

With a vacation in prospect - it had started four days earlier for their colleagues - the Ervin committee rushed to an end of the big-name part of its investigation just before 5 p.m. Tuesday, August 7, 1973.

That was the day two morning papers reported criminal investigation of Vice President Spiro Agnew on charges of bribery, extortion and tax fraud while governor of Maryland. Later in the day interest of allegedly criminal acts as vice president was also reported. Agnew had been the silent beneficiary of the pervading hanky-panky with untraced hundred-dollar bills. Those who did it for him had already been charged in Maryland.

The Ervin committee wound up with what for it was exceptional speed. On the one day they heard the two top lawyers on The Watergate case prior to the appointment of the special prosecutor. These are former Attorney General Richard Kleindienst and Assistant Attorney General Henry Peterson, head of the Criminal Division. They were preceded by Pat Gray who, as acting director, had run the FBI during the entire investigation.

These three men, all Nixon appointees, had been in charge of the entire <sup>whole inquiry</sup> investigation. Everyone else was subordinate to them and subject to orders from them.

In theory, that is. In fact, they all swore to having run no investigation.

And, in fact, they had presided over a whitewash that they were not charged by the committee with administering. This is not surprising because, despite all it had brought to light and the unprecedented attention it had received, the committee, too, was whitewashing.

Peterson, with some emotion, protested prosecutorial purity. That we examine separately. The indictment they drafted for the grand jury to rubber stamp is the best evidence.

Until Kleindienst could no longer delay recusing ~~xxx~~ himself, or withdrawing from the case, Peterson had been second in charge, which seems to have meant little more than staying in touch, more or less, with the local prosecutors. Of the first "break" in the case, Alfred Baldwin's turning state's evidence, Peterson first learned in the newspapers. Reports from the prosecutors reached him, in his own volunteered words,

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There were many courtesies Kleindienst, if not ~~the~~ to the establishing of truth to the completeness possible. One of the more glaring - but one also not commented on - had to do with an earlier scandal over the promise of \$400,000 by the monstrous international conglomerate, ITT, to the Republican convention then slated for San Diego. Jack Anderson had published a secret memo ~~XXXXX~~ by ITT lobbyist Dita Beard confirming the deal as a quid pro quo for favored treatment in an anti-trust case pending against ITT, which sought to buy Hartford Insurance ~~XX~~ and several smaller ITT was allowed to keep Hartford in the settlement. <sup>Company</sup> Mrs. Beard had involved John Mitchell, the attorney general. In the backwash, the confirmation of Kleindienst as Mitchell's successor was jeopardize. It was apparent that, unless everyone else lied, Mitchell perjured himself in that proceeding. Nixon's troubleshooter, Chuck Colson, recommended abandoning the Kleindienst nomination, the feeling was that strong. Colson knew more than most about what could come out.

Mitchell had testified to not having anything to do with the matter. If false, because it was material and under oath, this was perjury.

Less than a week before Kleindienst appeared, the committee asked him about a secret memo to him written by Colson. Haldeman, whose amnesia was then more than usually troubling, claimed no recollection of it. He can't be blamed for not wanting to remember. Even for Colson it was a blunt writing. They have an internal White House classification "for eyes only" but in this case it hadn't functioned well.

The ITT buying of the deal was in 1970. Colson's is a 1972 memo, inspired by the Kleindienst hearings.

This memo was described better by <sup>California Democratic</sup> Senator John V. Tunney, son of the former boxing champion, than by any of the Watergate investigators. Tunney said it "involves the highest echelons of the White House and the Administration in a fix-up, cover-up, lie-out-of-it scheme...obliterates any legitimacy the settlements on behalf of ITT may have had."

As a member of the Judiciary committee, Tunney participated in the Kleindienst and the Gray hearings. He then had demanded the filing of perjury charges, without success,

which is predictable when the Department of Justice is called upon to prosecute itself and duplicates my own earlier experiences, again with perjury committed by Department officials that, thanks to Mitchell and Kleindienst, went unpunished.

Whereas Mitchell had sworn to no knowledge of the fix or of the case itself before settlement and had denied the payoff. Colson wrote Haldeman, with some energy, about the existence of internal documents, not all copies of which were retrievable or had been destroyed, *or otherwise made unretrievable,* "setting forth the \$400,000 agreement with ITT". One copy of the memo had gone to Mitchell before the settlement, Colson said, so this alone was proof. There was, in fact, much more. I have copies of some.

