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Impeachment and the President's Taxes

AS THE HOUSE JUDICIARY COMMITTEE goes about its business of working out articles of impeachment, we have noticed a recurrent concern over the question of a President's responsibility for acts committed in his name and with his authority—but by other people. This is the issue of whether Mr. Nixon can be called to account by the impeachment process for criminal acts performed by his appointees, employees and confidants. The President himself has an easy answer to the question. He has systematically and, in our view, shamelessly, laid off on his one-time associates total responsibility for many of the acts and activities which have put them in criminal jeopardy and which comprise a large part of the grounds for the charges now being formalized against him. Oh, well, the President has said, I may have given a wrong impression of what I wanted done, or in my passion created an atmosphere in which overzealous people may have done things I wouldn't have approved of if they had been brought to my attention—but at no time did I actually condone or overtly order these deplorable misdeeds. That paraphrase roughly conveys the President's position with respect to everything from the Watergate burglary to the Watergate cover-up, from the break-in at Dr. Fielding's office to the perjury committed to cover up that crime, from the profligate misuse of campaign funds to the forging of State Department cables.

Clearly this presidential defense troubles experienced and conscientious lawyers on the Judiciary Committee. Out of their own background in criminal law, they are seeking to apply strict rules of evidence and conventional tests of demonstrable and direct complicity to the conduct of an office and the exercise of powers and authority which are unique to the presidency. They are viewing the President as an ordinary defendant in an ordinary criminal proceeding. But the presidency doesn't work that way. It is a fountain of directives, policy guidance, hints and even half-formulated wishes which acquire, from the nature of their source, the full force of direct command. Confusion and controversy over the precise terms of presidential accountability have marked the deliberations of the Judiciary Committee and will doubtless recur throughout the impeachment proceedings as they move on to the House and possibly the Senate. And this is a subject to which we will be returning shortly because we think it is central to a proper definition of an impeachable offense.

In the meantime, however, we are puzzled by the omission from the draft articles of impeachment of the one charge that would seem to us most neatly to conform to the requirements of those committee members who believe the President can be impeached only for an indictable crime—and one for which he is directly responsible and with which he is directly connected. We are referring to Mr. Nixon's failure to pay his taxes.

In the broad range of charges now under examination, tax fraud represents the extreme in specificity. It is a sharply defined crime under well known law. In this

area above all, there can be no doubt of the President's responsibility for the actions of others who helped to prepare his tax returns. One member of the committee, Edward Mezvinsky (D-Iowa), is pressing his colleagues to add this count to the other charges, and he is right. This debate illuminates the whole crucial process of drafting the final articles of impeachment.

To begin with, the evidence of tax fraud is strong. It is strong enough that the Commissioner of Internal Revenue, Donald C. Alexander, asked the Special Prosecutor four months ago to look into the case in respect to the lawyers and accountants who assisted Mr. Nixon with his returns. "It is our opinion that a grand jury investigation of this matter is warranted," Mr. Alexander wrote, "and because this investigation will involve presidential appointees, we believe it would be appropriate for it to be carried forward by your office." In addition Fred G. Folsom, who served until last year as the Justice Department's chief prosecutor of tax fraud cases, has offered the committee his own unequivocal opinion. If Mr. Nixon were any other taxpayer, Mr. Folsom concluded, his case would be referred by the Justice Department "for presentation to a grand jury for prosecution."

When the Internal Revenue Service notified him in April that he owed \$432,787 in back taxes, Mr. Nixon made the extraordinary claim that he was not personally responsible for the defects in his returns. He laid the blame on unnamed persons to whom he had "delegated" that responsibility. Under federal law, a taxpayer is always responsible for his return. The publication last Friday of the Judiciary Committee's volume of evidence on these returns shows that Mr. Nixon was fully familiar with the legal questions involved. He was carefully exploring the law of the matter as early as December 1968, even before he took office, with one of his law partners. The subsequent record is massive but it can be summarized by citing Herbert Kalmbach, then his personal lawyer, who has testified that Mr. Nixon went over every line of his returns.

Even if there is evidence of fraud, is that a matter for impeachment? Some members of the Judiciary Committee evidently feel that whatever sins Mr. Nixon may have committed here lie between him and the IRS. They are not, in this view, an issue that pertains to Mr. Nixon's public role as President, or which affects the constitutional government of the country. This argument seems to us clearly defective. The defect is illustrated in Mr. Folsom's statement that any other taxpayer would have been haled before a grand jury. The whole series of impermissible deductions went unchallenged, for four years, precisely because Mr. Nixon is the President. It is hard to think of anything more likely to subvert the processes of fair and lawful government, and citizens' confidence in it, than a widespread and well-founded suspicion that our first citizen was using his public power for his private gain. The central issue in this impeachment, after all, is precisely whether the President must obey the law.