

PERHAPS THE MOST sensible and compelling definition of an impeachable offense—one that captures both its gravity and uniqueness—was provided in a staff study by the House Judiciary Committee last winter. By way of transcending the false choice between actual indictable crimes and amorphous political offenses, the committee staff went to the heart of the matter, which is that the President enjoys powers no other citizen possesses. From this, study concluded that the abuse of such distinctive powers cannot be measured in an ordinary criminal code that would apply to the indictment or conviction of an ordinary citizen. An ordinary citizen named John Ehrlichman was in fact convicted under the terms of that code last Friday for acts committed while in the service of the government. The chain of events that brought him to that condition reach back, in our view, to an impeachable offense—a genuine abuse of special presidential powers. We have in mind the creation of the so-called plumbers unit, a special presidential police force apart from the duly constituted security agencies of government, whose existence was known only to Mr. Nixon and a handful of participants and whose members were answerable only to the man who created the unit.

The context in which the plumbers unit was created and the consequences that flowed from that act are reviewed in a series of excerpts from official statements published elsewhere on this page today. They constitute a case history in the abuse of presidential power. Mr. Nixon set out in the first instance, by his own account of the aborted Huston Plan, to lend the weight and force of the federal government to a program of admittedly illegal domestic intelligence gathering activities, specifically including, as the President put it, "surreptitious entry—breaking and entering in effect." The plan foundered after five days, not for any lack of enthusiasm on the part of Mr. Nixon, but only because FBI Director J. Edgar Hoover refused to permit the FBI to participate. But the Huston Plan's significance could hardly have escaped the attention of the President's closest associates who were subsequently to inherit a variation on this plan. When, a year later, the President established the plumbers unit, otherwise known as the Special Investigations Unit, a certain standard had been established for what the President considered to be permissible activities in the vague name of "national security."

It is relevant to note here that the activities that then went forward (cable-forging, breaking and entering, wiretapping, psychological profile-making, gum-shoeing and the rest) and the accessories that went with them (wigs, voice alterators, surgical gloves, artificial limp-inducers) only came to public attention as a consequence of a series of flukes. The point here is that this whole

dangerous and murky enterprise was made possible with and by the authority of the President of the United States; only his command could set all this in train and protect its confidentiality on grounds of serving the national interest. A President is presumed to be serving that interest in his acts and the same presumption applies to requests or directives issued by responsible subordinates in his name.

It is in this light that one must consider the convictions in the plumbers trial last Friday. Certainly the evidence is overwhelming that Bernard L. Barker, Eugenio R. Martinez and G. Gordon Liddy all had reason to believe that the break-in at Dr. Fielding's office was being undertaken as presidential business. Egil Krogh, who pleaded guilty in the same case and has already served his prison term, has stated that he also believed this to be true. Mr. Ehrlichman, who based his defense in part on a distinction between knowledge of a break-in and knowledge of a "covert" operation and lost that argument, never pretended that he was acting on his own. Rather, he maintained that the activities that he approved on the President's authority were simply not illegal. The judge, as well as the jury, said that they were and the effect of this is to place a felony at one remove from the President. We say "at one remove" because in this matter, as indeed in their relationship, there was nobody between Mr. Nixon and Mr. Ehrlichman.

Did Mr. Nixon have no idea of how one of his "closest and most trusted" associates interpreted his instructions? Was the President so imprecise in his directives that Mr. Ehrlichman, close as he was, totally misconstrued what the President had in mind with the creation of the plumbers and with the intensity of his anxieties concerning their general area of operation? And, having utilized the special powers of the presidency to create a secret police unit attached to the White House—an extraordinary measure under any circumstances—did Mr. Nixon fail to maintain some supervision or even inquire about its undertakings thereafter? The point about these questions is that so far as Mr. Nixon's conduct is concerned there is no favorable answer—neither yes nor no. That is because we are left with a choice between (1) an assumption of presidential complicity in acts for which men have either pleaded guilty or been convicted of felonies, or (2) a demonstration of gross presidential negligence and indifference concerning criminal activity directed by the White House. Either way, it seems to us, in both the creation of the plumbers unit and the consequences that inevitably flowed from it, one confronts an abuse of presidential power of sufficient magnitude to constitute an impeachable offense.