

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 lawyer 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 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,

"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. Forgetting the President, this meant ~~from~~ ^{of} John Mitchell, whose Deputy Attorney General he had been ("John Mitchell is one of the best friends I've ever had. I love 'im");² 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 who 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/ ^{(as was} ~~was~~ Robert Vesco, who had found it expedient to hire Nixon's nephew Donald and who had sent a satchel full of hundre-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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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, ^{he} said so himself. ^{None} 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 nomination 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 Weicher was the only one with interest in that. He quoted from Nixon's April 30, 1973. Nixon had then said, "...On March 21, 1973, 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. 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 ~~xxxxxxx~~ a court of law. How any could have avoided them in 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 Inoye 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 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 ~~the office of~~ his ~~affairs~~ psychiatrist into ~~xxxxxxx~~ which 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."

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Yet with these among many 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 ~~it~~ 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~~ ~~dismissing~~ 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 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 of 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 busy 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~~ ^{none} preparation or ~~work~~ 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 Democrate Talmadge, to end the hearings a month after they resumed would assure that unpublicized evidence "on questionable campaign 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 Revenue 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 persue 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 Democratic 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 ~~ix~~ 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.")

The importance of the witnesses and TV coverage guaranteed a real spectacular. This the committee could depend upon. No matter how little they said, not 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 know 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 ~~be~~ certain to garrot Mitchell, and he did. This gave Mitchell the only inspiration he could have to tell at least that of the truth that could ~~help~~ serve personal interest.

Dean made documented accusations the other 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~~ 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.

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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 ^{it} any involvement, 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 ~~know~~ 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 ~~that could have 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 fillibustered 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."