

Neither ABC, which televised today's hearings, nor NPR, to which I listened for a while while prior to picking Lil up (he late night) mentioned this. Didn't catch the net NEC or CBA news tonight. Don't know if I'll be using this, but on the chance it is ignored in the probably larger attention I would expect to be given to the first subpoenaing of a President by the Congress, I'll have a note. Carbon in event you are unaware, including of Jencks. Surely some legal reporter will catch this, I hope. CBS Graham and NBC's Stern are both lawyers. Times and Post have lawyer/reporters...I should have added that the claim for privilege can be made for proper presidential acts only in any event, not in criminal or political acts, which are not a Constitutional function of a president....Wild day but a great intro for the German Mafia. The committee, obviously, is anxious to get to them. It sat late with Strachan, whose openness surprised me. I guess the rough personal time Haldeman gave him helped convert him to the human race.... Imagine that none of the staff lawyers asked him if he knew of more bugging or tapping, after the accidental bonanza. It bumbled out when a Senator oh by the wayed him. Hope they ask the Nazi Mafia to itemize every bug and tap each had, every one of which helkows, with a reminder of perjury, which may make them believe there may have been a squealer. HW 7/23/73

Dashed this off after hearing AP quoted for first time about 11:30 last night and thinking about it intermittently, writing after I took Lil to work and before the hearings started. I thought it worth noting when p.m. Saturday ~~radio~~ radio news carried the leak of the coming position and persuasive when the contents of his position and the fact of the letter were given to AP before Ervin could have gotten the letter, which it was also leaked had been sent. Ervin was home, politicking. (TV was great on this 11:00 p.m. last night. The old man was in good shape, reporting pictures of him holding a phone captioned "Martha WHO?" and saying how he fobbed off a preacher who wanted to be witness to what God what he claimed God had told him, "I fear that would be criticized as hearsay" approx. I may, of course, be wrong in my estimate of the situation, but I think I'm right. It won't take long to know. If I'm right, a very interesting period lies in the immediate future! If you noted a reflection of disgust in the last night's note when I couldn't find the quotes of Baldwin's testimony I was disgusted with myself and more. I've been trying to indulge in a luxury, a portable portable radio on which Lil can hear WG while working. I have one that works well, only six transistors, but it eats batteries up and there is no telling when they'll go dead on her, the only really portable with FM we have that works at all. So, I'd decided to get one that after the hearings I could wear around my neck on morning walks, the old one I'd been carrying having pooped out long ago and AM is very undependable in the mountains, so I hear little news while walking. I have gotten two, both with at least twice the solid state components of the one that eats batteries, neither worked, and I'd just gotten the third that, on trying at home, seemed to forecast what happened today, it would be useless in her office. This one has 15 solid-state components, I don't know how many transistors. It won't do what a 4 year old six transistor does, the third of which this is true! The compulsion to cheapen everything in the name of "progress" was just another disgust too many, as is the waste of all this time. And, incredibly, a 9volt battery eliminator is not available locally. Learning this also wasted much time. Clerk's don't know when you phone. When I get to DC again I'll get one and Lil will make out fine with the old set. I can't afford to put three fresh batteries a week in it. I'm sorry about my disgust with the inefficiency and haste-caused misfiling, for I'm sure that is what it is and about asking a favor that will take time for you....Had radio on while writing this. WH just announced delaying response to Ervin. Offhand hunch is that somebody told GL that most people would take it the way old Sam out it, he has something to hide in them. HW 7/23/73

If the crisis has yet been reached in Nixon's Watergate fever as, for ~~more than~~ fourteen months the political and factual temperature had gradually risen, it came with the inadvertent disclosure of his Orwellian method, clandestinely taping virtually every word anyone ever spoke to him or in his presence.

And that coincided with his one known actual fever, his one admitted ~~illness~~ illness in many years - fact about which the self-conceived superman soon boasted in a manner unbecoming to the hind-running candidate in an election for dog-catcher.