Then there was another memo, by White House Communications Director Herb Klein. It included this language, "...\$400,000 in private money arranged through a new major ITT hotel contacted by Bob Wilson." The hotel is the ~~Saratoga~~ <sup>Saratoga</sup>. Wilson is a California Republican Congressman. (Another California Republican leader, Ed Reinecke, also confirmed the transaction at an earlier date. He also was part of it.)

Part of Colson's concern was that the memos, copies of which still existed, ~~is~~ "directly involved" Nixon. One discussed conversations between Nixon and Mitchell two months before the ultimate settlement, mentioning, in Colson's words, "the agreed-upon ends of the resolution of the ITT case." Another said that Ehrlichman told ITT President <sup>Harold</sup> ~~Harold~~ S. Geneen (right) that Nixon had given specific instructions to Justice, not to press anti-trust cases on "bigness alone."

Colson laid out straight for Haldeman his and other White House staffers' concern over "all the problems - put in their worst context - that might arise." Colson suggested that Kleindienst's nomination be withdrawn to avoid "the possibility of serious additional exposure" of the Nixonian seaminess.

ITT executive activity was rushed August 7, 1970, which is this period before the deal was consummated with the settlement ITT wanted. The quality of the personal relationships is indicated by the informality of the salutations. ITT's "Ned" wrote "The Honorable Spiro T. Agnew" as "Ted", not even "Dear Ted/": "I deeply appreciate your assistance concerning the attached memo. Our problem is to get to John the facts...After you

read this, I would appreciate your reaction on how we should proceed."

Top and bottom, large size stamping " PERSONAL & CONFIDENTIAL."

Mitchell is John Newton Mitchell. The attached, like-stamped unaddressed, unsigned memo of the same date refers to "our meeting on Tuesday [when] I told you of our efforts [ITT President Geneen] to try to settle the three anti-trust suits... Before we met Hal/had a very friendly session with John... While you and I were at lunch, Hal and Bill Merriam, who runs our local office, met with Chuck Colson and John Ehrlichman, and Hal told them of his meeting with John/ Ehrlichman said flatly that the President is not enforcing a bigness-is-bad policy and that the President had instructed the Department of Justice along these lines. He supported strongly what John had told Hal... In his conversation with Hal, John agreed that the steam had gone out of the merger movement... John agreed with Hal that there was no need for a 'crusade' to halt the merger. ... My question to you is, should we get this development [at lunch with Ehrlichman and Colson] back to John so he is aware, and how do we do it? What is the best way? I would appreciate your help and advice."

"Ted"s response is not among the xeroxes I have.

But another of that day's ITT letters is. It is to "Dear Chuck" at the White House from "Tom", who is Thomas H. Casey, ITT's Director, Corporate Planning. His letterhead uses the Washington address, 1707 L Street, NW. It eliminates any question about the "John" of reference in these words, "During his meeting with Attorney General Mitchell, Mr. Geneen and the Attorney General both agreed... The Attorney General stated that it was not the intent of the Department of Justice to challenge economic concentration or bigness per se, or big mergers as such."

When there is a Nixon and a Mitchell and a gaggle of money-minded advisers to "interpret" the laws, the need for legislative enactments to develop an authoritarianism is considerably diminished.

On the 10th there is an internal ITT memo, from E.J. Gerrity (right) to J.F. Ryan that ends the pretenses of the Dita Beard scandal, that she was a hard-drinking self-starter. As a follow-up to what we did ~~with~~ <sup>[sic]</sup> Friday with Colson et al in re anti-trust

it is important that Bob Schmidt, Dita Beard, Horner-Goodrich, and whomever else should be aware, that we acquaint key people with what happened last Tuesday." Among the seven to whom copies were sent is Dita Beard.

"Ned" wrote a memo ~~xxx~~ "describing his visit with Agnew." Or, with no address on the letter, the inference of hand-delivery is confirmed. For an additional Kleindienst involvement, "If Kleindienst follows through, thks may be the break for which we have been looking."

This is quoted from an August 24, 1970 Inter-office ITT memo, also "PERSONAL & CONFIDENTIAL" from Ryan to Merriam, subject "Highpoints."

It also discloses that in between, on the ~~w~~ 20th, Ryan visited with Nixon's moneybags, the indicted Stans, who collected and blackjacked the Watergate money.

