

EARLIER THIS WEEK, the staff of the House Judiciary Committee, which is doing the preliminary work on impeachment proceedings now under way, released a report outlining its conception of what constitutes an impeachable offense. That report pretty much endorsed the findings of the Association of the Bar of the City of New York and others that an impeachable offense is not necessarily the same thing as a violation of a criminal statute. Thus: "The criminal law sets a general standard of conduct which all must follow. It does not address itself to the abuses of presidential power. In an impeachment proceeding a President is called to account for abusing powers which only a President possesses."

Whatever individual members of Congress may feel about the legal merits of this conclusion, all members will be well served by its practical effect. For it would have been a disservice to those who take a broad view of impeachable offenses for the committee at this early stage to restrict its own concept—and its inquiries—to the narrow ground of demonstrable criminal acts. There is something of a chicken-and-egg principle at work here and the committee staff recognizes as much in observing that the "issues cannot be defined in detail in advance of full investigation of the facts." It is always conceivable that this investigation may produce evidence of criminal activity so persuasive as to moot the argument over what constitutes an impeachable offense. But it seems more probable that the fate of Richard Nixon's presidency will turn, in the end, on much more difficult judgments—judgments concerning his use of those "powers which only a President possesses."

What are those powers? And what responsibilities go with them? We would begin with the power to share power—to nominate and appoint subordinates who partake in the exercise of the vast, discretionary authority at the President's disposal. We come next to the power to set a standard of conduct and to define the policy objectives for those persons he has chosen not only to carry out his explicit directives but to reflect faithfully what they perceive to be his will. And finally we come to the power that derives from the trust of the people—their presumption that neither the office of the presidency nor the extraordinary powers they have conferred upon it will be grossly, persistently and cynically misused. Surely, if you look back over this brief catalog of broad powers, the first and most important responsibility that attaches to them is to be certain that they are not casually or loosely delegated. No less important is the President's responsibility to see that those to whom these powers are delegated are not corrupting his purposes. For it is only by discharging these two responsibilities that he can discharge a third, namely his obligation to hold his office worthy of that respect and trust which the public accords it almost as a matter of course.

Now, how does all this apply to the particular case at hand? Negatively, we fear, for you do not need to subpoena any documents—the public record is sufficient—to know that in that great collection of crimes and improprieties we call Watergate, Richard Nixon has shown every inclination to exercise the powers of his office and practically no predisposition to exercise the responsibilities that go with them. Indeed, his general line of defense has been to plead ignorance of the facts—of the Watergate burglary, the cover-up, the "plumbers" excesses, his own personal tax oddities, the improvements to his private property at government expense, the corrupt arrangements between campaign contributors and government officials, the apparent destruction of evidence in more than one criminal case (we have in mind the Acting FBI Director's burning of some of the contents of E. Howard Hunt's safe, in addition to the curious case of the subpoenaed tapes), and all that squalid hocus-pocus having to do with "enemies lists" and disguises and money stashed in phone booths and White House safes, not to mention money sworn to have been passed regularly to his now departed Vice President, Mr. Agnew.

Thus, in his supposedly definitive Watergate account-

ing on May 22, 1973, Mr. Nixon could say of his connection with the White House organized burglary of Dr. Fielding's office:

*I told Mr. (Egil) Krogh that as a matter of first priority the (plumbers) unit should find out all it could about Mr. (Daniel) Ellsberg's associates and his motives . . . I did impress upon Mr. Krogh the vital importance to the national security of his assignment. I did not authorize and had no knowledge of any illegal means to be used to achieve this goal. However, because of the emphasis I put on the crucial importance of protecting the national security, I can understand how highly motivated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention.*

Right here, in this one example, we are getting close to something which bears heavily on the question of a President's accountability for the consequences of his commands, for we know certain other things about this particular case: that John Ehrlichman initialed a much more explicit order to Mr. Krogh to conduct a "covert operation . . . to examine all the medical files still held by Ellsberg's psychoanalyst"; that Mr. Ehrlichman was in a position to know the President's own sense of what would be tolerable means of fulfilling the objective at hand; that Mr. Krogh, as Mr. Ehrlichman's deputy, was in a position to interpret a directive from his immediate superior in terms of what would be allowable; and that both men knew what manner of men they were dealing with in the team they picked to carry out this operation—G. Gordon Liddy and Mr. Hunt. And yet, Mr. Krogh would tell the court last month that he had received "no specific instructions or authority whatsoever regarding the break-in from the President, directly or indirectly"—and this could be widely interpreted as an exoneration of the President. Exoneration of what? Of a crime in the ordinary sense? Perhaps. But of responsibility for "abusing powers which only a President possesses"?

We would not wish to prejudge this particular case, but we do think this small piece of the "Watergate" record illuminates a large part of the central question about impeachment which will soon confront the House Judiciary Committee. Before that body can arrive at a valid decision—and before the House or the Senate could deal responsibly with the impeachment issue, should it come to that—it seems to us that some firm conclusion concerning ultimate responsibility for the use, or abuse, of presidential powers will have to be reached and applied, case by case, across that whole gamut of events and episodes on which Mr. Nixon, in one way or another, has been called publicly to account. For even while any final determinations must await the fullest possible exposure of the evidence, we do not see any easy way to get around Mr. Nixon's own definition of the broad principle involved—a definition offered in his first public declaration on Watergate and related matters on April 30 of last year, before we had been told about the "plumbers" and the "enemies list" and the tax deductions and all the rest:

*Who, then, is to blame for what happened in this case?*

*For specific criminal actions by specific individuals, those who committed those actions, must, of course, bear the liability and pay the penalty.*

*For the fact that alleged improper actions took place within the White House or within my campaign organization, the easiest course would be for me to blame those to whom I delegated the responsibility to run the campaign. But that would be a cowardly thing to do.*

*I will not place the blame on subordinates—on people whose zeal exceeded their judgment, and who may have done wrong in a cause they deeply believed to be right.*

*In any organization, the man at the top must bear the responsibility. That responsibility, therefore, belongs here, in this office. I accept it.*