SEARCHING FOR THE REAL NIXON SCANDAL

A last inference

by Renata Adler

Two years after Richard Nixon's resignation, in the wake of congressional investigators' revelations about previous Presidents' abuses of power and misuses of our intelligence agencies, it is unclear what Nixon's fall meant, or what the House impeachment inquiry had to do with it. So argues the author, who served with the impeachment inquiry staff. Her study of the Watergate debris, before and after, led her to "an inescapable inference"—a shocking, almost unthinkable, but logical explanation of what the ultimate scandal that drove Nixon from the White House must have been.

On the weekend of Memorial Day, 1976, at John Doar's farm near Millerton, New York, there was a reunion of what had been, in 1974, the House Judiciary Committee's impeachment inquiry staff. John Doar, who was special counsel for the inquiry, had since become a partner in a New York law firm, where he was in charge of a major antitrust case. Other members of the staff had returned for the occasion from their various jobs. Some had brought tents and sleeping bags. Others had rooms in the nearby motels and inns. A few were sleeping in the house. More than a hundred people, in all, showed up, also several dogs, including a small terrier called Credence and a huge English sheepdog, who had attended the original staff picnic, on August 15, 1974, in Washington. Thirty-nine former staff members had chartered a plane from Washington to Pittsburgh, where they were picked up by other former members of the staff. Supper, the first evening, was catered by the local Grange. People took motorcycle rides into the hills. Small bonfires were lit around the farm itself. Some of the youngest bounced on a trampoline or played basketball. From soon after supper until well after midnight, there was square dancing. A band and a caller had been brought in from Hartford. Nearly everyone took part in the square sets and in a virtually endless Virginia reel. In the wildest fantasies of San Clemente, no one could dream that such an event was taking place. And even in Millerton, one had the fleeting impression of dancing on a grave.

It was not a grave, of course. President Nixon had only resigned. After nearly two years, it was no longer clear what that resignation had meant, or even what the inquiry had had to do with it. Meanwhile, with every document published by the Senate Select Committee on Government Operations with Respect to Intelligence Activities (the Church Committee), it was becoming more clear that the case for the impeachment of Richard Nixon, in 1974, had fallen apart.

It all seemed, anyway, long ago, and difficult to remember in detail. In late July 1974, the House Judiciary Committee, under Chairman Peter W. Rodino, had voted to recommend three Articles of Impeachment to the House. Article I was essentially an obstruction of justice charge. Article II charged misuse of the agencies of government. Article III, in effect, charged contempt of Congress, in doctoring and in refusing to produce

subpoenaed evidence. In view of the Church Committee's account of the conduct of previous administrations, including violations of law and abuses of power since at least 1936, the first two Articles seemed to dissolve. As for Article III, there had been disagreement about it from the start. Doar himself ultimately did not support it—on the grounds that requiring the President to produce this evidence, and thereby implicate himself in what would obviously become a highly serious criminal case, was reminiscent of the Star Chamber. Others argued that such a view implicitly endorsed claims of executive privilege, the national security, whatever, as camouflaged euphemisms for the Fifth Amendment; that if the President needed, in effect, to take the Fifth, he ought to be obliged, like any other citizen, to come right out and take it; and that a failure to pass Article III would add to all the other powers of the President a new power, to withhold evidence from the only process the Framers had established specifically to override such claims of secrecy: the impeachment process, the "Grand Inquest of the Nation," by which the President could be held, constitutionally, to account.

In any case, it didn't matter. Article III would never have passed, or even existed, without Articles I and II. The problem with all three Articles, and with their accompanying Summary of Information and Final Report, and with the thirty-odd volumes of Statements of Information, which were also published by the House Judiciary Committee, is that, in spite of a valid perception the whole country shared of the integrity of the process at the time, all those volumes never quite made their case, or any case. And one result, which nobody on the staff could possibly have foreseen, was that, in light of the Church Committee report and other documents, what remains of the records of the impeachment inquiry would support, not only a claim that Richard Nixon was hounded from office after all, but also, more strangely, the reverse: that the impeachment inquiry itself was just another phase in the continuation of the cover-up.

Neither of these claims, obviously, is right; yet they are not easy to dismiss. As there continue to be revelations of abuses of and by the CIA, the FBI, the IRS, the military, and officials at every level of government and corporate enterprise, in the remote as well as the immediate past, it becomes less and less clear why the Nixon presidency in particular had to end. This summer, the Senate voted overwhelmingly to establish a permanent office of special prosecutor, as though what had seemed, in 1973, an extraordinary crisis, requiring extraordinary measures, were now perceived as a more or less permanent state of affairs in government—and as though such a permanently critical situation could be remedied by the addition of yet another watchman to the constitutionally established, existing watchmen in the night. Another indication of the degree to which the specific Nixon case remains still unresolved is implicit in those theories that Nixon was driven from office by a conspiracy within government itself—more specifically, within the CIA. It is as though history already required, in explanation of Nixon's having left the presidency at all, an elaborate plot, in the form of a reconstruction from scraps of inconsistent evidence of an Agency cabal.

It seems certain, though, that the Nixon presidency, far from being continuous with those before, was in fact unprecedented; that, without the supposition of cabals of any sort, Nixon himself did something not only more than any of his predecessors but altogether else. And the reason why no investigation, by Congress, or the press, or in the courts, has so far managed to establish precisely what he did has to do, I think, both with the way the investigations were conducted and with what I now believe to be the very nature of the case. Putting together some of the circumstances of the impeachment inquiry with a few facts in those Church Committee documents—and trying to reconcile these with several, at the time apparently unaccountable, discrepancies and lapses in the conduct of President Nixon, his lawyers, and his aides—I think one does arrive at a bottom line, a plausible, even obvious explanation of why it was that the Nixon presidency had to end. It may have been for a time unthinkable; or we may have known it all along.

I. What Kind of Case?

The inquiry. On the morning of March 27, 1974, Barbara Fletcher, who was in charge of most calls to the impeachment inquiry staff from congressmen and members of the press, received a long-distance call from a young man who claimed that in 1973, as he was walking down Wisconsin Avenue, President Nixon shot at him. For various reasons, few of the logs and records kept by the staff (and now sealed, for the foreseeable future, in the archives of the House Judiciary Committee) are altogether dependable or complete. The files of congressional committees are, in any case, notoriously inaccurate. But because of her diligence and the delicacy of her assignment in dealing with these calls, Miss Fletcher kept scrupulous and exhaustive logs. The young man said he had been wearing a shield. He asked to be given a lie detector test. He left two Milwaukee phone numbers, his mother's and his own. Miss Fletcher noted all this and said she would pass the information on. It was evident from the whole tone of the entry that the young man, like a lot of other callers—like the lady who

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brought in her garbage as evidence that she was being poisoned; like the many hundreds of people who sent in rocks, with the message that only he who is without sin should cast them—was not well.

But among the innumerable What if's of the inquiry, and of Watergate itself, the problem might not have been a minor one. What if the young man had been completely sane and right? The staff would have been unable to investigate his claim. There were no investigators on the staff. And it is far from clear that shooting at a man in the street is contemplated in the phrase "Treason, Bribery, or other high Crimes and Misdemeanors"—the only grounds on which a President can be impeached. Shooting at a political opponent, certainly, would fall within the constitutional standard, as a "political" crime, that is, a crime against the system and the Constitution itself. But an ordinary violation of the criminal statutes, no matter how serious, is probably not contemplated in the phrase. The astonishingly foolish, poorly reasoned, and poorly documented brief submitted by the White House argued that it is: that "other high Crimes and Misdemeanors" simply meant a literal, ordinary (though in deference to that "high," a serious) crime, committed in the President's "public, or official capacity." It was hard to think of any unlawful acts, apart perhaps from adultery or purse-snatching, which a President might commit in his private, or unofficial capacity. The White House brief was intended, of course, to limit to the narrowest criminal terms any definition of the grounds on which a President might be impeached. It went on to say that "high Crimes and Misdemeanors," as a term of art, had a unitary meaning, like "bread and butter issues"—a comparison which, in its peculiar vulgarity, exemplified something both slipshod and condescending in the work of the White House lawyers, under James St. Clair, by whom the President was at the time so oddly, badly served. It was true of the whole brief what one of the youngest members of the inquiry said of subsequent documents submitted for the White House: that sooner or later, at their characteristic level of effectiveness, in general and in detail, these lawyers seemed bound to produce a brief on behalf of their client, President Philip N. Nixon.

One effect of the White House brief on grounds for impeachment, however, was to draw attention from the quality of the brief produced by the impeachment inquiry staff. That brief, our brief, which was published on February 20, 1974, was the first indication of what kind of work would be done by a staff of nearly forty lawyers who came from both political parties and from all parts of the country and who had, or claimed to have, by 1974, when they were hired, no view one way or another about whether President Nixon ought to be impeached. "I will say that every staff member was questioned whether or not they had taken a position on impeachment," Special Counsel Doar told the Judiciary Committee on January 31, 1974, "and if they had, other than that there should be an inquiry, then they were not considered for the job." For seven months, both Doar and Chairman Rodino insisted that no member of the staff take any side whatever on the question. As late as July 23, 1974, when Minority Counsel Sam Garrison suggested that Democrats on the staff might all along have inclined to favor impeachment, while Republicans might have tended to oppose it, Rodino said that if he had known Garrison took such a view he would have fired him.

