Mr. Cord gave away other government secrets. The Hunt and Liddy hotel room was searched. It yielded "additional tangible evidence - equipment and other paraphanalia."

Why keep this secret? Why not use it in the case? What good is evidence not used?

Baldwin fled in McCord's car. In it "they would have found tape recorders, 2 electric typewriters belonging to White House consultant E. Howard Hunt, and other electronic equipment removed from the Howard Johnson Motel by Alfred Baldwin, all readily traceable to their original source of purchase."

Mrs Hunt told him that Hunt also"had to dispose of cinriminating material at their residence."

McCord believes this would, at that early date, led to other White House criminal activity by Hunt, Liddy and their 1971 operation known as "the plumbers."

Hunt's typewriters could, of course, have been traced to what had been typed on them.

18-substitute "some pencilled notes from January and Fenruary 1972 mentioning not only John Mitchell's name but the names of John Dean and Jeb Stuart Magruder as meeting with Mitchell during those early 1972 months to discuss the Watergate break-in."

Magruder, and others Dean later confirmed these meetings/ too late - after the trial. Mitchell dissembled about them.

Dean also later confessed that during these months of freedom from prosecutorial inquisitiveness he helped manipulate the White House covering up and frustrating of the investigatin.

Hunt also returned to his non-White House office when the building was closed and cleaned it out. Checking the building guard's book would have disclosed this. This office was known to the FBI. They were at Hunt's home that evening. If they had been prepared with search warrants, as the local police had been for his motel room, they'd have made quite a haul. Somebody with the drag to keep an FBI agent from doing the obvious didn't want these searches made.

Zenger, who died in 1746, before the Revolution. In defeating an accusation of libel, for which in those days the penalty was quite severe, he began to assert the freedo m of the press in the new world. Pamphleteer Thomas Paine, now not often remembered because he was as radical as that evolution, inspired it and was one of many to establish the need for a free press. As government grew, abuses grew with it. The press gradually became a fourth and unofficial agency of society. In my youth it was often referred to as The Foruth Estate. The more the press exposed public miscreants, the more officialdom sought to repress the press. One of Nixon's first dramatic acts after taking office was to turn Agnew loose on the press. Not entirely in jest the vice president was called Nixon's Nixon, a reference to the vigor with which as Eisenhower's running-mate Nixon did those vile things the avuncular Eisenhower could not bring himself to do. Agnew assailed the press with the lust of a perverse lover. From that beginning in 1969, at a time that coincides neatly with other and then secret respressive measures Nixon initiated, the press remained on the defense. It spent more time agonizing over Agnew's complaints and criticisms than analyzing why he had embarked on so vicious a false crusade. The media was still immersed in over-reacting to Agnew's counterpart to Nixon's campaign vilifications when The Watergate story broke.

The major media never learned that Nixon never addresses issues when he is attacked. He counterattacks. He can't do this with an honest press without making the press one of the "enemies" he counterattacks. At no time beginning June 17, 1972, did Nixon and his spokesmen not have the press under strong attack for doing no more than its job and for doing it, it must be said, with conspicuously responsibility, the most meritorious accuracy, one the story expanded into the unprecedented scandal it became. If at first The Washington Post was almost alone in filling the traditional role ofthe press, in time other papers joined it. The White House response, its counterattack, was to misuse the awesome power of the presidency as never in history any chief executive had ever considered. The Post was bludgeoned with verbal abuse from all who spoke for Nixon and with severe adminsitrative pressures on its property that were subject to official retaliation. While exposing Nixon, the press was also busily engaged in defending itself.

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One of the results of Nixon's efforts to make himself the victim of the press and to pretend that he was aloof from all of that for which he was, inevitably responsible, is that the press never addressed the possibility of his having any involvement in The Wtaergate other than as perhaps having knowledge after the fact and doing nothing.

In its simplest formulation, the President is directly responsible for whatever happens in his administration. Harry Truman's very comprehensible formulation was, "The buck stops here." John Kennedy, who was manoeuvered into the disaster of the Bay of Pigs by the Eisenhower administration and in particular by Nixon, Hunt and others who figure in this story, assumed fill responsibility mincing fewer words than any president ever had about anything. (This, by the way, is a lesson the copier Nixon never learned. As a result of his political courage and intellectual honesty in assuming total responsibility for the fiasco he had not engineered, Kennedy's popularity soared higher, as measured in the polls, than any president every had.)

In context, no professional political or intelligence analyst would consider that there could be a crime as simple as the simplest of those called "The Watergate" without the President's knowledge. The only alternative to this is that the President had no control over his government and his party - no control at all - or that his administration was comrpised on only the rabidly insane.

The fact is that the major media never addressed this central questions:was Nixon directly responsible, in any way, for The Watergate, the break-in or the pther crimes. There came a time, and we shall come to it, when asking this question ought not have been avoided, for Nixon had established just such a conspiracy and it did come to light. Even then, while exposing this conspiracy against the system of society, this perfect parallel to all of The Watergate, the break-in and the associated and more serious crimes, no element of the major media ever seriously address the most fundamental of all questions, was this Nixon'd own crime.

His successful manipulation of the press was not faced by the press when it was reporting the Senate's disclosure of the behind-the-scenes schemes to pull these strings/ on the press.