There are many reason for using these documents in questioning Haldeman, Ehrlichman, Kleindienst and Mitchell, ~~if only~~ With all the conflicts in crucial testimony, one, always pertinent, is as a test of credibility and honesty.

The committee's failure to do so seems not to be consistent with diligence or determination to pursue its mandate or, in fact, (to really) do something about official criminality and corruption.

These documents should also have been used in questioning Gray, for Gray had the responsibility for no investigation of E. Howard Hunt's part in this ITT sordidness. <sup>Hunt</sup> Hunt and Liddy, Nixon's superspies, had first spirited Dita Beard out of town so she could not be questioned and then <sup>H</sup>~~H~~ Hunt, "disguised" with the CIA outfit that also wasn't fully investigated, corrupted her, hardly a role in plugging leaks or "investigating" the Pentagon Papers. Or doing something about the dope traffic. Knowing these were Hunt's alleged functions and the <sup>to</sup> Gray's FBI had ignored all of this - and that the FBI was under Kleindienst - and that Peterson was in charge of criminal prosecutions - the committee rushed to its vacation instead.

"rather slowly at first."

From the first minute it was obvious that Kleindienst had close personal and political connections/with all except the hired-hands in the ~~sex~~ assortment of crimes. (subject to charges)

Forgetting the President, this meant ~~from~~ <sup>A</sup> John Mitchell, whose Deputy Attorney General he had been ("John Mitchell is one of the best friends I've ever had. I love 'im");<sup>2</sup> the man in charge of the re-elect committee whose agents committed the crimes;

Maurice Stans, former associate as Secretary of Commerce, the moneybags of the crimes whom Kleindienst and Peterson had saved from grand-jury questioning at White House demand, in Peterson's words, "in order to avoid publicity" and who, with Mitchell, was indicted by an independent Manhattan prosecutor/ ~~along with~~ <sup>(as was</sup> Robert Vesco, who had found it expedient to hire Nixon's nephew Donald and who had sent a satchel full of hundred-dollar bills to Stans - \$200,000 of them - by Nixon's brother);

Haldeman and Ehrlichman, the two men closest to Nixon, both of whom Peterson urged Nixon to fire because of their involvements and both of whom also obstructed justice;

John Dean, who had been Kleindienst's deputy when Kleindienst was Deputy Attorney General;

Robert Mardian, who had been Assistant Attorney General in charge of the Internal Security Division;

and many others, friends of his or friends of his friends and associates.

That Kleindienst did not recuse himself at the outset meant that he could see to it that someone else did not control the investigation and prosecution from which he was careful to keep himself detached, not exactly the history-book role of the Attorney General of the United States.

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4-2:4  
Peterson, unlike Pat Gray, knew something about investigations. After four years in the Department of Justice in the two top positions, Kleindienst should have. Peterson had been an FBI agent when transferred to the legal end and rose under Nixon to be the man in charge of all criminal cases. Why he omitted his experience in citing his experience and why neither committee counsel nor any of the seven members corrected the deficiency is a mystery. This FBI experience was not a secret. George Herman of

CBS News did not ignore it in preparing the audience for the afternoon's testimony.

Pat Gray's one credential, aside from sycophancy, was that he didn't think. <sup>u</sup>e said... so himself. <sup>N</sup>one of the witnesses, if not all together, said as often, "I didn't think of it." His concept of love of country and patriotism, again in his own words, is expressed, "Aye, aye, sir!"

For its own reasons, whatever they are, the Ervin committee spent little time with Gray on The Watergate investigation of which he was boss. This was not true of the Senate Judiciary Committee when it was considering his <sup>n</sup>omination for permanent FBI director. These are some of the questions, all central to The Watergate investigation, to which he said he did not know the answers but would later provide them in writing:

(Quoted marked passages from transcript)

And these are some of the questions he considered irrelevant to The Watergate investigation - some of those dealing with Hunt and Segretti only:

(Quote marked excerpts)

The Ervin committee had the transcripts of the Judiciary committee proceedings. They made infrequent reference to some of the other things Gray had ~~said~~ said. Those Judiciary hearings had, in fact, been printed by then and I had skimmed and marked them up before Gray testified. The quotations above are from that initial skimming, those that grab the fast-moving eye only.