Nixon's personal and political crisis to that moment was reached about the time he entered Bethesda Naval Medical Center Hospital with a slight case of viral pneumonia. Perhaps there is a symbolism in the short-lived fever, which peaked, if official announcement are to be believed, at 102 and stayed there for a brief interval only.

His hospitalization and the disclosure that he was taping and bugging so secretly his closer counsellors and friends were entirely unaware of it.

His vaunting, excessive and ill-conceived remarks on leaving the hospital are worth separate analysis. From ~~their~~ ^{its} concluding words, "let others wallow in The Watergate," and rambling it is not unreasonable to interpret this boastful and irrelevant/statement of rather more length than the occasion justified, was his real throwing down of the gauntlet, his declaration, "Here I stand against the entire world - especially those bastard Senators!"

From that moment ~~was~~ a strategic rather, than a tactical change could be anticipated. ^{would be} Nixon ~~was~~ again/the dirty fighter, again the man taking the initiative, attacking instead of defending.

His fumbling, feeble attempt at counterattack through surrogates unequal to the task of overcoming overwhelming factual indictment had failed. All they could level at John Dean glanced off. Their opposition witnesses, rather than refuting Dean on fact, confirmed him on it, amounting to no more than profers of unsupported personal opinions from the opinionated. A substantial case against Nixon had been built, publicized and survived a less than Nixonian counterattack.

The day he left the hospital and unloaded his statement-challenge to the world he also drove to Camp David, through weekend rush-hour traffic for about two hours rather than helicopter, a matter of a fourth the time. With him was only old crony Bebe Rebozo, a man whose own dubious history makes him the ideal companion for a dirty-works consultant.

Immediately the touch of the old Nixon was apparent. Waiting ~~for~~ for him at the gate ~~was~~ his retreat converted into fortress, Camp David, ~~was~~ were thirteen Washington area girl scouts, accompanied by two counsellors. Quite a coincidence, these picture-making little girls so far from the nation's capitol and the President who just happened to decide to fight all that nasty road traffic so he could "enjoy the countryside" when he was going to spend the entire weekend in it.

This is the kind of stunt skilled public-relations men ~~contrive~~ arrange, to humanize.

Sure enough, for this "accident", there also just happened to be a photographer at the right place and at the right time, despite the antipress changes at Camp David under Nixon. So, there was this picture of the smiling Nixon waving at (posed poorly- he waved to high) always-cute little girls.

Yet here also, in the ~~prearranged~~ contrived, as so often with Nixon, there was symbolism, appropriate symbolism.

The rustic-appearing "Camp David" sign, covered with a ~~viven~~-shingle peaked roof, has a triple road stripe leading to it. On the right is the forbidden territory of Camp David. The girls are to the left, outside ~~Camp David~~.

People, even little girls, are for Nixon's use, but outside his life and its concerns.

Before General Haig, Ron Ziegler and only a couple of others of those then closest to him joined Nixon, there were already leaks from the White House, the only possible source, that despite his assurances to the Senate, Nixon was going to reject the promised consultation over making the relevant tapes available and would reject the conference, too.

It was 4:30 Friday evening when Nixon had himself photographed with his juvenile, human props. The leaks were reported by radio the next day, Saturday. And by Sunday the leaks included an exclusive to the AP that Nixon had already sent Senator Ervin a ~~letter~~

letter telling him, the Senate and the world, "Deal's off."

None of this was necessary. All of it was ill-mannered, a personal affront to the respected, 76-year-old Senator, ^{and} to the legislature. If it was a typical Nixon crudity, why did he do it?

When he had been ill, there was no rush on writing. There was no need to leak what he would say. There likewise was no need to leak that he had, in such great and unnecessary haste already written and sent the letter.

Therefore, that he did the unnecessary and ~~did~~ did it so roughly, if it is not just another expression of Nixon's arrogance, must have meaning.

If Nixon had not been involved, personally and intimately involved, in that catalogue of crimes too great to list, these secret tapes of his would, without possibility of doubt, if untainted, prove it. He had every reason to provide this proof and ~~none~~ genuine one for withholding it. That he would not, in logic as in legal concepts, meant that he knew the consequences of his act and his act had the obvious meaning.

