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WATERGATE AND THE JUDICIARY, 1972-1974

By

David W. Guard

A THESIS

Submitted to
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ABSTRACT

WATERGATE AND THE JUDICIARY, 1972-1974

By

David W. Guard

The purpose of this thesis is to examine the role of the judiciary during the Watergate scandal between 1972 and 1974. In particular, the trial of the Watergate burglars and the battle for the White House tapes will be emphasized.

This examination is primarily based on court opinions, additional legal documents, personal memoirs, and journalistic works. Several secondary sources are also cited throughout the study.

Three major findings are reached by this thesis. First, President Richard Nixon would have undoubtedly finished his second term had the judiciary not taken an activist and independent role in uncovering the scandal. Second, the judiciary assumed this activist demeanor because the administration participated in extensive illegal conduct which was not related to national security. Finally, the Watergate experience serves as no guarantee that similar abuses will be uncovered by the judiciary in the future.

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For Barbara Guard and Bryan Griffin

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I

The Watergate scandal during the Nixon presidency is an important topic for historians to study for a variety of reasons. First, Richard Nixon remains the sole president who resigned his office in American history. The type of corruption and criminal activity which led to this resignation was unprecedented. Although several presidents, including Ulysses S. Grant and Warren G. Harding, were noted for their appointments of unscrupulous officials, their administrations were not characterized by a planned attempt to sabotage a free election and subvert the Constitution. Few scholars doubt that Nixon would certainly have been impeached and removed from office had he not voluntarily resigned.

Second, Watergate profoundly affected the public's attitude toward government. Following the scandal, Americans became disillusioned with political officials and the policies they implemented. As a result, the importance of integrity became a salient issue in the 1976 presidential campaign and contributed to the election of Jimmy Carter.

Third, Watergate seriously undermined the notion that the American presidency should be an imperial institution. The forceful leadership that the public expects of its presidents has become tempered with the expectation that accountability will also be provided.

Finally, the roles of the legislative and judicial institutions have been reassessed. Although historians have extensively studied the growth of congressional power and leadership since Watergate, little attention has been given to the importance of the judicial branch and the extent to which courts contributed to the fall of Richard Nixon in 1974.

The purpose of this paper is to examine the role of the judiciary

during the Watergate scandal. In particular, the trial of the Watergate burglars and the battle for the White House tapes will be emphasized. This discussion is followed by an analysis that addresses the significance of the judicial contribution to the fall of Richard Nixon.

II

At the outset, it is helpful to consider the events that led to Watergate. Many people, in defense of Nixon, have suggested that the burglary represented nothing more than ordinary politics and that the administration was unjustly driven from power by liberal Democrats. This is a serious misrepresentation. In point of fact, the administration was responsible for illegal conduct shortly after it assumed power.¹

Its specific involvement began in response to an article which appeared in the New York Times on May 9, 1969 disclosing that secret bombing raids had been conducted against Cambodia. Enraged, Nixon and Secretary of State Henry Kissinger immediately suspected that leaks from within the executive branch led to this disclosure. Though untrue,² wiretaps were consequently ordered by the president against four newsmen and thirteen White House, State, and Defense Department employees. While Nixon assumed that these taps were permitted under the Crime Control Act of 1968--which was later declared unconstitutional by the Supreme Court in 1972--he ordered an additional tap that was known to fall outside the protection of this law. Specifically, the FBI was directed to tap the phone of syndicated columnist Joseph Kraft for writing a critical piece on Nixon. But because no one seriously suspected Kraft of leaking information, Director J. Edgar Hoover refused. Instead, White House Chief of Staff H. R. (Bob) Haldeman instructed Jack Caulfield--a retired police officer--to carry out the order. He obeyed. Less than one year into his administration,

therefore, Nixon had participated in illegal wiretapping which violated both the letter and spirit of the law. Significantly, the entire scheme failed to link anyone to a specific national security leak.³

Despite these disappointing results, Nixon's obsession with national security continued. Accordingly, he approved of what became known as the "Huston Plan" in July 1970. Named after Tom Huston, a second-echelon White House aide and committed right wing ideologue, the plan specifically authorized "surreptitious entry--breaking and entering, in effect--on specified categories of targets in specified situations related to national security."⁴ In addition, the proposal sanctioned increased electronic surveillance, the opening of anyone's mail by government officials, and the placing of informants on college campuses. In short, Nixon authorized the federal government to spy on any American believed to threaten national security. However, he decided to rescind the plan because J. Edgar Hoover raised legal and political objections to its implementation.⁵

Meanwhile, the White House prepared an "enemies list" designed to attack potential administration critics. This list eventually targeted approximately two hundred individuals and eighteen organizations, including Edward Kennedy, Joe Namath, the president of Yale University, the National Education Association, and the World Bank. In his recent memoir In The Arena, Nixon attempts to distance himself from the list by arguing he never saw it. Although evidence is lacking that would either support or refute this assertion, the White House tapes clearly indicate that he directed his aides to prepare a list as a means of harassing or embarrassing critics. Weeks before the 1972 election, Counsel to the President John Dean told Nixon that he was keeping "notes on a lot of

people who are emerging as less than our friends because this [election] will be over some day and we shouldn't forget the way some of them have treated us." The president enthusiastically agreed. "I want the most comprehensive notes on all those who tried to do us in," he declared. "They didn't have to do it. If we had had a very close election and they were playing the other side I would understand this. No--they were doing this quite deliberately and they are asking for it and they are going to get it."⁶