While there were strong reasons for maintaining a bipartisan staff with this apparent viewlessness, in the first serious attempt to impeach a President in more than a century, the criterion is not one for putting together a firm of lawyers. It is more suited to selecting jurors—who are meant unprofessionally to weigh, but never to investigate or to assemble a case. Lawyers are advocates. The lawyers Doar hired were bright, loyal, discreet, and highly recommended. They represented as broad a cross section of the country as the congressmen on the committee. They worked under two ironclad admonitions: to maintain absolute confidentiality and to be "fair." At the same time, Doar had to proceed on the assumption that almost no one could be trusted. On January 2, 1974, I asked him how, in that case, he was going to keep perfect confidentiality in so large a staff of lawyers. "You work them very hard," he said, "and you don't tell them anything." The brief produced by such a staff was, predictably, deficient.

So were most of the other inquiry documents. It turned out to be unimportant. What was important was that, through months of tension, crises of morale, and professional frustration, the staff did manage to work hard and to keep silent. What they were working on, or thought they were working on, is another matter. Few of them, at the time or even two years later, seemed to have more than an intimation that, while what they were doing was essential, the only thing essential about it was that they be seen to be doing *something* in secret, day and night, for months. "Some of it was the worst time of my life," one of the junior lawyers said, more than a year after it was over. "What you had for the first few months, you see, was thirty lawyers, treading water." That "treading water" was his insight. That "for the first few months" was an understatement. The fact that underlay the ordeal was that most of the work, almost all the time by almost all the staff, was a charade. A valuable charade, in that a machine was seen to

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churn, while no circus took place, and the courts, and a smaller group of Doar's, and ultimately the congressmen themselves could do their work. But the machine itself, firmly required to be directionless, produced, naturally enough, no investigation and, in the end, no case. It is commonly said that "the case" is in those thirty-odd staff volumes. Only by people who have not read them; hardly anyone has read them.

Doar himself was working mainly with a smaller group of about seven people, five of whom were old friends who had worked with him before and who were not on the regular staff.[1] Much of what could be salvaged from or written into the lamentable brief on grounds, for instance, was the work at the last minute of these ad hoc irregulars—as was, for good or ill, the conduct of the inquiry, from the ordering of facts and strategies, through compiling the endless Statements of Information, Summary of Information, and Final Report, to the drafting of letters to the White House, of the actual Articles of Impeachment, and even of the statements of Chairman Rodino, from the opening of the inquiry, through the hearings, to the remarks with which he responded, in his living room, to the television broadcast of Richard Nixon's resignation speech.

There was never any doubt among Doar and this small group that, unless there was overwhelming evidence of Nixon's innocence (and the only conceivable circumstance in which, by 1974, there could be such evidence would have been a conspiracy among his aides to frame him, in which case, under a superintendency theory, he might have been impeached for that), the object of the process was that the President must be impeached. Doar had, in fact, been the second non-radical person I knew, and the first Republican, to advocate impeachment—months before he became special counsel, long before the inquiry began. There had to be such complete discretion on this point, and such constant, rote repetition of the words "fair," "fairness," "fairly," that there arose a temperamental hazard of inventing pieties and believing in them, against the evidence of your own purposes and your own sense—a hazard to which Nixon had obviously succumbed. Doar customarily spoke, however, in terms of "war" and "the Cause." It had to be so. To exactly the degree that impeachment is warranted it is no less than urgent. Given the immense, lawful and (since in an impeachment a refusal to observe the restraints of law is precisely the point at issue) unlawful, powers of an American President, it would have been unthinkable for Doar to have taken the job as less than an advocate. As late as this summer, 1976, however, most members of the staff and of the Judiciary Committee were still divided in their view of when it was that Doar reached his decision—whether it was in March 1974, as a result of the grand jury presentment, or on the morning of July 19, when, in one of the many completely imaginary stories generated by the inquiry's lore-manufacturing apparatus, Chairman Rodino was supposed to have shouted at Doar to force him to make up his mind.

All this by way of outlining the circumstances in which the inquiry was conducted. Doar, certain from the start that the President must be, under conditions of exemplary fairness, removed from office, could not, he thought, disclose that determination to the congressmen or to his staff. The situation created its own peculiar stresses. Secrecy and loyalty had been the Watergate virtues, after all. Apart from exercising these virtues, staff lawyers were occupied, for instance, in filling out, on the basis of documents already public, those endless and in terms of impeachment entirely useless "chron cards"—the minute-by-minute chronologies, which had been important in the Neshoba County Case of 1967 (in Doar's successful prosecution, as chief of the Justice Department's Civil Rights Division, of the murderers of Andrew Goodman, Michael Schwerner, and James Chaney), but which had no relevance at all to the case at hand. The congressmen, of necessity, became impatient. When the chron cards were replaced by flat, uninflected, numbered Statements of Fact, which Doar proposed that the staff read to the Judiciary Committee for a period of six weeks, beginning in May, the congressmen argued at length whether the statements could properly be designated "fact" at all—whether what was "fact" was not the sole prerogative of the committee members to determine. In the end what were read to them were called Statements of Information. And in the end, having understandably failed to see the point of all these Statements (there was hardly any point, except to gain time and to present the committee with a tidy and impressive format), the congressmen's conduct was exemplary—leading to a President's departure from office, without any of the bitterly partisan recriminations which might have divided Congress and the country for many years.

A single episode, however, illustrates the virtual impossibility, at the time, of conducting almost any impeachment research project. It has to do with the 1976 report of the Church Committee. In the context of the 1974 inquiry, there arises the obvious question: If the conduct of past administrations bears, as it so evidently does, on the Nixon case, why did the inquiry not look into these matters and produce some such report? It tried. Doar, aware that such a report would be among the soundest

[1] The author was among the members of the group.

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and most obvious defenses for any President against impeachment, knew he had to commission, from outside the staff, a historical account of abuses of presidential power, in anticipation of any report the White House lawyers would produce. As it happens, the White House lawyers never undertook anything of the kind—an error, perhaps of overconfidence, so profound that it still seems hardly credible. Doar's own report, by scholars under the direction of the distinguished Yale historian C. Vann Woodward, was supposed, like all other inquiry work, to be kept secret. When Congressman Charles Wiggins, for example, insisted that the inquiry's failure to make such a study was unforgivable, he was never told, nor were any other congressmen, that the project was already under way. Committee members, all of whom are lawyers, had already made it clear that they did not want any professors, Yale or other, to advise them on matters of law. In any case, whether secrecy caused the assignment to be phrased unclearly, or for whatever reason, the study was not what would have been required if the White House had produced such a study, which of course it didn't. Professor Woodward ultimately published the work (which does not appear among the inquiry volumes) elsewhere, in paperback.

A footnote to the story of that project concerns Minority Counsel Albert Jenner. As counsel for those Republicans who concurred in the majority vote of the committee, Jenner was a pivotal and historic figure, the pivot of the pivot, in a sense. Had he construed his job differently, had he seriously disagreed with Doar at any point, Jenner could have obstructed the process at every turn. It is by no means clear what the outcome, under those circumstances, would have been. But the fact is, he did not. Another fact is that he was absent a lot of the time, traveling and lecturing. Jenner still remarks, as he did frequently in the course of the inquiry, that Doar is an "administrator," while he, Jenner, is a "litigator." He says he was persuaded of the case against the President in March of 1974, with the grand jury presentment—at the same time, he adds, as Doar. Then, very amiably, he walks over to the shelves of his law office in Chicago, where his inquiry documents are kept. "This will interest you," he says, "although we've kept it top secret. It's something we relied on very heavily." And he removes from the shelf a bound copy of Professor C. Vann Woodward's study. The title is correct. The authorship is attributed to Vance Packard.

That's how things were, broadly, at the inquiry. And in spite of whatever it did accomplish, what it could not accomplish, or even really attempt, was an investigation of the case. What I am concerned with here is establishing a context for a set of initial assumptions, followed by a few facts from various sources, which led me to what I thought were going to be some wild speculations—about why our side, like their side, could not be doing what it appeared to be doing; about what happened and why, although it is all over, it still seems unsettled now; about what a real investigation, if circumstances had permitted one, would have found. It was evidently not a story of the inexorable processes of simple justice; or of their forces of darkness vanquished by our forces of light. Nixon's chosen successor has, after all, for two years held his office. He has retained the former President's unindicted accomplices and aides, and appointed some of the closest of them to positions—the command of NATO, for example—that ought to be unthinkable for men so utterly compromised. Nixon himself carries on as though the investigation never really reached him. And no revelation about him or, these days, any other holder of a public trust has any sense of finality to it. There never seems to be a truth with which it ends. Unless Nixon did something beyond what is known about him, or his men, or any of his predecessors, his departure from office seems random, arbitrary, and even incomplete. What I was left with finally was a set of questions and, I believe, a single inescapable inference—which would account, not so much in the detail of investigative reporting as in the very logic of events, for what I think must be the last fact, the bottom line.