Moreover, the coming week was the one in which the two closest of his most intimate counsellors, Ehrlichman and Haldeman, ~~where~~ were scheduled to testify before the Ervin committee. On coast-to-coast ~~and~~ TV and internationally by satellite. The Senate expected much to come from these two. It scheduled the entire, full week of hearings for them.

This gross misconduct, this brazen display of contempt for the rest of the world and its regard for him, had as its most likely meaning a challenge and a message.

The challenge was "Do your worst, I'm ready."

The message was, "Nixon is in charge and henceforth fights his way."

When Nixon threw his own special prosecutor in on the rejection of the Senate's request for evidence it held essential to its function and mandate he, whether or not he so intended - remember, he is a lawyer and has the world's largest single gaggle of them at his instant command - was guaranteeing the acquittal of not only his hated enemy John Dean, but all those who had been closer to him.

H.R.Haldeman could not even be brought to trial.

Neither could John Ehrlichman.

There is almost no limit on the automatic acquittals of the countless guilty, guilty of countless crimes.

And this, of course, foreclosed any one of them testifying against Nixon.

Dean John Wigmore, eminent legal philosopher, wrote of the marvellous machine for the establishing of truth. That is nothing to this marvellous machine Nixon created out of nothing for guaranteeing the exculpation of the guilty, pre-eminently himself.

There are two great ironies in this.

The most recent reaffirmation of the legal truism was at Nixon'd behest, in the case of the United States v. Daniel Ellsberg and Anthony Russo. The government withheld evidence required to be made available to the defense. This is automatic grounds for dismissal. Nixon exculpated the man he so detested by legal dirty dricks, withhold evidence.

The evidence withheld need not be of known character. It does not have to be demonstrably exculpatory. If it is no more than of possible use in impeaching a witness, it is the right of the defense in all criminal cases. A fink of Nixon's red-baiting days and the Department of Justice established this ~~xx~~ right, later enacted as a law by the congress. The fink, after this court decision, finked on those for whom he had spies. Harvey "atusow wrote a book about his career as informant for Congressional committees and the Department of Justice. Prior to that he was used as a witness in the prosecution of a union organizer, Clinton Jencks. Matusow's reports to the FBI were denied him. On appeal the case was reversed on this basis, thus establishing the right of the accused

to proof that the government knowingly and deliberately tries to convict with what it knows is false and manufactured evidence, an exotic concept of justice.

So, when Nixon told his own special prosecutor that the prosecutor, for the first time in history, is not part of the executive branch but is part of the judiciary (as many victims of Nixon's and earlier repressions had long complained!) and he would withhold all the documentary and taped evidence, Nixon was assuring the exculpation of all who might be charged and could claim to have been in any of his offices-ever.

Or to have talked to Ehrlichman, Haldeman, Higby, Colson, Strachan, Strachan's secretary and perhaps most of the White House staff, for all these are known to have had their phones wired for taping by the White House, though its own communications service or the Secret Service or both.

Nor is it only Watergate-related crime that is by this Nixon invention bathed in immunity. Anyone ever charged with any kind of crime who has ever been in any of the ten places Nixon is know to have bugged, the others where he had the capability, who spoke to him or almost anyone in the White House or who ever in any way used the White House communications system, which is monitored by the military has a basis for the claim. Especially the fat cats who kitted up with Nixon's war chest, no mere figure of speech the way he campaigns.

Meanwhile, he has already packed the Supreme Court and the day of this invoking of non-existent privelege was but a heartbeat away from appointing the fifth member, the one who would make a majority of appointees his appointees.

There would be plenty of time in criminal cases, for the law provides for appeals and appeals can take a long time.

Were this to extend past the Nixon term, the situation would be but little changed, for he claims the property right to all his White House memorabilia. With his record of having the taxpayers pay for the landscaping of his million dollar estate and such personal items as his furniture in it, it is a safe assumption that he would empty the White House of every scrap of paper, every reel and cassette of tape. The taxpayers may have bought them, but Nixon asserts the right of kings. They are his property. Nobody can take it from him, either.