

A Question of Trust

By Anthony Lewis

BOSTON, Jan. 23—Forty years ago a Senate investigating committee subpoenaed documents from William P. MacCracken Jr., a Washington lawyer. He said they were protected by the lawyer-client privilege. While that claim was pending, one of his clients—without Mr. MacCracken's knowledge—got into his files, removed material and destroyed it.

Mr. MacCracken told the committee that he was not responsible. But the chairman, Senator Hugo Black of Alabama, told him: "You said upon your honor as a lawyer . . . that this committee could rest assured the files were there and would remain there." The Senate found Mr. MacCracken in contempt. The Supreme Court, in an opinion by Justice Brandeis, unanimously rejected a constitutional argument he made. He served ten days in the District of Columbia jail.

The tale of Mr. MacCracken has a certain significance today. It is not a precedent controlling all other cases of missing evidence; contempt or obstruction of justice will always depend on the particular facts. What the story does convey is an attitude toward public responsibility—the obligation of a lawyer or really any public person to the process of law.

The theme of public duty is sounded in a different context in some more recent Supreme Court cases. In 1968 the Court said that New York policemen could not be forced to waive their privilege against self-incrimination in a criminal proceeding, but they could be fired if they refused to answer direct

questions about their duties. The reason was that a policeman "is a trustee of the public interest." The same was said of sanitationmen.

The justices treated the public employe as a fiduciary, in dictionary terms a person to whom property or power is entrusted for the benefit of another. The other in this instance is the public, and it is entitled to an accounting from those acting in its name.

Those cases, though hardly familiar, express what most Americans accept as honorable standards of public conduct in a democracy. A perception that President Nixon has failed those tests underlies Americans' deeply cynical attitude toward him today.

There can hardly ever have been a public figure so given to avoiding personal responsibility. There was an amazing example the other day, in connection with indications that the authorities are increasingly doubtful about Mr. Nixon's tax returns. His press spokesman, asked about that, said the President had ordered his own investigation of the returns. An investigation! As if the matter were someone else's responsibility.

The same attitude applies to the wiped-out White House tapes. It must be the fault of Rose Mary Woods, or some devil, not of the man who said last July 23 that the tapes would remain "under my sole personal control."

And so on through the litany of Watergate. Every burglary, every cover-up, every wiretap, every obstruction of justice committed, and in many cases admitted by high personal

aides of this President, was not his responsibility.

The picture of an innocent President floating on a sea of crime is fundamentally unconvincing. That, not any specific knowledge, accounts for the remarkable poll results showing that 79 per cent of those asked believe Mr. Nixon guilty of at least one charge connected with Watergate. The public is sensible enough to think that the man in whom it placed its highest trust is responsible for the fouling of that trust.

Thinking of that office as a trust also clarifies the obligation of the President to provide information to the House Judiciary Committee's impeachment inquiry. Once serious evidence of wrongdoing is raised against the most ordinary trustee, he has a legal and a moral duty to account for his performance. For a President to deny that obligation would itself be grounds for impeachment. For if "executive privilege" can frustrate this inquiry, then the impeachment clause will have been read out of the Constitution and Presidents made four-year monarchs.

Twisting and turning, dodging and distracting, Mr. Nixon tries to avoid square judgments of law. Now he even attempts the tactic of sending poor Vice President Ford out with the word that some laundered tape transcript shows him innocent. He knows that Special Prosecutor Leon Jaworski is too proper to puncture that balloon. But events are closing in.

It is increasingly difficult to avoid

the conclusion that the President is acting out of fear of punishment for crime. It is personal retribution that is on Richard Nixon's mind, not the trauma of his country.