In the early weeks of the inquiry, at about the time the brief on grounds was in the works, Doar considered a number of loose assumptions about what kind of case it was going to be. There was, in general, a Tip of the Iceberg theory: that whatever the inquiry might ultimately reveal, it could only be the small, visible part of what was actually there; the case would have to be made from that small visible part. There was a Narrow Escape theory: that Nixon and his aides, having made what amounted to an extremely radical analysis of the system (namely, that all its processes were meaningless and all its officials essentially corrupt), had begun to supersede the legitimate forms of government in what amounted to a revolutionary coup; the case would have to protect the country from that coup. There was a Robber Baron theory: that certain forms of corruption and violations of the system, like those committed by the robber barons, while they may have been tolerated for years, grow at some historic point beyond the tolerable; the case would have to bring such abuses of the presidency to an end. There was the Pattern of Conduct theory: that, while there may be abuses of power that a President might randomly, and perhaps by mistake, commit, a pattern of systematic violations would provide grounds on which he ought to be impeached. And a Higher Standard of Conduct theory:

that, since the President alone is required by the Constitution to "take care that the laws be faithfully executed," the Framers intended (as it is clear, from their letters and debates, they did intend) not to grant the President some "executive privilege" outside the law, but on the contrary, to hold him accountable, by some higher standard than any other citizen, to the law itself. There was the Superintendency theory: that the President, like any other civil or corporate officer, has a reasonable obligation to inquire and to inform himself of the acts of his subordinates, and be held accountable for them, particularly when those acts are crimes committed in his name, and solely for his benefit and on his behalf.

It is obvious that these informal assumptions combined hypotheses about the case with strategies for winning it. More directly in the line of strategy was what to look for and to try to prove. There was the Criminal Act under the Statutes theory, the one set forth in the White House brief, which everyone, from distinguished constitutional scholars to students of the problem in any depth at all, rejected. A Tax Fraud and Emoluments theory—which, for various reasons, including questions posed by the financial affairs of previous Presidents and present congressmen, was never seriously investigated by the staff. And there was a sort of nameless theory, which had to do with getting from the constitutional oath, faithfully to execute the office of President, to the unconstitutional acts, by way of the lies. There is nothing, of course, in the law or in the Constitution which requires anybody not to lie, except under oath. But the President, once he is in office, need not submit to being put under oath; he incurs no risk of perjury. He cannot anyway be indicted while in office; nor can there be an effective warrant to search his premises. The question was whether the President, notwithstanding his special constitutional oath, had a limitless power to commit unlawful acts and to conceal them, by means of a limitless right, in effect, to lie. It was some combination of the Oath-to-the-Acts theory with those in the preceding paragraph which led to the ultimate argument for impeachment, and to the form of the Articles themselves.

All these initial formulations and assumptions were, of course, addressed to the difficult question of what "other high Crimes and Misdemeanors" were. In February 1974, however, one of Doar's small group wrote, in a very short memo, "I think you're being too cavalier about bribery." It had been dismissed. In addition to the problems which followed from any Tax Fraud and Emoluments theory, bribery seemed just too difficult to prove. I remember, however, thinking as I read that memo in February that, if bribery was impossible to prove, then at least two parts of the impeachment provision of the Constitution were obsolete; having so much occasion to read the phrase "Treason, Bribery, or other high Crimes and Misdemeanors," it seemed to me that, as far as the presidency was concerned, there was no longer any circumstance in which treason could apply. With the technology of modern warfare, foreign policy—allying oneself, for example, on the instant, with a foreign power previously considered an enemy—was necessarily a matter of presidential discretion. There seemed to be no conceivable sense in which treason, by any definition, could be committed by a modern President.

II. The Defense

To turn now to those apparently unaccountable White House lapses, discrepancies, things that don't make any sense. I begin with a proposition that is arguable and that I don't at all require: that if Nixon himself had been caught, red-handed, in the Watergate he would not have been impeached. Burglary is a literal crime, as required by the White House brief; and burglary of the offices of a political opponent makes it that "political" crime which would satisfy anybody's brief; but I think he could have explained it away. As for the cover-up, the obstruction of justice, if the President had been caught red-handed and lied about it, he would not have been impeached. There would, of course, have been an outcry. But an outcry is not an impeachment. There had to be many, many outcries, with two years of metaphoric bombshells, and massacres, and smoking guns, before the process was truly under way. The proposition is, anyway, unimportant. At the time of the break-in, President Nixon was at Key Biscayne. It is only to speculate that if he had been involved in the Watergate, personally, unarguably, and directly, he would have fared better than he did. Until November 1972, there was still, of course, the election to think about; there might have been a risk in that election. But not impeachment. Apart from his own acts, it took a lot of time, and people, and institutions, the press, the special prosecutor, the Ervin Committee, the courts, before the mechanism was even in place.

It is after he had won the election, however, by an unprecedented margin, that the odd progression of lapses and inconsistencies begins. Why, for instance, immediately, or at least soon after, the election, did the President not pardon Hunt and the other Watergate burglars and continue to comply with their demands? The money was there. The payments would have continued to be clandestine. There had been, then, no confessions by John Dean or Jeb Magruder, no accusation even by James McCord. There had certainly been no resignation by Attorney General Richard Kleindienst; no appointment of Elliot Richardson, bringing with him the special prosecutor, Archibald Cox; no Saturday

Nixon considered sending Attorney General Richard Kleindienst. Then he thought of John Connally. He finally settled on sending Congressman Gerald Ford.

Night Massacre, triggering resolutions of impeachment. The Ervin Committee hearings had not even begun. At least as late as March 21, 1973, the President could have pardoned all the Watergate defendants (thereby relieving the pressure of impending sentences by Judge Sirica) and, simultaneously, vaguely, taken the blame for the whole affair himself. It might have been thought to his credit. There would certainly have been nothing to impeach him for. And, as we have since had good occasion to know, to pardon is the President's constitutional right.

Precisely because it would have been safe to pay, pardon, take the blame after the election, it may, however, have seemed safer not to. No politician would have been positively eager to take the blame. For a long time, I thought that was explanation enough. To turn, though, to another, more familiar set of Why's: the tapes. Why not, when Alexander Butterfield revealed their existence, destroy the tapes? Why turn over to the House Judiciary Committee what were obviously doctored transcripts of tapes, the originals of which the inquiry staff already had? Why not record, and find, and turn over to the committee a single tape on which the President looked good? His defenders, if they had had the wit to do so, could at least have argued that, while there have been grounds to impeach any President, with Nixon there were, on balance, not only extenuating circumstances, but strong, good grounds (the opening to China, peace, détente, whatever) to keep him on. Why not, having decided to turn over any tapes at all, simply *flood* the Judiciary Committee with tapes, masses of tapes, U-Haul truck after U-Haul truck? Every time the staff seemed to find incriminating evidence, the President's lawyers would have claimed to find further tapes, with exculpatory evidence, all of which, in the name of being "fair," the inquiry staff would have been obliged to examine. That would presumably have drawn out the inquiry until at least November 1974—when, almost certainly, most members of the Judiciary Committee would have been defeated in the congressional elections. Their constituents would have been so impatient with how slow they were. In January 1975, the process would have had to begin again and be drawn out—if anyone could bear to continue with it—until President Nixon had served out his term.

Instead of looking separately at those Why's, there are two explanations people like to give for all of them: that Nixon was insane; that it was not his nature, as revealed by the whole history of his life, to yield an inch in anything. One problem with these answers is that, even if true, there is really nothing they explain. To account for apparent lapses in the conduct of a man who rose to great power at least twice, and fell from it, by claiming he was just intransigent or mad is to disregard the particular meaning of any of them. Whatever the state of his sanity or his nature, Nixon was doing all right with them until mid-1974. If there needs to be a single abstraction, or at least a sweeping word, to cover the detail of the mistakes made by and for him, I do not think the word exists. It is for a middle way that is not only wrong; it is the only way that is wrong, a kind of dark side of the Golden Mean. Anything—more, less, everything, nothing—is sometimes better than that way. With the medium lie, the partial erasure, the half-stonewall, the President and his lawyers were always finding their way into it.