Nixon, in fact, had been so pleased with Gray's performance that, as we have already seen, he kept him in the FBI slot long after he knew there was no chance of confirmation. Kleindienst and Peterson were not unaware of this.

Nor were they, any more than Gray, unaware that Nixon was lying about the investigation and his claimed part in it. Senator Weicker was the only one with interest in that. He quoted from Nixon's April 30, 1973. Nixon had then said, "...On March 21, 1973, <sup>?</sup> I, personally, assumed responsibility" and ordered those in charge "to report to me in this office." Each of the three said he had never gotten any such orders and had not been called upon for any such report.

~~(Nixon could not have had Ehrlichman in mind, for Ehrlichman himself had sworn~~

Nixon could not have had Ehrlichman in mind. Ehrlichman swore that whatever it was he conducted was not an investigation. Besides, that didn't happen until later, until March 30.

None of the three men in top command of the supposedly "thorough and aggressive" Watergate investigation permitted himself the questions in each day's newspapers about Nixon. These are questions it was their official function to resolve, if necessary in ~~excuse~~ a court of law. How any could have avoided them is inexplicable. In the case of Peterson, who had personal investigative experience, there is less excuse. These four excerpts from his testimony illuminate the point.

Asked by Senator Indye how he could explain the failure of the FBI to find a second bug in Democratic headquarters when the state-evidence witness, Baldwin, had told them exactly where it was and when the Republicans, particularly Agnew, were alleging it had been planted by the Democrats when the phone company, <sup>later</sup> found it, Peterson mused, "One thing about the ~~FBI~~ Bureau, they're not very good at admitting their mistakes, I'll tell you." So, he kept them in charge of investigating themselves.

He testified that they were "investigating what Hunt and Liddy did out there in California" and that a week after the arrests the CIA had given him, personally, the pictures Hunt had left in the CIA's camera. He had a private conference on this with the CIA's general counsel.

The FBI had investigated Ellsberg. These pictures showed Liddy in <sup>the office of</sup> ~~his~~ front of ~~his~~ <sup>which</sup> ~~office~~ ~~and~~ ~~the~~ ~~psychiatrist~~ into ~~whose~~ ~~office~~ they broke and the doctor's name. The FBI knew the doctor, had talked to him. But, according to Peterson, he and they could see no connection, no relevance. He swore, "We didn't identify those documents with the Ellsberg case."

Were this not enough, Nixon knew all about the case. His orders to Peterson were, "I know all about that. That's a national-security matter. You stay out of that. Your mandate is to investigate Watergate."



Yet with these among many <sup>other</sup> facts inconsistent with purity and innocence right in its face and with Peterson's charge that political pressure had forced appointment of a special prosecutor and thus kept him and his from "breaking the case wide open", the committee did not pursue it. They did not even ask why anyone should expect the crew that had been on it/without breaking the case to accomplish ~~this~~ it in a longer time. They did not even question his blurted-out boast of how they were going to do it: first get convictions and then "immunize" the convicted and make them talk.

With the great concern all politicians profess for how the tax dollar is spent, none asked why it took a quarter of a million FBI hours alone if the "game plan" was to extort confessions from the already convicted by giving them immunity ~~and holding~~ from new charges and jailing them for contempt if they didn't talk.

The plain and simple fact is that after McCord did talk, without such a deal, Hunt and all the others save Liddy also did, and no Kleindienst-Peterson-Gray-Department of Justice indictments issued.

Peterson was long on emotion, short on <sup>of</sup> credibility and zero on performance.

With all of this and so much more that was ignored, with Peterson and Kleindienst the two top law officials on the case that was a glaring whitewash, the committee saw fit to spend less time questioning them than it had with nobodies like the clerk Robert C. Odle, Jr. and others <sup>of</sup> similar unimportance.

There were fine speeches. Those of old and admirable Sam Ervin would have been ~~appropriate~~ appropriate for the Fourth of July, revival meetings, law schools and political campaigns. Those by smart, young and TV-personable Howard Baker subtly sustained Nixon. Some of the other Senators gave the appearance of trying, but the reality is that a Senator is a <sup>?</sup> bust man who can't do all his other work and keep up with the complex facts of so complicated a case. It is for this reason that I have selected simple illustrations, those that required no ~~preparation~~ <sup>none</sup> preparation or ~~not~~ that could not have been delegated to the staff.

