

WXPost  
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MAR 5 1974

## The White House Defense Strategy

The great state papers of the Nixon years (indictments, briefs, judicial opinions, constitutional law broadsides) are closely related to one another, but the real relationships are often not what they seem to be.

Consider, for example, the relationship between the most recent indictments and the White House lawyers' essay on the true grounds for impeachment. Perhaps the essay was just a response to the House Judiciary Committee staff report on the same subject. But I believe the essay was also written in *anticipation* of the indictments that were issued 24 hours after the essay was issued.

The committee staff argued that a President can be impeached for acts that are not indictable under criminal law. Yet the White House did not just respond that a President can only be impeached for criminal acts: "not only do the words (of the Constitution) inherently require a criminal offense, but one of a very serious nature committed in one's governmental capacity."

The last dozen words are there for a purpose. They make two intriguing distinctions. Even some criminal acts ("unserious" ones) are not grounds for impeachment. And a President can not be impeached for even "serious" crimes unless they are committed in his "governmental capacity." To understand why the White House adopted this provocatively narrow definition of

an impeachable offense, make four common sense assumptions:

Mr. Nixon's lawyers argue the positions he tells them to argue.

Mr. Nixon has no reason to tell his lawyers to define the grounds for impeachment any more narrowly than his interest requires. Any excessive narrowness in the definition would be worse than superfluous: it would accentuate the distance between the White House definition and the much broader definition that reflects the majority view among leading constitutional scholars.

Mr. Nixon's sole interest is in avoiding impeachment.

Mr. Nixon is the world's foremost authority on Mr. Nixon's role: he was right there when he did whatever he did.

Now, on the basis of these four reasonable assumptions, it is appallingly reasonable to anticipate the mischief that Mr. Nixon is planning. Lay the White House essay next to the indictments, and the White House lawyers' gray prose suggests two gruesome new tactics for Mr. Nixon.

First, consider the idea that no President can be impeached for even a "serious" crime if that crime is not committed in his "governmental capacity." This idea seems like a warning against including any of Mr. Nixon's tax matters in a bill of impeachment. Even if it appears that Mr. Nixon violated the law in avoiding taxes, his lawyers seem ready to argue that it is a "private" matter unrelated to Mr. Nixon's "governmental capacity."

The idea that a President can only be impeached for a "serious" crime is much more important and ominous. Read in conjunction with the grand jury's indictments, this idea seems like a veiled but truculent confession by Mr. Nixon.

The grand jury examined various relevant tapes and documents and decided that there is probable cause to believe (among other things) these two things:

That H. R. Haldeman, who as White House chief-of-staff was Mr. Nixon's contact with the world beyond the Oval Office, was deeply involved in a criminal conspiracy to obstruct justice.

That Mr. Haldeman lied when he reported that Mr. Nixon, while attending a meeting at which "hush money" for Watergate defendants was discussed, said "it would be wrong" to pay such "hush money." (Seventy-five thousand dollars was given to defendant E. Howard Hunt within 12 hours after the meeting.)

So let us not flinch from reasonable inferences; let us not mince words.

It is reasonable to infer from the indictments (and from Mr. Nixon's behavior in the last 12 months; and from all that we know about how his White House worked) that Mr. Nixon is guilty of participating in a criminal conspiracy to obstruct justice.

In addition, it is reasonable to infer from the careful wording of the White House essay on the grounds for impeachment (and from what we know of Mr. Nixon's character) that he is going to argue that he can not be impeached for such involvement because it is not a "serious" crime.

So Mr. Nixon's final argument is: "I'm not a *serious* crook."