But there doesn't need to be an abstraction, a policy or state of character, to explain those Why's. Looking again, in terms of the substance of the tapes themselves, at just that initial question of the pardons, specific explanations do suggest themselves. It has always been an anomaly that whatever we know, from tapes or other sources, about the offenses that led to Nixon's departure from office is based, in one way or another, on what was known to John Dean. Although Dean knew a lot (the Huston plan, the burglary of Ellsberg's psychiatrist's office, the seventeen wiretaps, certain events that preceded the Watergate break-in, the essentials of the cover-up), he was, after all, a minor White House lawyer, who did not even have a conversation of substance with the President until September 15, 1972—when Nixon needed to have talked with Dean as a basis for covering him with a claim of executive, and for good measure, attorney client, privilege. How little Dean was in the President's confidence is clear from the now famous conversation of March 21, 1973, in which he "informed" Nixon of what Nixon already so well knew. And because that conversation subsequently acquired such importance (in terms of Dean's credibility, of Watergate, and of choices Nixon subsequently made), almost all subpoenas of presidential conversations were addressed to the matter of confirming or failing to confirm what John Dean knew—which, as far as the President was concerned, was confined almost entirely to conversations in the spring of 1973, about Watergate.

Except for September 15, 1972. And looking again at the transcript of that conversation, it becomes obvious why the President could not safely grant Hunt and the other burglars pardons: the House Committee on Banking and Currency, the Patman Committee. The problem was never the burglary of the Watergate. The problem was the source of the cash. As soon as hundred-dollar bills in the possession of the burglars had been traced via Bernard Barker's bank account to Mexico (i.e., within five days of the burglary), the course of events was set. The same account had cleared $89,000 in

checks endorsed by a Mexican lawyer, Manuel Ogarrio. And the problem, from the moment the cash was traced to a Mexican bank account, was that the Patman Committee started to look into it—and that committee, unlike any subsequent investigative body, would have known how and where to look. In late 1969 and early 1970, the Patman Committee had held hearings about secret, numbered foreign bank accounts (in Switzerland, the Bahamas, and elsewhere), mainly with a view to the use of such accounts by organized crime. It had not considered their use in a political campaign. By September 1972, it was beginning to look into exactly that. When it was stopped.

Chairman Wright Patman had a list of witnesses concerning cash transactions related to the Watergate. On September 14, 1972, the first of the important witnesses declined to appear. Chairman Patman scheduled another meeting, for October 3, 1972, to proceed with the subpoena power. On October 2, 1972, Assistant Attorney General Henry E. Petersen wrote Patman a letter, hand-delivered, warning that the committee hearings might "not only jeopardize the prosecution" of the Watergate case but also "seriously prejudice" the defendants' rights. If Nixon had granted pardons that argument would, of course, have fallen apart; hearings can hardly prejudice the rights of defendants when the President has already pardoned them. The Patman investigation could have gone ahead. In his conversation of September 15, 1972, the President wanted to insure that it would not. He issued instructions that a number of people be sent to contact the committee with that argument from defendants' rights. He considered sending Attorney General Richard Kleindienst. Then he thought of John Connally. He finally settled on sending Congressman Gerald Ford. (President: "What about Ford? . . . This is, this is, big, big play . . . they can all work out something. But they ought to get off their asses and push it. No use to let Patman have a free ride . . .")

The Patman hearings were suspended. By October 31, 1972, the committee's staff had made a little headway all the same. Even without subpoena power, the staff had found enormous irregularities in the bookkeeping of, among others, the treasurer of the Finance Committee to Re-Elect the President, Hugh Sloan. And in the records of several banks where CREEP had its accounts. And in statements, written and oral, made to investigators about the sources of the cash, by the chairman of the Finance Committee to Re-Elect, Maurice Stans. The staff had also, almost incidentally, discovered a campaign contribution to CREEP via the Banque Internationale à Luxembourg. There was so much cash and so much irregularity, though, that without the power to subpoena records or to take testimony under oath, the committee lost the trail.

Secret foreign accounts as a source of laundered campaign contributions would not, in and of themselves, be enough to impeach a President either. To turn then, for a while, to the questions raised by Nixon's treatment of the tapes. There can hardly be any doubt, in the logic of events, that Alexander Butterfield, who disclosed the existence of the taping system, to the minority staff of the Ervin Committee and then to the full committee on national television, was a plant. The only question for a time was whose. Ever since he testified, Butterfield has managed to imply that he spoke reluctantly, that a question was put to him in such a way that he had to tell, or perjure himself, or compromise his honor, or whatever. This version—the reluctant witness, the clever investigator—has understandably not been disputed by the Ervin Committee staff. But the record, the only record that staff made of that interview at the time, simply does not bear that out. Butterfield volunteered. "I feel it is something you ought to know about," he said, "in your investigations." Having added, in that initial interview, "This is something I know the President did not want revealed," Butterfield went on to tell the full committee, on national television, that the tapes "are precisely the substance on which the President plans to present his defense." He went to considerable lengths then to emphasize—utterly misleadingly, as it turned out—the particular *clarity* of the tapes, and the care with which they were checked, both in the Executive Office Building and in the Oval Office. The EOB tapes were, in reality, so bad that the President himself (in his tape of June 4, 1973) complained of how hard it was to understand them; the group that produced the inquiry transcripts spent approximately one man-hour per minute trying to decipher them. I leave aside the question of whether Butterfield was an agent of the CIA—a rumor reported in the *Times* and elsewhere, and denied by him; although his testimony ultimately backfired, it seems certain that Haldeman (and by extension, Nixon) sent him in.

As a character in all these events, Butterfield has never made much sense. Like Hugh Sloan, Earl Silbert, Henry Petersen, Alexander Haig, Fred Buzhardt, and even James St. Clair, he was one of what became an unlikely herd of self-styled victims of deceit, and then self-serving and improbable heroes of Watergate. Butterfield's wife had been Haldeman's wife's best friend at college. The Butterfields and Haldemans were friends. Butterfield's office was placed to control all access, by persons or documents, to President Nixon's office—surely a sign of an earned trust. When Haldeman needed somebody to hide the $350,000 secret White House fund of cash, the man he used was Butterfield. Butterfield subsequently became an informer, the informer, for the

Everyone who had spoken to the President was put on notice: no one could feel safe.

impeachment inquiry. But, apart from homey speculations about the Nixon marriage (he was, in every interview, the source of the story that the Nixons were not close), he never really said anything. His initial disclosure of the existence of the tapes was, after all, in the President's interest. Everyone who had spoken to the President was put on notice: no one could feel safe. With the misleading emphasis on clarity, people were warned all the more clearly. It is probable that, in three years of only normally sycophantic conversation with the President, there was not a major figure in government, from all three branches, the military, all the various bureaus, agencies, and departments (not to mention minor White House officials who might, like John Dean, have felt under pressure to testify), who did not feel compromised, or even implicated in a felony, on those tapes. The President had them, and had at the time no reason to think he must disclose any more of them than he cared to. The message in Butterfield's testimony was a perfect threat, at the very least, to every Nixon confidant and appointee.

To take just one domestic constellation: the Department of Justice (in the person of Attorney General Richard Kleindienst) and the two major investigative agencies (in the persons of Acting FBI Director L. Patrick Gray and CIA Director Richard Helms) were intimately involved with the obstruction of justice on which the case for impeachment came to rest. When Senator Lowell Weicker, of the Ervin Committee, first suggested that the President might have been guilty of "misprision of a felony" in not reporting to any properly constituted authority what John Dean had told him, and when the House Judiciary Committee considered, as part of its argument for impeachment, the same failure to pass the information on, Nixon may have thought his accusers were not sane. There could scarcely be any legal or constitutional obligation to report a crime to people who were in on it—and for whose complicity he thought he had, among other evidence, the tapes.

If the tapes as a veiled and planted threat did not entirely work, the reason may apply to most adversary situations, in public and in private life, in which both parties are lying and at fault. When people lie in concert, a single, simple truth can be impossible to prove—as in the case of finding, among only three suspects, the individual who produced the eighteen-and-a-half-minute gap. But when they lie in conflict, each liar, in indignation about the other, may begin to feel innocent. People who feel *wronged*, in particular, are likely to forget what regrettable thing it is they themselves did or said. It could be that, in their outrage, those people who were compromised on the tapes simply forgot. Or maybe the threat did work, and they did not forget. History, after all, is left with the remarkable fact that, to this day, nobody except John Dean has come out with testimony, borne out by the tapes or other, which implicates President Nixon in any crimes. And here is the status of the tapes themselves: although Congress has, by special legislation, impounded them (thereby foreclosing Nixon's access to the main weapon he thought he had against others and, simultaneously, precluding access to the best evidence against the man himself), the tapes remain, while the matter is appealed to the Supreme Court, in the EOB. Dr. James Rhodes, the national archivist, has written to Nixon's lawyers and to the White House to request permission to rewind the tapes—which he says are deteriorating because they are loosely wound. Dr. Rhodes has also asked to check which tapes, of what may be as many as 5000 hours of conversation, actually do contain a "signal," i.e., voices—a matter which can be very quickly checked. He has received no reply. It is possible that, among all the parties of interest in the tapes, only the national archivist is concerned with preserving them.