Why staff counsel didn't do the obvious here and in most of the other cases is also not immediately apparent. That they did not is obvious.

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Indeed, after this was written it was confirmed by The Washington Post, quoting staff and Senatorial sources. The Bob Woodward-Carl Bernstein story of August 8, 1973 goes even further and reports that the tentative decision by the Republican members, goined by Democrat Talmadge, to end the hearings a month after they resumed would assure that unpublicized evidence "on questionable campaign ~~of~~ contributions by some of the President's close friends and supporters" and "material on the network ~~on~~ the network of Nixon campaign spies, the 'plumbers' and the political work of the Internal Revenus Service...will slip between the cracks unless we have the time."

(The Post also quoted "many" unnamed "members of the staff" as asserting that "inadequate questioning on the part of the ~~senators~~ is responsible for any 'backlash' effect and say that the ~~senators~~ have failed to adequately pursue leads developed by committee attorneys. ... the senators are prepared to all but ignore the information developed for...campaign financing and dirty tricks." One key staff attorney said, "... the "dirty tricks" and campaign financing touch every politician...we detect a new shyness on these subjects."

("Senator Baker took a less pessimistic view of the future of the committee. 'The committee is already a success,' he said. 'it is just a question of how much of a success...though the findings now appear hazy...'"

("Several <sup>U</sup>emocratic staff members and two senators criticized Baker's role in the investigation. Said one senator, "His questioning is soft. He's trying to get himself into back ~~in~~ the good graces of the Republican Party". The senator also criticized Fred Thompson, the minority counsel. 'Thompson is known for his pro-White House questions, just listen.'")

*punctuation is confused -*

The importance of the witnesses and TV coverage guaranteed a real spectacular. This the committee could depend upon. No matter how little they said, no matter how much they lied, the hearings were bound to be the sensation they were. What did come out it was good to come out, good for the people to know, But what came out was far short of what could and should, was far less than the people should know.

This was my fear at the outset of the second round of hearings. To anyone with investigative, legal or analytical experience, there was a major flaw that went unreported in the news columns, uncriticized in editorials. The major culprits were put on at the outset. It was known that they would lie because they had no choice. Lying was their only chance of escaping the possibility of the functioning of justice when Nixon controlled that justice and they had committed their crimes for him. Therefore, ~~it~~ those whose testimony could have had greatest effect on those who were the biggest liars should have had their testimony taken first.

In having John Dean at the outset, procedure was proper. But in having John Mitchell before John Ehrlichman, it was wrong. Ehrlichman was ~~was~~ certain to garrote Mitchell, and he did. This gave Mitchell the only inspiration he could have to tell at least that of the truth that could ~~help him~~ serve personal interest.

Dean made documented accusations the others had to face.

Likewise was it wrong to delay taking the testimony of the dirty-workers like Hunt into the third round because if he talked at all he would impale the bigger ones.

Aside from being a kind of whitewash, this ~~kind of~~ organization assured there would be a more massive contradiction in testimony. In turn that meant greater difficulty in resolving conflicts. And that meant less chance of even perjury indictments.

Especially when Nixon runs the Department of Justice and that department is the prosecutor and the investigator of crimes.

Kleindienst, Peterson and Gray are, of course, lawyers. So is each member of the committee and its counsel. All these lawyers knew the score.

It is the obligation of the witness to answer questions, not to volunteer information. With these three as with almost all before them, it was foolhardy to expect any volunteering that was not for a selfish purpose. ~~With~~ With those having any involvement, <sup>it</sup> would not likely serve the interest of full disclosure.

If the witness is truthful and responsive to the questions asked and if there is a deficiency in the evidence, it is the fault of the questioning.

For any Congressional investigation to be successful, for it to elicit the evidence, it requires the right witnesses and that these witnesses ~~have~~ be asked the right questions.

This third and essential, Nixon-connecting phase of the investigation had only right witnesses, if not all of them. They were not asked all the questions that should have been asked. Inevitably, this means that all the truth ~~did not come out~~ that could have come out did not and could not. In turn, this means the committee learned less and accomplished less than it could and should have.

Time pressures did not cause it. The members do not really have to take vacations. More time was available from better control of the hearings. Ehrlichman filibustered for a week, undeterred. Nobody even tackled him.

Nor is ignorance or incompetence the explanation. All these lawyers know their business.

They pulled their punches - on purpose.

This was their "game plan."