

A Proper Forum

The testimony of Jeb Stuart Magruder, the deputy manager of President Nixon's re-election campaign, sets forth an appalling picture of chicanery and deceit at the highest levels of the Federal Government. It also brings into focus the difficult questions concerning civil liberties and criminal law which arise when serious charges of illegality are made in any forum other than a courtroom.

Mr. Magruder has testified that he participated in a meeting at Attorney General John Mitchell's office in the Justice Department in January, 1972, at which C. Gordon Liddy, convicted leader of the Watergate burglary team, originally outlined his plan for a series of illegal activities against Democratic party leaders. Mr. Magruder further testified that then and subsequently, after Mr. Mitchell approved a scaled-down version of the Liddy plan, he kept senior members of the White House staff regularly informed of the plan's progress.

Senior White House aides, but not President Nixon, according to Mr. Magruder, were aware of these illegal activities, and participated actively in concocting the perjured testimony which sought to cover up the truth.

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Testimony of this explosive character carries with it high risks. There is the risk of damaging, inadvertently or otherwise, the good names of innocent persons. There is the risk that the future prosecution of wrongdoers may be fatally compromised because of prejudicial pre-trial publicity.

Vice President Agnew recently argued that the Senate Watergate hearings "can hardly hope to find the truth and can hardly fail to muddy the waters of justice beyond redemption." The hearings, Mr. Agnew pointed out, lack the procedural safeguards which exist in a courtroom such as the right of cross-examination by opposing counsel and the exclusion of hearsay.

Although this and similar criticisms have weight, they fail to take fully into account either the divided nature of American government or the uniqueness of the Watergate scandal. Congressional investigations are unquestionably—by courtroom standards—rather untidy and sometimes inconclusive enterprises.

The United States unfortunately does not have a firm tradition that the Attorney General should direct the Justice Department in a nonpolitical fashion. Moreover, it does not have the tradition of assigning investigations either to a sitting judge for rapid inquiry or to a special tribunal. In the gap in procedure which exists, Congress has inevitably retained control of the investigative functions even when the matter under inquiry becomes huge, complex and sometimes only tenuously connected to a legislative purpose.

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The Watergate scandal, moreover, is a political earthquake of such unprecedented magnitude and intensity that it would strain any institutional arrangements. Individual officials in some Administrations in the past have violated their public trust and been forced to resign and sometimes been criminally prosecuted. But there has never been the imputation before that a President was cognizant of illegal activity before it occurred or that he knowingly participated in a conspiracy to cover up such activity after it occurred—the two heinous accusations which hang over Mr. Nixon's head but which have not been substantiated.

Proving Mr. Nixon's guilt or innocence is an extremely tortuous undertaking because the conditions of the modern Presidency surround a Chief Executive with layers of assistants of varying degrees of authority and also insulate him from the public and even from Congress. It becomes much more difficult than it once was to determine how much a President is aware of.

Mr. Nixon has compounded this difficulty by making a confusing zigzag between the authority of the office of the Presidency and his own individual rights as a citizen. In the earlier stages of the unfolding of this scandal, for example, Mr. Nixon loftily asserted "executive privilege" in his own behalf and that of all his subordinates. His lengthy statement of explanation and self-exculpation issued on May 22, however, had much more the quality of a lawyer's brief on behalf of a client trying to defend himself.

It is not the office of the Presidency which is "on trial" in the Senate hearings and in the press. Rather, it is Mr. Nixon's conduct as President and the conduct of certain members of his Cabinet and senior staff. The Senate committee under leadership of Senator Ervin is conducting an inquest into certain aspects of Mr. Nixon's stewardship. No other item of public business is more important than this inquest. No other forum is more appropriate—indeed, no other forum is available—for this inquest.