As for why Nixon would submit to the Judiciary Committee doctored transcripts of tapes the staff already had, that nearly worked. The White House released its thick book of doctored transcripts on April 30, 1974. The regular staff, at the time, was in such a daze of fairness that it simply could not find systematic discrepancies between the White House version and the true version of eight conversations that overlapped. When the EOB tapes turned out to be mostly garble, interrupted by hissing, buzzing, and tapping noises, Doar considered abandoning this form of evidence. The lore-manufacturing apparatus, at this point, introduces a blind lady, with miraculously sensitive ears. There was no blind lady. A blind man who listened to the EOB tapes couldn't understand them either. A member of Doar's small group insisted, threatening to resign over the question, that Doar permit him and a tape expert to re-record from originals at the White House, and later (when White House Attorney Fred Buzhardt withdrew access to originals) from the tapes in Judge Sirica's chambers. The tape expert and the member of the group who had threatened to resign found two others to "go into the mud," as they put it, for hundreds of hours, filling out each transcript, word by word. The rest of the small group initiated work on the discrepancies—weeks after the White House transcripts were released.

The grand jury had based its presentment, mainly, on the tape of the March 21, 1973, conversation in the Oval Office between the President and John Dean. St. Clair directed his whole case, such as it was, toward showing that the President had not unequivocally authorized the

[illegible] impression that he [illegible] best of the tapes.

payment of hush money on that day. But the "I don't give a shit . . . I want you all to stonewall it, let them plead the Fifth Amendment, cover-up or anything else . . . save the plan" conversation, which persuaded Republican congressmen Thomas Railsback and Robert McClory to vote for impeachment, took place on March 22, 1973, in the EOB. It was deleted from the White House transcripts and unintelligible on the special prosecutor's. The grand jury never heard it. It is even possible that nobody at the White House ever heard it, that it was always mud. Barely possible. The recopying had just reached the tape of March 22, 1973, when Buzhardt cut off access to the tapes.

In this context, too, there is a particular point about the transcript of June 23, 1972—the tape that was supposed so profoundly to have shocked the President's defenders that it obliged them to persuade him to resign. The few, very few, Nixon associates who have not tried since his resignation to save themselves at his expense claim that both Buzhardt and St. Clair had read in May this transcript which so astounded them in July. Buzhardt has said that he knew that all was lost when, in late July 1974, he listened for the first time to the tape of June 23, 1972, and heard the incriminating word "Gemstone." The inquiry's tape expert says it took months for him to be able to decipher that word. In any case, it is certain that both Buzhardt and St. Clair were familiar with the contents of the tape before the Judiciary Committee voted, and did not trouble to let any of the President's defenders on the committee know. Months later, during the trial of *U.S.* v. *Mitchell, et al.*, it became clear that this transcript also had been doctored; neither of Nixon's lawyers had called attention to those excisions in July when they had listened to the tape.[2] When one recalls that the President, in the statement with which he released the transcript, made a special point of admitting that he had concealed it from his attorneys—when one realizes that the worst strangler, dope-pusher, child-molester, finds it unnecessary in adversity to apologize to his own counsel—it seems possible that in this little episode the President was framed. St. Clair felt that, before the case reached the floor of the House, he ought to show Congressman Wiggins, the President's major defender on the committee, that transcript of June 23, 1972. Having received what must have been a considerable shock when Wiggins, enraged, told him the transcript meant the case was lost (and that if the White House did not at once make the transcript public, he, Wiggins, would), St. Clair returned to his client with an assurance that the problem was not insuperable—as long as the President's counsel did not resign. St. Clair, however, would feel obliged to resign unless the President stated publicly that he had withheld from his attorneys the knowledge of this tape. The President believed, and did as he was told. And St. Clair was able to tell the press that he was not, after all, the first lawyer whose client had lied to him.

As for not having found and turned over a single tape the President looked good on, it is fairly clear, from the tape of June 4, 1973, that Nixon, with the concurrence of Ziegler, and earlier Haldeman (and Haig, with his loving assurance, "Only you. Only you"), was under the impression that he sounded pretty good on most of them. On June 26, 1973, Nixon again listened to himself on tape. Within days, the Ervin Committee heard from Butterfield. And St. Clair, who liked to insist that he was defending the presidency, when he was actually using the presidency to protect a criminal defendant and then using the President himself to protect the President's lawyer's name, never did give a straightforward reply when members of the committee asked whether he had listened to any tapes at all. He could presumably have asked Buzhardt to find a good tape, but neither of the lawyers seems to have felt a necessity for finding one. They were so preoccupied with the miniscule questions posed by the tape of March 21, 1973. Finally, why not have flooded the committee with unassimilable evidence? As well ask why the White House lawyers were remiss in almost everything. There was every reason, however, for President Nixon not to want to do it. And the inescapable inference, I think, consists in the explanation why.

III. What's Missing?

A piece last year in *Esquire* raised the question of how it was that the New York *Times* at first missed the story of the Watergate. One explanation was that *Times* reporters had been following leads on other stories—drug-taking by a high government official, and so on—stories that did not yield. Many papers ultimately made their contribution. The Washington *Star*, interviewing a gardener, discovered that a recent visitor at San Clemente had been Judge Matthew Byrne, of the Ellsberg trial; that broke the story of the offer to him of the directorship of the FBI. The Providence *Journal* broke the story of Nixon's income tax. The Los Angeles *Times*, Jack Nelson in particular, broke various stories. *Time* revealed the seventeen wiretaps. Other reporters uncovered important stories—as, of course, did the New York *Times*. But the reporting that led most directly to

[2] The tape also contains the first mention of G. Gordon Liddy in any recorded conversation. It is the President who mentions him. For some reason, this first mention of Liddy was not brought out by anyone, defender or opponent, as extremely damaging. It seems to me highly probable that President Nixon knew Liddy, personally and extremely well. Liddy, at least, has managed to keep his silence; and he had the presence of mind to shred his hundred-dollar bills.

What did the boss know and when did he know it makes sense only as the question of a jury lawyer whose client is the boss.

Nixon's departure from office was unquestionably Woodward and Bernstein's in the Washington *Post.* The author of the *Esquire* piece concluded that the *Times* had been remiss. It seemed more likely, though, that Watergate, and the important revelations it led to, were not the story. And I don't mean the tip of the iceberg here. I mean that, in spite of all the Watergate cover-up talk on the few known transcripts (out of three years, after all, of recorded conversation), Nixon simply did not think Watergate was the front he was vulnerable on.

If one bears with this line of thought, that Watergate was not the story, then the problem is what was. It is hard to sustain a belief in a conspiracy within his Administration against him. It would be unreasonable to expect to drive from office, by means of tapes in his sole possession, the man who had appointed (and who presumably had compromising tapes of) the presumptive heads of any such conspiracy. Moreover, no evidence on a grand enough scale ever came *out* about President Nixon to support a view that the intelligence agencies had conspired to produce such evidence. Finally, it is clear from the Church Committee documents and from more recent, almost daily news reports that the agencies had problems enough with secrets of their own to preclude an interest in the removal from office of a Chief Executive—when that removal would lead, as it inevitably did, to investigations of the agencies themselves.

Even less convincing are theories that the offenses at the heart of the Nixon Administration had to do with a Hughes connection, or with the Bebe Rebozo $100,000. So many people, Republicans and Democrats alike, have had some sort of Hughes connection. As for Rebozo, a memorandum of June 16, 1972, from Gordon Strachan to H. R. Haldeman, does report a complaint from Florida CREEP contributors that they had "already given through Bebe." But, as events in the intervening years, concerning kickbacks and financial-political scandal of all kinds and on all sides, demonstrate—and as the fact that no article of impeachment having to do with taxes or finances was ever passed confirms—the President could not have been impeached simply over money. Vice President Agnew did have to resign over money, but it seems beyond question that this resignation would not have occurred had it not been for Watergate—when the President viewed the prospect of Agnew's resignation as protection for himself.

The minds of assassination theorists run, perhaps, to murder: the shooting of Governor Wallace; or the crash of the plane bearing Mrs. E. Howard Hunt. But it is unlikely that the Nixon scandal had to do with murder—else why not have murdered a few more people, and those more key? One arrives suddenly at the territory of the florid killings, Jimmy Hoffa, Sam Giancana, John Roselli—and at the Church Committee documents—in a most unlikely way. Because what was happening in the name of intelligence activities provided, at least, a context for the way Nixon conducted his Administration; and because the Church investigation itself provides an example of not wanting to know too clearly, or to state at all, what your own research unmistakably implies.

IV. Transactions

The Church Committee's report on intelligence activities consists of seven volumes. Like most government documents, they are hard to read. The first volume, "Alleged Assassination Plots Involving Foreign Leaders," was, politically, the right place to begin. A bipartisan majority of the committee could agree to investigate these matters—past and foreign—precisely and only because they were remote, indifferent, a subject in which nobody had anything politically to lose. If someone had really managed, in the early sixties, to assassinate Fidel Castro, the whole country probably would have been for it. There was, in those days, no Left to speak of. The rest, among investigators, press, citizens at large, was just consensus and hypocrisy. Consensus, because in the matter of old and failed assassinations, all parties could agree to a distraction from the real and serious questions: whether, for instance, the agencies were doing what they were authorized and paid to do, and at what price; whether there was any way to keep them, domestically, within the law. Hypocrisy, because everyone could agree to be outraged that such plots were ever contemplated—when it was, and is, by no means clear that they were not always part of what has been required, from time to time, of an intelligence agency.

