

For the Defense

Since the Watergate scandals began, there has been an implicit conflict of interest between Mr. Nixon, occupant of the Presidency, and Mr. Nixon, potential defendant in a criminal indictment. Much of the trouble in which he now finds himself had its origin in his evident certainty that the power and prestige of the Presidency would always provide an impenetrable shield for questionable or even clearly illegal acts.

In reality, this misuse of the Presidency has instead served to build pressures for impeachment, the drastic but sole remedy specified by the Constitution for serious Presidential misconduct. As those pressures have intensified and as the indictments and confessions of his close associates increase in number, the conflict of interest between Mr. Nixon's Presidential and personal roles has become naked and indefensible.

At his press conference on Monday evening, Mr. Nixon openly construed his Presidential responsibilities in the light of his personal necessities. As had been expected and as officials facing impeachment invariably do, he asserted the view that he could be impeached only if he could be shown to have committed a crime. This view runs counter to the preponderant view of legal scholars and of the historical and legal precedents set forth at length in the House Judiciary Committee's recent memorandum.

As a practical matter, the House Judiciary Committee in drawing up articles of impeachment and the Senate in judging them are likely to concentrate on offenses that are outright violations of criminal law or closely related to such violations, and therefore clearly impeachable, because that is the course most certain to win the widest public acceptance without argument.

In response to questions as to whether he would cooperate with the Judiciary Committee, Mr. Nixon gave the same guarded answer that he has recently given Leon Jaworski, the special prosecutor. Those answers consist of saying that his counsel is James St. Clair and that he will follow Mr. St. Clair's advice. It would be candid if Mr. Nixon said that he would cooperate with these inquiries insofar as his lawyer thought it was in his interest to do so. Instead, he says that he will cooperate "in any way consistent with my constitutional responsibility to defend the office of the Presidency."

In an impeachment, there is no such "constitutional responsibility." Impeachment by definition is a breach of the separation of powers. The Constitution gives the Senate the power to sit in judgment on a President and remove him if it finds he has abused his office. It is a logical absurdity for Mr. Nixon to contend that he has a "constitutional responsibility" to use the powers of his office to frustrate an impeachment inquiry into whether he has abused those powers. An accused President can only argue as any accused person can that the weight of the evidence exculpates him. But he has no right or privilege to withhold any part of that evidence.

The powers of the Presidency cannot be used to shield either violations of the criminal law nor "high crimes and misdemeanors" in the constitutional sense of dereliction of duty and abuse of trust. In whatever way the House Judiciary Committee chooses to define its impeachment task, it is up to Mr. Nixon to cooperate. If he should refuse to do so by withholding evidence, that in itself would become strong ground for impeachment.