Nixon didn't own and couldn't control the press - although about 90% of the papers are owned by Republicans - so he undertook to do the next best thing. He manipulated it. Because once the story snowballed the press gave it the attention it desserved, it came to be assumed that the press was doing a really thorough job. It did a very good job of reporting. But it did little original investigating, little following of conspicuous leads, and it did fail to understand and publish many of the proofs that became available. The report this without reminding the reader that the major media are the prisoners of inflexible deadlines, that each days stories have to be collected, written, edited, set in type and then printed and distributed, a daily almost-miracle and an enormous effort, would be to malign the press that in all its forms probably did better by the people than an any major story, ever. Much space was given to this story by the papers, much time by radio and TV. The attention was more than just extensive.

The fact is, however, that for all the time and space the story was never given to the people in context. Meaning was not supplied, nit in editorials and not in signed articles. Perhaps the collective media mind, if there is such a thing, boggled at what then had to be considered. That a president could be involved in such crimes was as inconceiveable as the crimes themselves. The inconceiveable crimes were addressed and reported. What caused them never was. And whether Nixon was part of covering them up, while dealt with, was not dealt with in depth. Whether he took the lead in the covering up was rarely if ever really considered.

And all of this was a far cry from the most basic of all questions, was he their engineer, their boss, their participant, not at worst only their silent beneficiary.

Nixon understands the press, its traditions, limitations and shibboleths. Understanding would have meant nothing without the daring to attempt to manipulate it. He had that daring - others may prefer less pleasant words - and he accomplished his purposes. For all the millions of exposing words, for all Nixon's protests and bitter accusations, he got much better treatment from the press than the available and uncontested fact warranted.

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Government presented a different ~~problem~~ series of different and complex problems. Considering what he was so deep in, he dealt with government and these porblems remarkably effectively.

The executive branch was his, in theory and in practise. Through his effecient and brutally effective agents he controlled it so completely only a overt dictator would have hoped for greater success. That of the indictments is but one example. Of the millions of federal employees, there is not one who did not know that incurring Nixon's dispelasure was to put his head on the block. Of the countless thousands who had relevent knowledge of any of the many factes of what is known as The Watergate, the percentage with the dedication and personal courage to let the press or the Congress have their knowledge is very, very small.

To those who had and used this personal courage, the country, if not the world, will forever owe a debt.

The painful truth is that while much was leaked to the press, any examination of what was leaked and what wasn't strongly indicates that those doing the leaking were more often motivated by self-interest than by lofty principle. The press doesn't bite the feeding hand.

Most significant of the information that came to light came from those with their own criminal involvements.

However, what was leaked and what the press did report was enough to built overwhelming pressures for the other branches of government to go through the motions of filling their roles.

Most of all, this means the Congress.

Until the volume and content of leaking and reporting became overwhelming, Nixon had the power to frustrate Congressional inquiry. He did it. He was able to end a perfectly proper investigation by the Banking and Currency Committee of the House of Representatives although it, like all other committees had a majority of Democrats, the custom being that the majority party in the Congress organizes it and controls

its committees. But the president spends the tax dollars the Congress appropriates, xan spend them where it can help or hurt individual legislators, and uses this weapon. It is a political cliche that all presidents do. Also working for Nixon is the support he has with southern Democrats, from those calling themselves conservative, from those in basic agreement with many of Nixon's views and policies, as on race, and the fear of what he ~~xxxxxxxxxxxxxxxxxx~~ as President could and would do to those standing for re-election in 1974.

The details of how he sabotaged the House investigation, under the chairmanship of Dwight Patman, of Texas, became public in secret White House papers obtained by the investigation that later was authorized by the senior body, the Senate.

Until this formal Senate investigation was voted, the threat was kept alive by the last of the Kennedy brothers, Massachussetts' Edward M. (~~Ted~~ "Teddy") Kennedy, who was chairman of a subcommittee of the Committee on the Judiciary and had the right to look into some of the matters.

What became the Senate's investigation

2

Insert on Ervin committee as or at first mention

After the White House had successfully sabotaged an attmppt by the House of Representatives, the lower body of the Congress, to launch a Watergate investigation, and following an informal inquiry by a subcommittee of the Senate Judiciary Committee, headed by Senator Edward M. Kennedy, the last of the Kennedy brothers, the Senate voted for a "select" committee, a special committee not part of any standing committee.

This was assured January 9, 1973, when the Democratic Policy Committee of the Senate unanimously agreed on the need. It then decided that Senator Sam Ervin should be chairman.

Formal Senate approval, also by the unanimous vote of the 70 members present, came February 7. The committee was to report back to the Senate after a year of investigation and hearings, for which it was also voted subpoena powers. The mandate was broader than The Watergate. It included all of the 1972 campaign and anything related to The Watergate. Tradition was followed in giving the majority party, the Democrats, a majority on the committee.

Ervin is a 76-year-old North Carolinian who, while fond of referring to himself as no more than a "country lawyer, is a Harvard graduate. He practised law before becoming a judge. In the Senate, where he came to be regarded as the formost expert on and defender of the Constitution, he was also a leader of the southern, conservative wing of the party. After he was responsible for several investigations, particularly on of the domestic operations of Army Intelligence, he became a darling of the liberals who forgot his opposition to granting their full rights to minorities, the popular attitude in his constituency.