One might even have thought naiveté compounded with consensus and hypocrisy, in that people could seriously entertain the idea that foreign interventions of a high and violent order could be undertaken by underlings, without the knowledge of the various Presidents. This would involve a misunderstanding of the presidency so profound that it brings in just the cast of mind that made it difficult to know what Nixon did: a bureaucratic logic of passing the buck downwards, of presuming, in the name of "fairness," the ignorance of the man in power, beyond the farthest reaches of common sense. What did the boss know and when did he know it makes sense only as the question of a jury lawyer whose client is the boss. The presumption of innocence is, after all, a practical, moral convention for the conduct of fair trials. It was never meant to go any further, to suggest that truth itself, say, consists in the outcome of a conflict of legal strategies. And certainly not to express the Mafia ethic that the lowest takes the rap.

But when the Mafia itself, literally, was brought into

the story, there was something in the details that began to obscure the drift. The collaboration of the CIA and the Mafia in a plan for a foreign assassination had its initial plausibility. The Mafia had had profitable operations in Cuba; it must have longed to have them back. Then, with Sam Giancana, John Roselli, even Judith Campbell Exner, Frank Sinatra, the rococo elements appear—giving rise to at least one speculation, and one certainty. The speculation: that the whole story is backwards, that there might have been a White House connection with the Mafia, perhaps accidentally and carelessly. The connection would have come, inevitably, to the attention of J. Edgar Hoover—whose FBI cannot, as it claimed, have been bugging a Mafia phone, but must have been tapping the White House phones for many years, for the FBI Director's purposes. There cannot have been any other reason to wait *fifty-four* weeks to bring the Roselli-Giancana matter to President John Kennedy's attention. To exactly the degree that a connection is dangerous to the national security, its termination too is presumably no less than urgent; it took Hoover more than a year to feel that urgency. It was obviously just a moment when, for whatever reason, Hoover felt he must deal this card. As for the CIA, when this Mafia connection, by whatever route, came to its attention, the White House might have said—as it said so recently, in the case of the burglary of Ellsberg's psychiatrist's office—Stay away from that. That's national security. The CIA's employment of the Mafia for purposes of assassinating Castro would have become the consensual fiction. Advantage to the Mafia: such private services as having the CIA break into the apartment, years ago, of the singer girlfriend of that jealous lover, Sam Giancana; tax relief; and relief from various other legal pressures, probably.

That would be a speculation. But a certainty is this: that, at some unspecified point in its history, the CIA began to include the investigation and control of narcotics traffic, without mandate or explanation, in its own interpretation of its intelligence work; that, in recent years, virtually every group that has newly claimed the control of narcotics as part of its mission (from Egil Krogh's Plumbers, through the units of John Caulfield and G. Gordon Liddy, when they came from drug enforcement agencies) has used that claim as a cover for some crime; that the CIA, in the course of the Church Committee hearings, was unable to give any satisfactory account either of its dealings with the opium-running tribesmen of Southeast Asia, or for allegations of drug traffic by its own Southeast Asian airline, Air America. A report by the CIA's own inspector general concluded that there was "no evidence that the Agency . . . has ever sanctioned or supported drug trafficking *as a matter of policy.*" (Italics added.) Those words in italics must constitute the weakest disclaimer of criminal activity by a governmental agency ever to be seriously presented in any public forum.

And looking back, then, at the alleged purpose of the association with Giancana and Roselli, there arises at least this question: Does it make sense for the CIA to have enlisted organized crime as an ally in a plan for an assassination of the highest importance, while, at the same time, it claims responsibility for suppressing traffic in narcotics, which is the most highly profitable enterprise for organized crime? Does either half of this proposition, which would make of the secret collaborator in one international enterprise the bitterest conceivable enemy in the other, make any sense? (The fact is, of course, that Castro was not assassinated. Narcotics traffic, on the other hand, has flourished, supporting not only organized crime, but all those bureaucracies whose mission is to suppress it.) The reason the questions are not idle is that there is evidence, scattered throughout the Church Committee report, that, at least since its demoralization in the Bay of Pigs, the CIA has changed from a band of courageous and patriotic amateurs into another sort of band entirely.

Investigative reporting is not what I intended or what I have done here; my politics, such as they are, tend to be moderate. But one cannot help, in looking at documents which might establish a context for a last inference about the Nixon Administration, finding signs, in government in recent years, of something, in economic terms at least, radically amiss—evidence of great improprieties involving immense sums of cash. There are, to take two examples, transactions involving two of the CIA's "proprietaries"—the businesses which the CIA says it must own, as a cover for its intelligence activities. The first is the sale of an airline, Southern Air Transport, which the CIA bought, in 1960, for use in Asia. The CIA bought the airline, which was based in Miami, Florida, for approximately $300,000, and held the shares in the name of a former board member of its other airline, Air America. In 1973, it sold Southern Air Transport, to its former owner, for approximately $6 million—several million dollars less than its book value at the time, and $2 million less than what had already been offered, in cash, by another buyer. The CIA's explanation for the sale was this: it sought "to avoid a conflict of interest." However complicated other aspects of the transaction may have been, one thing is clear: selling to former associates, at a price millions of dollars below book value and below a competing cash offer, does not so much *avoid* as it quite openly declares the most direct and glaring conflict of interest.

The collaboration of the CIA and the Mafia in a plan for a foreign assassination had its initial plausibility.

A second case concerns a $30 million "insurance complex," which the CIA claimed it was obliged to set up abroad, as a result of the death of four agents in the Bay of Pigs. Leaving aside the question of whether it might not have been possible to compensate four surviving families by some means other than an enterprise costing millions, the CIA went on to claim that for reasons of "cover" the insurance complex had to make investments, in foreign and American stocks, and also to keep some "non-interest bearing deposits" in foreign banks. The only "issue" which a section of the report obviously written by the CIA itself could find in the matter of these deposits was that the selection of the banks was "non-competitive"—as though the Agency might have been showing favoritism in its choice of banks, or attempting to influence their policies. That is not, of course, the real issue at all. An "insurance complex," in foreign banks, with a portfolio of foreign and American stocks, and deposits on which it claims to get no interest, is not a necessary or even plausible "cover" for intelligence work, but an opportunity—stated with a brazenness that insults the committee which investigates—for fraud on a scale that no private corporation could contemplate. Since the CIA refuses, on grounds, it says, of national security, to disclose how much money it has at all, and since Congress has so far indulged that refusal, the Agency continues in its special capacity for making illegal profits and never having to account to anyone for them, or to give any explanation of who or what has that money now.

As for the FBI—as portrayed in the Church Committee report, it seems so locked in obsessions of its own that it hardly bears on the Nixon case. In federal government, it has always been vital interests such as defense (and more recently, medical care) which present special opportunities for impropriety, because of their intense importance to a public that, lacking expertise, is helpless in terms of oversight. All this by way of a cursory outline of situations which existed in government, quite apart from the Nixon Administration; and to establish a context for what I think the Nixon scandal itself had to be. It would have to be of an entirely other order than any of these, as it were, more normal scandals; and it required, not the most florid and aberrant explanation, but the worst and perhaps the most obvious. And here's what I think, inescapably, it has to be.

V. Bottom Line

People are accustomed to speak of the tragedies of Vietnam and Watergate, or of the post-Vietnam post-Watergate morality, as though they were linked only in some abstract, ethical sphere. Then, one looks at those transcripts once again. In his conversation of February 28, 1973, with John Dean, President Nixon discussed an allegation that, in 1968, at President Lyndon Johnson's insistence, the FBI tapped conversations between Agnew, the candidate for Vice President, and Anna Chennault, widow of General Claire Chennault and president of Flying Tiger Airlines. The rationale for this tap was supposed to be that Mrs. Chennault was urging the South Vietnamese to slow down or stop the peace negotiations in Paris, to help assure the election of a Republican administration, under which, she was supposed to be telling the South Vietnamese, they would get better terms.

Mrs. Chennault says she did not even know Spiro Agnew in 1968; but that is not the point. She says she knew Richard Nixon very well. On February 28, 1973, President Nixon was preoccupied only with whether there had been such a tap, not with the rationale behind it. One remembers that, less than a week before the 1968 election, the South Vietnamese did stop the negotiations cold. Less than a week. One remembers, too, the remarkable suddenness and, even for refugees, unprecedented hysteria and chaos with which the war, in March 1975, finally did end; and the apparently real fury and sense of betrayal President Thieu expressed, when he so precipitately, and it seemed spitefully, gave up. And one cannot help thinking back on 1968, and believing that, in 1972, there must have been a deal. On October 26, 1972, two weeks before the election, Henry Kissinger said of Vietnam, "Peace is at hand." Peace is at hand. There can and could be no doubt that he sincerely meant it. Within the week, however, Alexander Haig flew to Vietnam. There was unprecedented bombing and the mining of Haiphong. After all that, in January 1973, when the accords were signed, the terms were in no substantial way different from the ones Henry Kissinger had gotten, months earlier, when he genuinely thought peace was at hand. Then, one remembers we were pouring huge amounts of money into South Vietnam; and that the government there, being famously corrupt, was getting a lot of it. One remembers that President Nixon himself was getting a lot of illicit campaign contributions, from a lot of strange sources, and diverting at least some of them to his personal use. And one can't help thinking that, in 1972, the South Vietnamese administration, not wanting peace to be at hand just yet, used some of the enormous amounts of money we were pouring in there to bribe our Administration to stay in.

