

The nation is moving inexorably toward an impeachment trial of President Nixon. His conviction by two-thirds vote of the Senate is by no means certain but his indictment by the House of Representatives sitting as grand jury for the nation appears increasingly likely.

Although many people in Congress and in the country are still reluctant to recognize that possibility, President Nixon is—ironically enough—acting in such a way as to make it even more probable. James D. St. Clair, the President's lawyer, indicated at one point last week that the White House not only regarded the House Judiciary Committee conducting the impeachment inquiry as an adversary but also that it was reluctant to continue full cooperation with special prosecutor Leon Jaworski.

When Mr. Jaworski made this obstructionist attitude public, the White House executed a tactical retreat. Mr. St. Clair was to continue his "private conversations" with the special prosecutor and "to cooperate fully." But once again the change seems to be more of appearance than of reality. Any cooperation will have to be "consistent with the principles of confidentiality of Presidential conversations"—the dubious point on which the White House has insisted all along.

Mr. Jaworski has wisely decided not to contest the question at this juncture and to proceed instead with prospective indictments. Once those cases reach trial, he or the defense counsel can move to subpoena the pertinent White House materials and the matter can then be decided by the courts.

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In various manifestations over the last nineteen months since the Watergate burglary and cover-up began, the White House efforts to obstruct justice have touched upon all three basic grounds for impeachment: criminal misconduct, abuse of Presidential power, and the extra-constitutional enlargement of that power.

There are certainly reasonable grounds to believe that the President may have violated criminal law and is therefore subject to impeachment, which—let it be remembered—means trial as distinct from conviction. One group of public-interest lawyers in Washington has recently published a study listing no fewer than 28 possible criminal violations for which Mr. Nixon could be charged.

In terms of constitutional theory, however, impeachment is not necessarily limited to specific criminal acts that might be performed by any citizen. On the contrary, it was primarily intended to deal with political crimes by public officials, that is, with the abuse of great power. As Alexander Hamilton wrote in Federalist Number 65, impeachment is to be used against "those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denoted political, as they relate chiefly to injuries done immediately to the society itself."

Mr. Nixon can fairly be charged with abusing his public trust in the way that Hamilton describes. Although a President has a constitutional responsibility to see that the laws are faithfully executed, Mr. Nixon has withheld evidence from the office of the special prosecutor and must bear responsibility for the destruction of evidence under court subpoena which was in his possession, specifically the erasure of eighteen and a half minutes of his taped conversation with H. R. Haldeman.

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Mr. Nixon's use of the doctrine of executive privilege to shield his own acts and those of his former subordinates from a searching inquiry by the special prosecutor is surely outside the bounds of the Constitution. The framers of the Constitution envisaged impeachment as the sovereign remedy for this kind of exaggerated and distorted exercise of Presidential discretion.

Is Mr. Nixon's repeated effort to sabotage the investigation of the Watergate cases an indictable offense? Is it an unconstitutional refusal to fulfill his oath of office to see that the laws are faithfully executed? Or is it an extraconstitutional exercise of Presidential discretion?

However it is viewed, it is grounds for impeachment. By perpetuating in any way the White House cover-up, the President moves himself and the nation further down the road toward a fateful collision.