There is a long tradition of flowery eloquency in southern politicians, oratory providing a substitute for logic and reason, particularly on racial issues. Some of the most spectacular, high-flown and gutter low-language not all of which has always been printed in the Congressional Record, has gushed from the throats of Ervin's predecessors, one of whom, known in his day as "Tom-tom Heflin (from Alabama) is credited with speachifying a race riot into reality in Washington. Ervin is not this spell-binder type. His style is rather a blending of Chataqua and Sunday School, mixing apt quotations from Shakespeare with scripture and the Constitution. With his

pronounced Carolina accent, his visible mobility at 76, the heavy schedule he kept, and a few nervous tics which had his eyebrows punctuating like exclamation points and his jowls quivvering as though in endless indignation at any assault on the Constitution, he became an instantaneous, nationalwife folk hero via TV, which broadcast all the hearings.

Sam Ervin fan clubs were formed as though he were a movie starlet. "Uncle Sam" T-shirts with a friendly caracature of him were sold as though he were a sports hero. Popularly he did, if without the intent, project himself as the embodiement of the national symbol, "Uncle Sam", most of all when he did not hide his indignation or skepticims and then even more when he illuminated with quotations from the bible or the classics, as he did without end or repetition.

The other Democrats were:

Herman Talmadge, 59, like all the others a lawyer, son of a man who in his long political life had carried the excesses of southern racist politics to an extreme. "Ole Gene" Talmadge, snapping his red galluses, had been a stormy racist fixture until his death. "Hummin" was quiet, heavily-accented and undistinguished if powerful by virtue of his committee charimanships and positions on the Agriculture and Finance committees. He is, however, smart and professional. Outside the Senate he is a successful producer-merchant, specializing in ham and other pork and agricultural products.

Daniel K. Inoye is an authentic hero of World War II. He is a Hawaiin of Japanese ancestry who lost his right arm in that war. At 48 he is one of the most popular men in his island, is handsome, urbane, intelligent and remarkably self-controlled. After Hawaii became a State he served two terms in the House beginning as a first Congressman. He was elected to the Senate in 1962 and when re-elected in 1968, he had a fantastic 83 percent of the vote. He is an assistant majority leader, known as a liberal.

Joseph M. Montoya, a 57-year-old New Mexican of Mexican ancestry, has spent all his lifetime since he was 21 in elective office. He served in both houses of the State legislature, then was elected to the House of Representatives four times before going to the Senate in 1964.

Vice-chairman and ranking Republican is 47-year-old Howard H. Baker, Jr., of Tennessee, a man who appears much younger and became an instant star on TV oartly because of that and partly because of the contrast between his seeming youth and his studied ~~xxxx~~ pretense of impartiality and non-political interest, which he played with consummate skill that soon had him mentioned often as a Republican Presidential candidate in 1976. Baker is from a political background by birth and by marriage. His father was a Congressman for 13 years. On his death the mother served his unexpired term. His wife is the daughter of fog-horn voiced Everett McKinley Dirksen of Illinois who until his death followed staunch McKinleyan beliefs in the House and the Senate. Dirksen was one of the most flowery of orators, with a quaint rising and falling of tones as he espoused uktra-conservative causes. Baker's sister is married to a Congressman. William C, Wampler of Virginia.

Edward J. Gurney is a 59-year-old Harvard lawyer, born in Maine and the first Republican Senator from Florida since the Reconstruction. He speaks slowly, as though each word came from a great store of scholarship and was the result on a special decision in each case. Neither is true. He said he asked to be a member of the committee because, he claims, investigative work is my favorite kind of Senate work." On the committee he displayed no flair for his favorite kind of work. His record there is more easily explained by his open defense of the administration when it and some of its highest officials, of cabinet rank, were caught in criminal activity, financial and political corruption and chased this stiff drink down with perjury. One of the reasons the Judiciary committee could reach no answer is the fact that this investigation, in effect of the International Telephone and Telegraph Company, ITT, grown into a monstrous, international conglomerate, was frustrated by Nixon or others acting in his name and on his behalf through at least two of those convicted Watergate burglars, one a former White House employee and the other then on Nixon's personal staff. Gurney called the Judiciary hearings partisan. "Someone had to play the role of ~~xxx~~ defending the President and I did." It is in this role that his Ervin committee effort was obvious and complicated by the White House opinion, that became public during it, that he was a

Nixon stooge and would continue to be if he knew what was good for his political future. In writing yet, such was the delicacy of the White House.

Gurney calls himself a conservative and says he want to see to it that the Ervin committee is "as nonpartisan as possible." The Nixobian concept of Gurney's nonpartisanship was mebarrassingly defined when the White House sent him, in secret, a list of partisan, biting, often irrelevant, argumentative and propagandist questions to be asked of the witness who first dumped a load of until-then secret White House plans and memoranda in the committee's hands.

Lowell P. Weicher, Jr., born to considerable wealth, educated at Lawrenceville, Yale and the University of Virginia Law School, is the junior ~~Republican~~ Senator from Connecticut. Among Republicans, he has a liberal voting record on most domestic issues. He won election in 1970 as an anti-war candidate, then supported Nixon in the Cambodian invasion. He is the one member who claimed to be conducting his own investigation of the side. While making accusations against others in and out of the White House, including Nixon's chief of staff, prior to the beginning of the hearings, Weicher was pointed in defending ~~him~~ Nixon personally. At six feet-six inches he may be the Senate's tallest member.

Before the committee really got into its work he said,"Because of things like the Watergate [in the sense of the breaki-in ~~xxxxxx~~ and the covering-up], people have lost their faith in politicians, and I want to see that changed. The only thing that will convince them to respect politicians is to bring ~~them~~ dirty business, like the Watergate, out in the open."