All right, it is difficult, monstrous; and, of necessity, only an inference, impossible to prove. But one looks back—thinking, not laundered money, foreign money. It is hard to recall the sums and characters, where they came from and where they went. But, early in the Ervin Committee hearings, there is the dim sound of the testi-

With the revelations of payments by American companies to foreign officials, it began to seem highly probable that some of that money was going to find its way back.

mony of CREEP Finance Chairman Maurice Stans. He mentioned a contribution, $30,000 in cash, from a "Philippine national"—a contribution, Stans said at the time, he had been too fastidious to keep. Gordon Liddy's successor as counsel to the Finance Committee to Re-Elect, Stans said, had told him that it would not be legal to accept such money. So Stans had arranged, he said, with Fred Larue, an assistant to John Mitchell at CREEP, to return that $30,000 to its source. "Since then, and this is more irony, Senator," Stans went on, amiably, in the ensuing colloquy, he had learned from a Justice Department official that it would have been "perfectly proper" to accept that money from a foreign national, "so long as he is not an agent of a foreign principal." That is what Stans testified on June 12, 1973.

It would not, as it turns out, have been "perfectly proper" to accept a campaign contribution from a foreign national. It would have been illegal. But the sum itself is so trivial, $30,000. One wonders why Stans testified at such length about it. Hugh Sloan, the Finance Committee treasurer, testified at length about it too. It is not until *four volumes* later, in the records of the Ervin Committee hearings, that one finds any correspondence that deals with this transaction. It occurs in support of the testimony of Fred Larue, who had paid some of the hush money to the burglars, and who was by then negotiating his plea. Stans had not asked Larue to return any money to any source, it turns out, until May 9, 1973—more than a year after the Finance Committee had accepted it; but less than a month before the Ervin Committee hearings began. And even in his letter of May 9, 1973, Stans did not specify to whom the money was to be returned. Larue simply wanted to return the CREEP money in his possession. His counsel *did* specify, more or less. The $30,000, Stans's attorney finally wrote, in acknowledging a letter dated May 16, 1973, from Larue's attorney, was "paid" to Anna Chennault, for "return to foreign nationals"—nationality, Philippine or other, unspecified.

The only reason this trivial amount, this $30,000, came to light at all was that it was part of $81,000 in cash that Hugh Sloan was stuck with when the source of the cash in the possession of the Watergate burglars had been traced to those checks endorsed by the Mexican lawyer Manuel Ogarrio. And that, one recalls, was the cash that had interested the Patman Committee. At first, Stans had told the committee staff that the money came from Ogarrio; then, that he could not disclose who it came from, since they were Texans to whom he had promised anonymity; finally, that he did not know who the donors were. The Patman Committee staff, having coincidentally discovered, at about the same time, that $700,000 in cash had come to CREEP, in a suitcase, from an American corporation by way of Mexico, was at first misled into thinking that the story had to do not with contributions by "foreign nationals" but with donations by American corporations and citizens (illegally and in secret) by way of foreign banks. As it turned out, the story was both: Americans and foreign nationals. But the committee, lacking its subpoena power, never got Stans or any other CREEP official under oath—as the Ervin Committee, so many months later, did. And that petty $30,000, within the $81,000 (which remained of the original Ogarrio $89,000), came back to haunt Stans, Sloan, Larue, CREEP, Mrs. Chennault, and the country as a whole. On June 23, 1972, Stans had instructed Sloan to give the $81,000 to President Nixon's personal attorney, Herbert Kalmbach, who gave it to Larue, who happened to use it as part of the hush money. And Larue plea-bargained. So, in whatever disjointed form, the $30,000 had to be accounted for. And it was foreign.

And thinking foreign, there are anomalies great and small, everywhere one looks. Hugh Sloan explained to the Ervin Committee that he had been unable to give a proper accounting of CREEP funds between April and July 1972, because Kalmbach had been "abroad." Abroad. There is no reason why the President's personal attorney and principal fund-raiser should not travel abroad. The height of the political campaign just seems an odd time for his holiday. In his own testimony, Kalmbach always insists, and when he does, elicits sympathy, that he was deceived and "used." In the memorandum of June 16, 1972, however, there is Kalmbach, returned from abroad, requesting assignments that are "tough and dangerous." Within days, he was raising, from domestic sources this time, the cash for the hush money. Kalmbach had already raised more than $12 million for the 1972 campaign. A political matters memorandum as early as October 7, 1971, says, "Kalmbach keeps asking for tough, interesting assignments." On February 1, 1972, he is reported to have declared himself "willing to run the very high risk of violating the criminal provisions" of campaign spending legislation.

And even in what remains of the records of CREEP itself—on file, as required under post-Watergate law, at the Federal Election Commission—one finds both foreign and domestic oddities. What was still until last year the Committee to Re-Elect the President is now called the 1972 Campaign Liquidation Trust. It reports an interest income of $80,000 a year, with this income annually exceeded by expenses—as might be expected in a fund that wants to liquidate. It is only that campaigns normally end with deficits, and that an interest income of $80,000 reflects a lot of capital—which raises the

question of who or what has that money now, and by what right. Some domestic curiosities: until October 1976 the Campaign Liquidation Trust still had on its books a suit against John Dean and his attorney–for the return of $15,100, paid "on or about April 12, 1973." (The suit was settled with the return of that money to the Trust.) On a single day, May 3, 1973, six months after the President had, after all, been overwhelmingly re-elected, the Committee to Re-Elect listed on its books seven separate payments of $3000 and one of $2500 to Maurice Stans, as "Salary"–making his salary for that day $23,500; four days later CREEP paid him another salary of $3000. It paid Stans that sort of salary on a lot of days. More surprisingly, perhaps, CREEP was still paying Hugh Sloan–who made such an issue, before the Ervin Committee and elsewhere, of his resignation, on the grounds of conscience, in July 1972, on account of the Watergate–considerable sums every month until at least spring 1973. In January 1973, Sloan was still carried on the books as "Treasurer"; but his salary had become "Consulting Fee." By February, his title had become "Consultant." On February 15, 1973, Sloan's consulting fee was $1320; on February 21, 1973, $1080, and so on. Unlike John Dean, Sloan was never sued by the Committee to Re-Elect. But Sloan had, after all, handled enormous cash contributions, as treasurer to the Finance Committee, in the 1968 campaign as well; and, unlike Dean, he could be presumed to know in 1972, although he never really told, about the sources of the cash.

In the records of CREEP on file at the Federal Election Commission, there are only slim indications of contributions from any foreign source. On February 27, 1973 (again, months after Nixon's re-election), something called "Committee of United States Citizens in Asia for Nixon" did file a registration form. In answer to question (a) "Will this committee operate in more than one state?" the committee replied, "No–only internationally, outside the U.S." In answer to (d) "Will it support a candidate for President or Vice President in the aggregate amount of $1000 or more during the calendar year?" the reply was "Yes." For (e) "Does this committee plan to stay in existence beyond the current calendar year?" another "Yes." And in answer to (f) "If so, how long?" there is "Perpetually." Under "Name of bank, repository, etc." the reply is "None." And "List all reports required to be filed by this committee with states and jurisdictions" elicits another "None." Under a question asking the identity of the committee's "custodian of books and accounts," there is "Marshall Hendricks, Lewis Burridge, Anna Chennault." In its Statement of Affiliated and Connected Organizations, the committee listed "(a) Committee of United States Citizens in Hong Kong for Nixon (b) Committee of United States Citizens in Japan for Nixon (c) Committee of United States Citizens in Korea for Nixon," and so on.

There is, on the surface, no absolutely obvious reason why–in late February after the November in which a President, who is constitutionally precluded from serving more than two terms, has already been elected to his second term–citizens should not establish as many Asian branches for his re-election as they like, even listing no "bank, repository, etc." and with an intention (although this might suggest an echo of the Narrow Escape theory) to remain in existence "perpetually." But within a month–by March 22, 1973, in fact–the Asia Committee of CREEP and its affiliated committees found themselves, all together, unable to claim contributions in excess of $1000. Having planned to stay in existence "perpetually," they nonetheless asked to be allowed to cease to report. The Asia Committee wrote to the Office of Federal Elections, seeking "the approval of your office to cease reporting, until such time in the future as we may have receipts in excess of $1000." That a Nixon campaign committee in Asia should reserve to itself the possibility of such receipts at a "time in the future" raises questions about which one does not care to speculate.

