

A CONSTANT THEME underlying the Nixon administration's justifications of almost all of the things it has been criticized for is, "Everybody's done it." At first blush, that would seem to be an appropriate response to the disclosure that Frederick V. Malek, then a member of the White House staff, sent a memorandum to H. R. Haldeman on March 17, 1972, outlining a program designed to assure that the powers of the federal government to dole out grants and other beneficences were marshalled most effectively to assist in the President's reelection effort. Although officials of past administrations are naturally inclined to see operations during their own government days in a rosy light—especially when compared with those of a succeeding administration of the opposite party—there can be no doubt that from time immemorial everybody in the federal government was aware that an election year was an election year. And the process of rewarding or punishing certain members of the Congress, for example, with the award or withholding of post offices, Corps of Engineering projects or military bases is a time-honored, if not particularly honorable, one. It cannot be argued that the impact of that process on presidential politics has been minimal in the past. Nevertheless, the Malek memorandum is an instructive example of the Nixon administration's proclivity for taking something "everybody's done" and carrying it beyond recognizable—or tolerable—limits.

In his memorandum to Mr. Haldeman, Mr. Malek said that the program he was outlining was designed to "improve Executive Branch responsiveness to the voting public." The memorandum went on to outline the bureaucratic machinery which he had put into place to insure that there was both systematic initiative in the departments and centralized White House direction on "politically sensitive" operating matters. The first accomplishments he cited were (more or less) unexceptional. He noted that some 35 White House requests to the Department of Commerce had resulted in "expediting the normal grant reviewing process and securing the release of information."

Mr. Malek's program went farther. He cited, for example, some \$1.4 billion dollars of Department of Commerce funds which could be "redirected" over two fiscal years for the benefit of the President's reelection campaign. He reported that "during the recently completed budget cycle [White House aide William] Gifford worked closely with the budget examiners to ensure the budget was as supportive as possible for the President's reelection." He suggested in a later memorandum that the Committee for the Reelection of the President would identify "the most advantageous projects."

Mr. Malek also sought to keep the project secret and to give it what has come to be known as deniability by ordering that no communications to or from the White House with respect to the effort be put in writing. When it came to listing the drawbacks of the plan, Mr. Malek wrote, "The most significant drawback of the program is, of course, the risk of adverse publicity."

Mr. Malek apparently was not concerned that delegating some of the departmental programming functions to the Committee for the Reelection of the President might have an adverse effect on the programs themselves—not to mention what it does to the concept of responsible government by duly elected or appointed officials. In practice, it worked like this: Cleveland requested \$354,000 for a recreational program. Only \$164,000 was granted. The reason: "The program is designed to impact inner city residents, and thus does not fall within our political guidelines." So the expenditure of public funds was to be conducted not in terms of the design of a program in pursuance of a congressional mandate, but in pursuit of the reelection of a President.

To the extent that this is a departure from traditional pork barrel practices, a case can be made that the difference is only one of degree. And yet it strikes us that, in an important sense, it is something more than that—something more in keeping with a fundamental tendency we have observed in President Nixon's general approach to government and politics. Time after time, as the Watergate saga has unfolded, we have encountered evidence of excesses on the part of the President and/or his associates which, by their nature, have had the effect of transforming a difference in degree into a genuine difference in kind.

Thus, past Presidents have selectively tape recorded their official conversations. It remained for Mr. Nixon to pioneer—disastrously—with indiscriminate, continuous, voice-activated recording devices in his various offices. Thus, former administrations have leaned heavily on the business community or farmers for campaign contributions. But the Nixon way, one surmises, was to be a lot more explicit in making the connection between a particular corporate—or dairy farmer—contribution and a specific governmental favor. Thus almost all Presidents have reacted violently to news leaks—with telephone tapping used as a security enforcement process on occasions. But only Mr. Nixon, as far as we know, felt the need to establish his own, private parapolice unit to engage in illegal burglaries and electronic surveillance to plug the leaks. Other Presidents have raged at press criticism. None that we have heard about has been quite so blatant about it as to threaten Internal Revenue Service audits or antitrust actions, or to launch a calculated, sustained, nationwide campaign of villification, for the express purpose of intimidation or discrediting the news media. Past Presidents have taken tax deductions for their official papers; but Lyndon Johnson did *not* scramble to beat the deadline when Congress was about to close this loophole—and Richard Nixon did. When it comes to political campaigning, for another example, it is the difference, you might say, between a Donald Segretti and a Dick Tuck.

In short, everybody *hasn't* done things the way Mr. Nixon has done them. And the Malek operation is only the latest illustration of why the indiscriminate use of this argument—even leaving aside its essential lameness in terms of morality or legal standing—is at best a weak defense.