Majority and minority counsel selected were Samuel Dash ~~in~~ his late 40s and Fred D. Thompson, 30. Both had prosecutorial experience, Dash was an expert on (and opposed to) wiretapping and bugging, of which he had made a study. He was, when selected, director of the Institute of Criminal Law and Procedure of Washington's Georgetown University, a Catholic university. Thompson was a practising lawyer in central Tennessee, Bakers's state. He had been a manager of Baker's campaign. As Dash was to get long-winded and professorial, Thompson was to get more and more partisan, defeding Nixonian interests

more and more openly as the hearings progressed. A certain amount of party partisanship is expected of that party's members and counsel. With Nixon the subject of the investigation, despite contrary pretenses, it was right and proper that questions be asked in fairness to him. By the end of the second set of the committee's hearings on August 3, 1973, Thompson had passed the point of fairness to Nixon. He would not have crossed that line without the assent, if not at the instigation of, his parton, Baker.

One of the holy causes in American politics is interpreting the intent of the Founding Fathers in the Constitution of The United States of America. There are as many hallowed interpretations as there are political needs. The interpretations vary with these needs. Meanings in the Constitution are explicit and implicit. Generally speaking, the courts are the last word on what was meant in this charter of two centuries past. The federal courts are appointed by presidents. By the time of The Watergate, Nixon had appointed a fair percentage of all federal judges and four of the nine members of the Supreme Court. These four were of conservative bent. Kennedy's first appointee, was Byron ("Whizzer") White. White is a a conservative who was rewarded for help in the campaign and who was best known before that for his fottball career. There is a conservative majority on the Supreme Court, the final arbiter, for any Watergate legal issue. Nixon contrived more "Constitutional" issues with which to defend himself and his aides and allies than any sages and seers had forecast. One of those things never adressed in the press was what Nixon had done to the courts and whether his appointees would put loyalty to him above loyalty to the law. They could be expected to interpret th law conservatively whether or not tinged with appreciation for the honors he bestowed.

One of the Constitutional interpretations is that it was the intent of those who conceived and defined the government that the Congress would be closer to the people than the president and would have more to do with national policy than has become the reality with the growing authoritarianism in the country, more than the grasping of more and more power by presidents has permitted.

The Congress legislates. It enacts laws and enables many executive policies and actions. It theory it decides what is criminal, what the executive branch of the government may do, how much money will be spent on what, and it decides how the money will be raised.

Also in theory, Congress alone can declare war. Lyndon Johnson ended that by fighting an undeclared war that Nixon perpetuated before the ability of the minuscule victim to resist the world's greatest might ground hostilities to close to an end.

Congress has two parts, the House of Representatives whose members stand for election every two years, and the Senate, where the term is six years. There are 435 Congressmen, supposedly coming from districts supposedly determined by population. Each state, regardless of size, has two Senators.

Contending for either office costs a fortune. Money has always been the handmaiden of corruption. But the beneficiaries of the money required to be elected enact the laws that control elections. So, throughout all of American history, there has never been a time when the laws that were said to be supposed to keep elections clean and honest, were without loopholes. This was the design of those who drafted the laws.

Until April 7, 1972, when it was superceded, the controlling law for national elections was the Corrupt Practises ACt of 1925. Both laws required reporting of and public access to full accounts of contributions and expenditures in national elections. They limited the size of

individual contributions and banned those by corporations. Tax laws permitted contributionsf for which tax credits could be taken up to $3,000.

The two biggest loopholes were that no accounting was required of candidates in primary campaigns and th re was no limit to the number of contributions that could be made to pretendely separate political organizations.

Primary ~~xxxxx~~ elections are those in which the candidates of the parties are chosen. In parts of the United States winning a primary is tantamount to winning the election.

To simplify this, the law was passed by those who wanted to get around its ostensible provisions and saw to it that circumventing the law was no real problem.

However, nobody ever conceived that the evasions of all law by the Nixonians could ever be the reality, just as nobody ever dreamed that the unneeded millions spent on his re-election could ever be collected.

Nor were the ~~xxxxxxx~~ scarcely-hidden violations, including the blackmailing of illegal contributions, ever considered likely.

The president, whoever he is, can always exert powerful influence on Congress. Commonly, it is by deciding where federal money will be spent and how. Withholding federal money from a constituency can wreak economic havoc upon it and cause the defeat of the incumbent. The converse is true, a mechanism that helps guarantee that the chairmen of the Congressional committees of greatest importance to the president are more likely to be congenial to his wishes. With most of the national budget spent directly or indirectly or war and its consequences, this gave the military, which is partpof the executive branch, tremenduous civilian influence, immeasureable control over key Congressional elections.

Moreover, the president can nullify any Congressional enactment by vetoing it. To over-ride his veto, two-thirds of the members of both ~~xxx~~ Houses must vote to over-ride. In practise, this is generally an impossibility.

The ~~Xx~~ president also appoints all federal judges, all of the district, appeals and Supreme Court judges. Nixon more than any predecessor applied political not judicial

standards in his selections. Some were so scandalous, of men so incompetent and so overtly biased, that the could not achieve Congressional approval and were rejected.

The President also appoints all members of his cabinets and certain of their subordinates, ~~xxxxxx~~ subject to ~~xxxxxxxxxx~~ Senate approval by a simple majority of those voting. Here again, his selections were so incompetent, so scandal-ridden, that they caused long hearings by the Senate or were withdrawn, not in shame but in fear of the political consequences of defeat.

