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Treating Mr. Nixon as a Suspect

The reason President Nixon keeps getting away with his Watergate brinksmanship—seeking outlandish claims of authority, forcing governmental crises and, at the last moment, backing down—is that no one in authority can bring himself to utter the truth about the Watergate investigations.

The truth is this: Richard Milhous Nixon is under investigation. He is a suspect in a criminal conspiracy.

Say that flat out, and it becomes clear what is going on when he institutes his phony in-house probes a la Dean and Ehrlichman, or circumscribes the Justice Department's investigation as he did with Gray and Walters, or fires Archibald Cox when Cox seems to be getting too close to the truth.

Richard Nixon, President of the United States, can wax solemn-faced and determined about such matters as presidential confidentiality, separation of powers and executive privilege when he chooses to withhold certain information or cut off certain paths of inquiry.

Let R. M. Nixon, criminal suspect, do it and it amounts to pleading the Fifth Amendment.

Everyone knows he is a suspect (which is not to say that everyone believes him to be guilty of what he's suspected of doing) but no one involved with the investigation can quite say it.

Instead, they proceed—at least so far as their public utterances are concerned—as though it never entered their minds that the President himself might be involved in the conception, execution or concealment of the

crimes and improprieties that we call Watergate.

They would prefer to have his involvement come out as though by startling accident, much as apparently was the case with the Baltimore County investigation and Spiro Agnew. In order to make certain that their nets are big enough to catch that "accidental" big fish, they insist on full and open inquiries and independent investigations and so forth. And (at least until things get sticky) the President can say, Why, me too.

And when they get sticky, he simply plays his brinksmanship game, using the resultant crisis to force the investigation along more comfortable paths—and then he backs down. The people breathe a sigh of relief that the crunch has been averted and forget that the clever fish has cut another hole in the net.

Not only does he get away with this incredible game, but in many cases he actually comes out ahead, in that some people are willing to give him plus marks for dissolving the crisis he so deliberately created in the first place.

What saves Mr. Nixon in these encounters is the mantle of the presidency. The American people have grown used to seeing the presidency—and by projection, the incumbent President—as the symbol of the nation's sovereignty and honor. And as a result, we will accept pieties and rationalizations from a President that would seem ludicrous when uttered by anyone else.

The Watergate investigators, independent and otherwise, share that

problem. But beyond that, those who work for the Justice Department are indirectly working for the President. And no matter how diligently they carry out their investigative work, it is impossible for them to say to their boss that he is a prime target of their inquiry, a suspect.

But the Congress can say it. And if we are to get at the truth of the continuing crimes and cover-ups, the Congress must say it.

It is clear now, though it wasn't earlier, that the special prosecutor shouldn't have been in the executive branch in the beginning. That makes him too vulnerable to the President's will, no matter how carefully drawn the pledges of independence and authority. For when all other pressure falls, the President can always fire his subordinate.

But he can't fire an employee of the courts or of the Congress. And it is one of those branches that ought to hire the next special prosecutor, whether it be Archibald Cox or someone else.

And when that happens, it will be important to make publicly clear that the job will involve the investigation and prosecution of criminal acts and conspiracies, and that the suspects include Richard Nixon.

That, for the time being, may be the best we can expect. The brinksmanship that permitted the President to get rid of Archibald Cox has, quite probably, permitted him to escape impeachment, too.

But only for a while.