But it is hardly new that there were irregularities everywhere in the finances of the 1972 campaign. Detail only obscures the logic of historical events. In thinking about international political contributions, the logic has normally gone the other way–contributions by the American government or by American corporations to officials, or parties, or governments abroad. But with the by now almost weekly revelations of payments by American companies to foreign officials in Europe, Asia, South America, and the Middle East, it began to seem highly probable in the very nature of secret cash transactions that some of that money was going to find its way back; and/or that some foreign interests rich enough to afford it were going to lobby, with cash, in America. Taking only defense matters, there was for instance Lockheed: with payments in Italy, Japan, and the Netherlands, the cash seemed to flow in only one direction. In June of this year, however, there were signs that it had also, for years, been traveling the other way. The special prosecutor's office revealed that a citizen of Saudi Arabia, having received over the years more than $100 million from Lockheed for his influence in selling aircraft to the Saudis, had contributed $50,000 to Nixon's 1968 campaign; in May and November 1972 the Saudi citizen withdrew $200 million from his account in Bebe Rebozo's bank. Because of a "burglary" in Las Vegas which was reported within a week of the start of the prosecutor's investigation, the Saudi lobbyist could

Such a bribe and the taking of it would have cost not just the American taxpayer's money but his sons.

produce no records of how that $200 million was spent. Or Grumman. On September 13, 1976, there was the former president of Grumman International testifying, under oath, that in 1972 a White House official had suggested that Grumman contribute $1 million to CREEP for the President's "assistance," on a forthcoming trip to Honolulu, in getting Japan to buy Grumman fighter planes. In April of 1972, a Grumman official had visited the White House to discuss sales of fighter planes to Iran; a month later, on a trip to Iran, Nixon agreed for the first time to sell Iran virtually any weapon it wanted. Signs, anyway, of a rich foreign country that could afford to pay to influence an American decision now and then.

Looking further back, however, at the Patman hearings on secret foreign bank accounts, one finds, as early as 1968, premonitions of what I think must have happened in 1972. In 1968, well before Nixon's first inauguration, the Patman Committee already had found "kickbacks by Vietnamese importers to American exporters, involving a huge U.S. Corporation. Again, Swiss bank accounts were used." Assistant Attorney General Fred M. Vinson (who, in 1973, was the attorney for Fred Larue in his tractations, over the $30,000 from a foreign national, with Maurice Stans) testified, in 1968, as the Justice Department expert on these illicit foreign deals. But the scale, then, was different, and the purpose was different. No one suggested, in 1968, that the Vietnamese kickbacks, through foreign banks, went into American politics.

As, by 1972, I think they clearly did. Turning away from detail, one is struck by the logic overall. It does not make sense, for example, that the President's fundraisers would put by far the greatest pressure of any political campaign in our history on so many sources, individual and corporate, and *reject* a contribution from the most logical of them all: the administration of South Vietnam, which had the most to lose if the President's opponent (who had announced a willingness to go, it must be remembered, to Hanoi on his knees for peace) actually won. And although the President might have liked to announce the war's end before any ordinary election, by the time he sent Haig to undo Kissinger's late October accords, he knew he did not need, in 1972, any peace to win. At the same time, Nixon never seems to have felt any diminution of need for campaign contributions. In the fall of 1968, the South Vietnamese had only had to dig in their heels and wait, while the war cost Humphrey the election. By the fall of 1972, if they wanted the support of the Administration, I think they had to pay.

And even the structure of the underlying proposition had occurred, minus only cash, in another context, at least once before: in the secret bombing of Cambodia. The rationale for lying to the American people, and to their elected officials, about the bombing of Cambodia was, it was said at first, national security. But that made no sense. Since the enemy knew, and certainly the Cambodian people who were being bombed would know, Americans were the only people it was being kept secret from. It was then that the entire logic advanced a step, and the circle closed. Sihanouk, the Administration said, had invited or acquiesced in the bombing of Cambodia. In order that he could conceal this complicity from his own people, our Administration had to keep it secret, too, from ours. It is the logical substructure that matters here. A pact can be arrived at, secretly and therefore deniably, between our leaders and theirs, which entails the killing of their people, in their own country, in their own ignorance of their leader's consent; and which entails the loss of our pilots' lives, in their country, without our knowledge of our leader's consent. That logic requires only the addition of money, money contributed by South Vietnamese officials to an American President, to explain why peace was not quite at hand in October 1972.

If one accepts, for a moment, the proposition that the awful secret that underlay the Nixon Administration was money, from that source and for that reason, there is the question what would have happened to the money, and how the former President could reach it now. John Wilson, the attorney for Haldeman and Ehrlichman, was the lawyer who, more than twenty years ago, won the major settlement which left the secrecy of Swiss bank accounts inviolable, even if—as in the case of the German investors in I. G. Farben, which became the American company General Aniline—the depositors in those accounts were likely to be former Nazis, who were precluded from access to their investments, under American law. At secret foreign bank accounts, the trail always ends. As for how Nixon could reach the money, however, there are several possibilities. There is, for instance, Rabbi Korff.

Rabbi Korff did not even enter the story until July 1973, when he took out a $5000 ad in the *Times*, in the name of the National Citizens Committee for Fairness to the President. A genuine friend of Nixon's since then, and truly committed to the former President's vindication, Rabbi Korff has been an unusual figure all along. Every few months, Korff holds a press conference to announce that the contributions he has been receiving from all over the country (for what has now become the United States Citizens' Congress and the President Nixon Justice Fund) are great, but not sufficient to cover the former President's legal fees. Then, he journeys to San Clemente, to report on the former Presi-

dent's frame of mind. It stands to reason that, although there may be contributions every time the Rabbi calls a news conference (among the largest of them are those of the Dewitt Wallaces of *Reader's Digest*, and strangely enough, those of Rabbi Korff himself, who is paid a salary by the committee, from which he contributes to the fund), citizens are not racing to send in their checks for the former President's defense. Then one remembers that the argument for those contributions—compassion, *legal fees*—precisely duplicates the cover story for payments to the Watergate burglars. It may be coincidental. It is just a cast of mind.

Whatever else is true, it is clear that Rabbi Korff has access to money, and both the opportunity and the explanation for conveying it to the former President. Korff's background has always been international, not to say swashbuckling. In the early forties, he was, he says, raising money to buy passports in Paraguay for Jewish inmates of Nazi camps and, by means of contacts in Switzerland, paying money to Himmler to get those prisoners out. There follows a period in which, Korff says, he spent a lot of time abroad, raising money for the Stern Gang and the Irgun. When one asks raising money from *whom*, the Rabbi becomes vague and laughs. In the fifties and sixties, Korff actually had a congregation, a small one, and wrote a lot of speeches, he says, for Democratic congressmen. He now travels a lot abroad. And it proves, of course, nothing more than that the former President has got a loyal, well-traveled, fund-raising friend, whose declared source of funds—citizens sending in a dollar here, a dollar there—would not amount to much or make much sense. It has also been probable from the first that those "loans" from Robert Abplanalp and Bebe Rebozo were never loans in any normal sense. They were not meant to be paid back. Nor were they gifts. What seems clear if one pursues the records and this line of reasoning is that the money Nixon's friends have "loaned" him is in fact his own, which he cannot, for one reason and another, reach any other way.

But the story, the inference really, is not concerned with now—but with the fall of 1972, in Washington and South Vietnam. As for who would know, the South Vietnamese, of course; but they have their own foreign accounts, and no one would believe them anyway. As for who else—all those international money-raisers, Stans, Kalmbach, Connally, perhaps. And Haig. At about the time of the Nixon pardon, President Ford kept making decisions, and then reversing them, about whether or not former President Nixon would have access to his own presidential papers; in the end, Ford let only one set of the presidential papers leave the White House: the ones belonging to Alexander Haig.

As for Nixon himself, he would, I suppose, have managed to think that he made such a deal on patriotic grounds, in the interests of the free world. And it is not so bad to have been paid to do what one might have done out of conviction anyway. Except for this: that he was President of the United States. And that unlike Watergate, unlike Rebozo, or Hughes, or the CIA, or any previous administration in our history, such a bribe and the taking of it would have cost not just the American taxpayer's money but his sons. And if the South Vietnamese government was bribing an American President, with American money, to keep our investment and our boys there any longer than was necessary, it is not to be borne. And that's what I think they did. Like the underlying thesis of Moses and monotheism, the underlying proposition is what we have all, somehow, shared all along. It explains why all the many volumes produced by the inquiry, as Congressman Wiggins correctly pointed out, don't contain enough of a case to fill a single pamphlet. It explains why, in spite of Nixon's departure, nothing was resolved, or laid to rest. The impeachment inquiry did what it could, and the President was removed. But we were, I think, of legal and political necessity, at the tip of the wrong iceberg. The story that required the end of the Nixon presidency, I think, was not Watergate or even "other high Crimes and Misdemeanors." It was Treason and Bribery. I don't know what follows from it. I think it is the bottom line. It has brought a disorientation beyond reckoning. People died for it. We are going to have to live, I think, with that. □