It is worth digressing here to examine some of Nixon's designess for these appointive office. ~~xxxxxxxx~~ One of the more important reasons is so that it can be seen that the two quintessential Nixonian requirements were

In recent years presidents have depended upon personal, staff assistants more and more. These men, who were among the most powerful in government, under Nixon without doubt the most powerful of all except for him, do not require Senate approval. Consistent with his authoritarian direction, Nixon began by reducing his cabinet to impotence and then extended authoritarian control even more by putting the cabinet members and the Departments of the government they administer under personal appointees who were without the Constitutional right to exercise the dictatorial control he delegated to them and who were not approved by the Senate.

If a president is determined enough, ~~xxxxxxxxx~~ there is nothing as close to an absolute impossibility as stopping such practises for which there is neither legal nor Constitutional basis. The only way the Congress can do it is by legislation. The only legislative means available is to grind the entire government to a halt, the use of the exclusive Congressional power to appropriate.

Nixon had as his closest assistants men who could not have been confirmed for dog-catcher. The two most powerful and closest to him were Harry Robbins Haldeman, his chief of staff, and John Ehrlichman, his domestic-affairs adviser. By the time of The Watergate, in which both were central characters, they were the most thoroughly unpopular, widely-dispised men in government. They are natural, born authoritarians

who once they began to comprehend the limitless pwoer they could wield, used it with arrogance and brutality. They also used it unwisely, making enemies without need or reason. Both are able men, neither is a politician. Their willingness to use raw power eithout restriant or inhibition was second only to their dedication to Nixon.

When because of their complicity in The Watergate he was fonally forced to dispense with them he praised them as the finest public servants he had ever known. This has to be the most severe self-indictment or the most thoroughgoing defemation of the public service.

Another of the changes in government not visualized by those who created the form is its domination by lawyers. Experienced lawyers and those trained in the law but not practising members of the bar. Most of the Members of Congress are lawyers. The tendency in the executive agencies has been to use lawyers more and more, from the heads of the agencies down and where the law is not prerequisite to the work. Nixon's Secretary of State, William Rogers, is a alwyer who had been Attorney General when Nixon was vice president and since then has been a friend and adviser. Lyndon Johnson's last Secretary of Defense was a lawyer who has returned to the practise he left on taking that post.

If there are values in knowledge of the law useful in public service, there are also disadvantages. One of those never talked about is the by-product of the adversary system of justice which in effect makes anything a lawyer as an adversary can get away with proper. In the courtroom opposing counsel he has [illegible] and a judge to keep an eye on him and to pull him up short is he goes too far. This philosophy absent an [illegible] adversary and a judge, often provides temptation men can't resist.

One of the less-publicized scandals of The Watergate is that a year after the break-in in various bar associations were examining the behavior of 125 lawyers. Reluctant as the bar association is to investigate or even question its members, this is a significant total as it is a measure of the deportment and acts of those who were under examination. The bar president found it necessary to discuss lawyers transgressions in public and to lament them. One of Nixon's appointees to the Supreme Court, Blackmun, bewailed the downward trend in morals, ethics and acts to the same 1973 bar convention.

The Law for the Layman

Lawyers have a vested interest in complicating the law where its logic and philosophy may be simple. In part, the mystification of the client helps the lawyer and reduces the client's tendency to ask questions. It also helps justify the fee. However, there is also a legttimacy that serves the client's interest when the lawyer goes into complicated arguments and procedures. Ours is an adversary system of justice. In unlawyerly language this means that anything the lawyer can get away with in court, where he has an opponent i n the lawyer for the other side and an administrator and interpreter of the law in the judge, is proper.

Once those five men were arrested inside Democratic headquarters, where they had no business being, the law become involved, in ways that are, essentially, quite simple. They had committed crimes for which they would be charged and tried, and they did have certain rights it became the obligation of their lawyers, the judge and the prosecution to preserve. The first of these legal rights, granted in the Fifth Amendment to the Constitution, was to remain silent. The next, to counsel of their choice, is assured by the Sixth Amendment.

Because these men were not the "2elf starters" all officialdom immediately labelled them, all those with whom they had been associated were also involved. In turn, this introduced other legal considerations, the most obvious being "conspiracy" and "accessary."

Once the White House and its allies started defending, heavy use, which was really deliberate misuse, was made of the word "hearsay". It was made to seem something than ranged from wrong to evil.

And when it could no longer be pretended that the fat was not in the fire, two other phrases not generally understood by laymen were used and misused. These are "immunity" and "executive privelege".

Official lying was the norm from the first. This is not new. It merely reached a new level. Lying is not in itself a crime, but certain kinds of lying is "perjury". When lying that is perjury is induced, that is the crime called "subornation of perjury".

Proceedings under the law have different forms, each consistent with its purposes.

Trials are in courts of law, which have special rules. There are criminal and civil courts, depending on what is being litigated.

Grand juries vote indictments in criminal cases. These are the charges of criminality. Petit huries sit in courts, in the open. Gran juries meet in strict privacy. Supposedly, anyway.

Hearings are held by various bodies other than courts. The more common are those by government commissions and by the Congress. In these different rules, again consistent with the different purposes, obtain. Congressional hearings are limited to the legislative responsibilities of the Congress. It is a popular misconception that the Congress has the legal right to hold hearings for the sole purpose of exposure. This has been fostered by truly infamous abuses by Congressional committees, the most flagrant of which were by those originally sytling themselves as investigators of that undefinable "UnAmericanism", more recently calling themselves investigators of whatever they chose to encompass in the designation "internal security". For Congress to legislate it must be able to hold hearings. For those hearings to develop information, the committees must be able to investigate.

