapes, let's get the facts. And now the President has agreed to turn them over, on order of the court.

This is a critical point in the Judiciary Committee, in the House itself and in the Senate, if the House agrees on articles of impeachment. Members are in confusion and even despair about how to vote and who to trust, but when the Supreme Court comes down unanimously against the President on a critical constitutional point, this is not only important, but could even be decisive.