There is an exception to the legislative-need rule on Congressional proceedings. It is popularly believe that the President can commit no crime and is immune under the law. This is not true. The equivalent of an indictment of the President, limited to what the Constitution describes as "high crimes and misdemeanors", is the decision of the House of Representatives to "impeach" the president. It the House does this, the Senate becomes the equivalent of the court. No president had been impeached. Andrew ~~XXXXX~~ Johnson, the vice president who succeeded the assassinated Lincoln, almost was.

To compel the attendance of witnesses upon the various kinds of proceedings there is a legal document called a subpena. Where the production of evidence is called for, there is a subpena duces tecum.

In civil suits, each side is entitled to "discover" the evidence held by the other side. One of the more common means is by the taking of "depositions", under oath and outside the court room.

In criminal ~~suit~~ actions, in theory the defendant is entitled to all evidence held by the prosecution that is exculpatory, are tending to prove innocence. Here even the President must comply with the law. That was established in the early days of the nation, when Aaron Burr was on trial for his life. The decision was rendered by the Supreme Court when John Marshall, widely considered the nation's most eminent jurist, was Chief Justice.

Another popular misconception has to do with the primary obligation of the prosecution. It is not to obtain a conviction but to see to it that justice is done.

Jurisdiction when crimes are alleged is determined by the laws said to have been violated. When the five men were apprehended in The Watergate offices, whether they fell under ~~the jurisdiction~~ local jurisdiction, that of the District of Columbia, or federal, was to be decided by the charges placed against them. Their crimes crossed the line into both categories. They could have been charged in both jurisdictions, something not uncommon, particularly when the federal government has political interest in the prosecution.

16A False swearing that is material is perjury. To be criminal, it must be material.

17A The purpose of the hearing is not to establish guilt or innocence. In Congressional hearings, "hearsay" or non-first-person evidence is necessary and is proper. Hearsay is also proper and accepted evidence before grand juries and in conspiracy trials. Nobody knows this better than they who started all the razzmatazz about hearsay as something terrible. The Wtnergate was a conspiracy. Hearsay evidence was proper before the grand jury and the committee and as it related to the conspiracy, in trial.

All conniving is not a conspiracy. Under the law if two or more people combine to do what the law says is wrong and then take an overt act to implement it, it becomes a conspiracy.

17B The law on subpenas is that they compel appearance but not testimony. Testimony can be avoided by the claim of immunity. The most common immunity is the Constitutional exemtpion of the Fifth Amendment. Invoking it does not mean that there is guilt. It means that if the witness testified, it is possible that his testimony could be used against him even if innocent. The Supreme Court has held that the inderece of guilt may bot be drawn from or suggested after a Fifth-Smerndment plea.

However, if a witness refuses to testify without cause, he can be held in contempt and punished for it by fine, jailing or both.

For a year Nixon improvised himself into a pseudo-constitutional immunity for himself and all those he wanted to bathe in immunity. During this year he and those speaking for him constantly shifted his position and promises. The initial uncertainty was over what to say, what to admit and what to deny, once total detachment became impossible to sustain. Despite what admission could not be avoided and the evidence that was adduced, however, Nixon personally did continue to pretend that he had been totally detached. This was inconsistent with the line of defense that gradually emerged, the claim to a special kind of presidential immunity.

During Nixon's earlier, free-swinging Congressional and Senatorial heyday, when he laced the country with accusations against imagined atom-bomb spying and "Twenty Years of Treason" by the Democrats, he had joined in the McCarthyite cry of "Fifth Amendment Communists" against those who had, as their only protection against these witch-hunters the Constitution and used it. This was his, McCarthy's and their lesser copiers' way of asserting that those who claimed the right to silence were guilty.

Nonetheless, Nixon's position in 1972 and 1973 boiled down to the claim that as President he had a special Constitutional right to silence, that this alleged right extended to all federal employees if he ordered them to remain silent, and that all of this represented his dedication to the Constitution and his special protection to the institution of the presidency.

Two of his second-level assistants who had been engaged in admittedly criminal activity did "take the Fifth". These men's duties were in what Nixon designated the "national security" area. Yet when called as witnesses before the House suncommittee on the CIA on July 17 and 18, 1975, Egil Krogh and David Young both "took the Fifth." When it served to protect Nixon, Krogh had provided a Los Angeles, California court with an affidavit in which he admitted his criminal acts. Yet when he was hailed before a Los Angeles grand jury, the "took the Fifth" and refused to answer questions. In Krogh's case, under the interpretations of Nixon's Department of Justice experts in such matters, Guy Goodwin, Krogh had waived his Fifth Amendment rights by filing the affidavit.

Krogh is a lawyer. He went to the White House staff from the Seattle, Washington law office of Nixon's Number Two man, John Ehrlichman. Consistency, however, is not a Nixon benchmark.

When, as ultimately happened in the summer of 1973, Nixon was in court on two fronts, he held that under the "doctrine" of "separation of powers" between the branches of government, he had a total immunity against surrendering any evidence. A "doctrine", obviously, is less than a law and not a phrase from the Constitution. It took a year of shifting improvisations for this position to evolve.

It began with what later evidence from White House documents shows to be a deliberately contrived test based on a real immunity, the confidentiality of a lawyer-client relationship.

John Wesley Dean III was "Counsel to the President," Dean was a government employee, not Nixon's personal attorney. Nixon's personal attorney was Herbert W. Kalmbach, of Newport Beach, California. Dean did, although federally paid, work on some of Nixon's personal affairs, having to do with Nixon's personal property. Before Nixon fired Dean, Dean, as he later testified, cooked up the idea that because he was the President's lawyer on official acts, in theory at least, the test of immunity be based on Dean ad his role. The contrivance was agreed to and it was respected by the Congress, which was well aware that Nixon was groping for an issue to take to the Supreme Court dominated by his appointees. A court test also had the merit, from Nixon's point of view, of by-passing and bringing to a temproary end, any factual disclosures.

Information was wanted by the Senate Judiciary Committee, which was considering Nixon's appointment of L. Patrick Gray to be permanent head of the FBI; by the House "Freedom of Information" suncommittee; and by the General Accounting Office, whose responsibilities including auditing the expenditure of public funds. But Nixon knew it would also be wanted by the Ervin committee. While still ambivalent, Nixon took a firmer position in which he hewed the line he was to hold in one of his extremely rare press conferences, on March 15, 1973.

He began with a broader interpretation of Deans role, "Mr. Dean is counsel to

the White House staff." If this was not the truth, who is there to argue with the President? The secret Nixon objective here was to be able to claim that Dean could not testify to admissions of guilt made to him by Nixon's assistants. To this Nixon added,

"He has, in effect, what I would call a double privelege, the lawyer-client relationship as well as the Presidential privelege. And in terms of privelege, I think we could put it another way. I consider it my responsibility to defend the principle of separation of powers."

The President prepares with care for press conferences. The questuon to which this is the heart of a long response, was anticiapted. It was the first question he took, and it he who decides which reporter to hear. Inp practise, ~~xxxxx~~ questions presidents want asked are "planted" to be asked. The question was,

"Mr. President, do you plan to stick by your decision not to allow Mr. Dean to testify before the Congress even if it means the defeat of Mr. Gray's nomination?"

Dean's non-existent ~~xxxxxxxxxxxxxxxx~~ responsibilities as "counsel to the White House staff" had and could have no relationship to ~~xxxxxxxxxxxxxxxxxxxx~~ Dean's testimony "before the Congress." The well-established principle of law is that if immunity is sought it must be asked. Until Dean was asked a question that could involve the ~~xxxxxx~~ ~~xxxxxxxxxxxxxxxxxxxx~~ lawyer-client relations with members of the White House staff, there could be no relevance.

~~xxxxxxxxxxxxxxxx~~ "The Presidential privelege" as Nixon used it means either a total "privelege" about anything or everything or what could, in practise, be indinstinuishabl what he called "executive privelege" and "the principle of the separation of powers."

As a "doctrine" or as a ~~xxxxxxxx~~ "privelege" there is a theory, not a law or the language of a Constitutional provision.

However it is interpreted and as always interpreted in the past, what is meant no more than that each of the three branches of government may not intrude into the proper functioning of any of the ~~xxx~~ others. The concept is restricted to proper functioning. Congressmen and Senators have been called before grand juries, indicted, tried and sent to jail. In the Teapot Dome scandal of the Republican Harding administration of the

early 1920s, one cabinet officer, the Secretary of the Interior, was convicted as a grafter and his colleague, the Attorney General, barely escaped the same fate. Presidential assistants have appeared before the Congress to face charges of financial misconduct. And in 1807, Supreme Court Chief Justice John Marshall did order President Thomas Jefferson to deliver evidence to a criminal defendant, Aaron Burr.

In his careful choice of language here Nixon presaged the plea he made on August 7, 1973, in federal district court in Washington, that he has an absolute privelege against criminal charges unless he is impeached first. Only after the Senate votes impeachment, his lawyers argued, could Nixon be called upon to face any criminal charges.

If this seems pretty extreme -it claims the President has an absolute and unquestionable right to commit any crime, including murder - there were specific crimes of which Nixon had knowledge. He later spoke about them untruthfully. At this juncture he had no way of knowing whether or not they were be exposed. He did know that he, personally, had authorized a series of crimes after specific warning that he as a lawyer did not need, that all were crimes. So, his seeming statement of theory and generalities was not at all theoretical. He was laying a defense that, with acuity, he arranged to be as bewildering and as obfuscating as possible.

In this same press conference, Nixon also challened all his "enemies"/but chiefly the Senate to make a court test of his position. This was foresighted, too, because as of them the specific crimes had not been exposed. His words were, "Perhaps this is the time to have the highest court of this lan make a definitive decision with regard to this matter."

On March 11 he issued a statement in which he alleged that his was the traditional provision on "executive privelege" and the "separation of powers." In it he asserted that "A member or former member of the President's staff [shall] decline a request for a formal appearance before a committee of the Congress." Al, the context this requires is that two members of his personal staff of the recent past were then in jail for Watergate crimes and there was soon to be a parade of other confessors, all from his personal staff.

Two days after this statement the Senate Judiciary Committee accepted Nixon's challenge and by a unanimous vote of 16 to 0, with all of Nixon's party agreeing in the request, asked Dean to testify on the Gray nomination. Dean's refusal to did not prevent the unimaginable disclosure that ~~xxxxxxxxx~~ of still other criminality later came from Gray himself. (Dean also refsued to testify before the House "Freedom of Information" subcommittee which was investigating his refusal to provide the passenger lists and flight logs to the General Accounting office. ~~XXXXXX~~ The GAO was investigating the possible misuse of tax money and government aircraft during the election.) ~~(Post 4/4/73)~~

Between the time of these Nixon statement and the beginning of the appearances of his staffers before the Ervin committee, Ervin declared with apparent resolution that he would send United States marshalls to arrest any White House aide who refused to appear. Nixon quietly backed down.

But he did not change his position. Instead, he gave it an even more extreme interpretation on April 10 when Attorney General Richard Kleindienst appeared before an unusual joint session of three Senate subcommittees.

During the campaign, Senator Edmund Muskie of Maine was one of the Democratic victims of The Watergate operations. He and Kleindienst had a heated exchange during this testimony: Lil-marked excerpt, then return for ex, priv file

Senators characterized Kleindinest's testimony as "frightening," "contemptuous" and "arrogant" but a Nixon spokesman described it as an expression of administration policy the next day.

What this meant, among the non-obvious meanings, is that the ~~Xxxx~~ Nixon could order any or all two and a half million government employees to refuse to testify about any crimes of which they had knowledge.

23A

Although Nixon described his as the traditional position, it was not. Presidents themselves had met with Congressional committees. Abraham Lincoln supprised the House Judiciary Committee by appearing before it voluntarily to deny reports his wife was in any way disloyal. And Woodrow Wilson had ~~xxxx~~ invited a committee to meet with him in connection with consideration of the Treaty of Versailles.

Through Assistant Attorney General Robeet G. Dixon, Jr., Department of Justice legal counsel, Nixon extended this even further on May 8. Dixon told a House/Government Operations suncommittee that, in the words of the UPI report, "Nixon cpuld invoke executive privelege even in a proceeding involving his own impeachment."

In effect, Nixon claimed that executive privelege is whqat he says it is. This is a paraphrase of a truism ~~xx~~ earlier expressed by former Chief Justice Charles Evans Hughes. He said, "The Constitution is what the judges say it is."

Different judges, appointed by different presidents and in different times attached different meanings to the Constitution.

Nixon, of course, knew this. He also knew that in addition to the four justices he had put on the Supreme Court to give it a conservative majority, he might momentarily be able to appoint others. The more he stalled, the better his probability of extending the Supreme Court's majority with several of the liberal members old and ill.

Because the Supreme Court would be pivotal in the final determination, something the media ignored entirely, a little-known part of the past of Nixon's Chief Justice is worth considering in this explanation of the law for the layman. If this kind of information never stick in the mind of the average citizen, it never avoids the consideration and evaluation of professional analysts. Especially when "The Consttitu Constitution is what the judges say it is."

(Pick up with COUP 309)

In dealing with materials as complex as The Watergate in all its ramifications and in undertaking what the future may hold the writer faces a normal writing problem in exaggerated size. Where to include what information, always an organizational consideration, here is more complicated. Writers and editors sometimes never resolve their doubts. The wheel of The Watergate is countless wheels withing many other wheels.

There is much more to the quotation that follows than is presented here. What does follow also has relevance elsewhere. It will not stand alone. It will be supplemented where the context is better suited.

In both instances it is not ego that dictates direct quotation of my earlier work. The purpose is to illustrate that the analyst can and does anticipate, can and does assign the meanings of the future to the contemporaneous. A subsidiary purpose is to show that the raw materials of analysis and intelligence are not secrets ferreted out by spooks but rather is generally publicly available to the searched who knows where to go.

This quotation is from a book that could not get printed when it was written. It was copyrighted in a limited edition in 1969, with the title Coup d'Etat. In early 1971, somewhat condensed, it appeared as Frame-Up, my study of the assassination of Dr. Martin Luther King, Jr. This selection was then edited out. It is quoted from the original:

[Note-if McCarthy requires explanation, add] Lil-fol lit-include this way The late Drew Pearson was co-founder of the "Washington Merry-Go-Round" column now his associate Jack Anderson's.

The late Senator Dirksen was the father-in-law of the present Ervin Committee vice-chairman Howard Baker.

The late Subversives Activities Control Board is the one legislative achievement of Richard Nixon. When its major purposes were declared un-Constitutional, President Nixon sought to perpetuate it without duties when the un-Constotutional duties he wanted for it could not be get through Congress. After wasting much tax-payers money on the corpse, he finally had to let it go to its grave, for whoch the appropriate epitaph would be, "It Never Should Have Been."

Two different kinds of "leaks" appear in this quotation. Nixon's justification of police-state orders he gave is that leaks are abominable and must be stopped. To the earlier Nixon, defamatory leaks about guiltless government employees were so commendable he kept Leaker Otepka, a leaker of the right extreme, on the public teat for years, increasing his salary for doing nothing when it became a legal impossibility for him to do anything.

Leaking to Nixon from inside the Justice Department, where the legal and Constitutional rights of citizens were abridged and violated by his leaker Burger, also was proper to the earlier Nixon. It didn't hurt Burger a bit, either, for when Nixon was vixxx Vice President Burger xxxxxxxx was appointed to the United States Court of Appeals.

With Nixon it is a question of who is the ox and who is gored. He is not against goring, as long as he can do it.

Knowing this earlier Nixon is indispensible to knowing and understanding the President Nixon, as knowing how the government is supposed to work and what the law is supposed to mean is essential to comprehending the full story of The Watergate. Nixon and it are inseparable. That it cannot be divorced from him is evident when nothing like it came to pass under all the presidents of 200 years.