With this information, the administration attacked its opponents through several methods. Excessive tax audits, for instance, were conducted against Washington Post lawyer Edward Bennett Williams and Democratic National Chairman Larry O'Brien. Moreover, the White House sought to embarrass Congressman John Conyers by spreading rumors that he had a "known weakness for white females." And because he was obsessed with a possible Kennedy candidacy in 1972, Nixon ordered his aides to uncover damaging information surrounding the Chappaquiddick incident which caused the death of Mary Jo Kopechne in 1969. This misuse of presidential power was based on Nixon's exaggerated belief that the federal government was riddled with liberal elites who sought to undermine his administration.⁷

An additional indication that criminal conduct permeated the Nixon presidency was the establishment of the Special Investigations Unit known as the White House "plumbers." Staffed by Egil "Bud" Krogh, E. Howard Hunt, David Young, and G. Gordon Liddy, its purpose was to "stop security leaks and to investigate other sensitive security matters."⁸ Specifically, the unit sought to investigate Daniel Ellsberg who leaked the "Pentagon Papers" to the New York Times for publication in June 1971. The plumbers subsequently broke into the office of Ellsberg's psychiatrist,

Lewis Fielding, on September 3, 1971. Although they failed to obtain information that would discredit Ellsberg, the unit continued to pursue such illegal activities as falsifying Kennedy administration diplomatic records, wiretapping, and hiring thugs to attack antiwar demonstrators. The plumbers were ultimately disbanded in late 1971.⁹

As the election of 1972 approached, Nixon formed the Committee to Re-Elect the President (CREEP) to manage the campaign. Encouraged by the White House, CREEP officials also participated in illegal conduct. Blackmail, for example, was used to coerce wealthy individuals into contributing to the Nixon campaign. This tactic was blatantly used against George Steinbrenner, owner of the New York Yankees. A longtime Republican, Steinbrenner switched to the Democrats during the 1960's and soon became a significant financial contributor to the party. After Nixon's inauguration in 1969, the federal government began to harass him for possible violations of business law. The Labor Department, for instance, investigated safety standards and working conditions; meanwhile, Justice was looking into alleged violations of antitrust regulations.¹⁰

Steinbrenner was then informed by his company lawyer and deputy finance chairman of CREEP, Thomas Evans, that federal harassment might end if he paid a visit to Maurice Stans, finance chairman of the campaign. At their meeting, Stans requested that Steinbrenner establish a committee of Democrats for Nixon in Ohio. Steinbrenner refused. He later informed Herb Kalmbach, a fund raiser for CREEP and the president's personal attorney, that he would be willing to contribute \$25,000. "Twenty-five is not satisfactory," Kalmbach replied. Steinbrenner was then told to come up with \$100,000; thirty-four separate checks would be necessary to circumvent federal campaign laws. He agreed. This blatant use of blackmail to obtain contributions

illustrates the extent to which corruption permeated the Committee to Re-Elect the President.¹¹

In addition to these tactics, Donald Segretti was hired by Dwight Chapin, deputy assistant to the president and appointments secretary, to "disrupt, ridicule and harass the Democratic [presidential] candidates and stir up as much intramural bickering as possible."¹² To that end, he and other campaign officials resorted to such tactics as spreading rumors about the sexual preferences of candidates, sending critical literature about Ted Kennedy in fake Muskie envelopes, and arranging Muskie's chauffeur to inform CREEP about key developments in the senator's campaign. Moreover, the administration sought to discredit George Wallace's American Independent Party as a means of preventing another formidable third party candidacy. To accomplish this goal, the American Nazi Party was paid between \$5,000 and \$10,000 to persuade American Independent Party voters in California to switch their party preference. Although Nixon has claimed since his resignation that pranks had been commonly used in previous campaigns, the particular tactics employed by CREEP were unprecedented in their illegality and misuse of presidential authority.¹³

Consistent with this series of "dirty tricks," G. Gordon Liddy, former plumber and finance counsel for CREEP, proposed a campaign of political espionage to Attorney General John Mitchell on January 27, 1972. Termed "Operation Gemstone," this scheme called for the kidnapping and drugging of hostile demonstrators at the Republican convention, the use of callgirls to embarrass Democratic Party officials during their convention, and sabotaging the air-conditioning equipment at the Democratic convention itself. Rejecting this proposal, Mitchell--who had resigned the office of attorney general to become director of

CREEP--approved a scaled down plan on March 30. This version authorized the bugging of the Democratic National Committee offices in the Watergate complex.¹⁴

On June 17, five men were arrested during a second attempt to bug the Watergate. Those arrested were James McCord, security chief for CREEP, Bernard Barker, Frank Sturgis, Eugenio Martinez, and Virgilio Gonzales. Subsequently arrested for the incident were E. Howard Hunt, a former plumber and consultant to the White House, and Liddy.¹⁵

III

These background events are significant for two reasons. First, it is clear that the Watergate bugging was not an isolated incident; rather, it was part of an illegal scheme to harass all potential political opponents and undermine a free presidential election. Indeed, the crimes committed by administration officials by June 17, 1972 were already extensive; they included wiretapping, sabotage, espionage, blackmail, burglary, and subversion of the Constitution. Because this pattern of conduct began in 1969, the distinction between legal and illegal activity had become blurred to the extent that constitutional duty and ethics were alien notions to White House employees.¹⁶

Moreover, the extensive nature of the illegal conduct made the subsequent Watergate cover-up an almost inevitable consequence. In addition to its role in the bugging itself, the administration sought to hide from the public its involvement in wiretapping, the approval of the Huston Plan, the enemies list, the Ellsberg affair, and Segretti's campaign of dirty tricks. Administration officials feared that a failure to cover-up its involvement in Watergate would expose their entire record and jeopardize Nixon's re-election.

Accordingly, the cover-up began immediately. On June 18, Mitchell issued a hurried statement from California denying CREEP's involvement in the burglary. "I am surprised and dismayed at these reports," he declared. "There is no place in our campaign or in the electoral process for this type of activity, and we will not permit or condone it."¹⁷ In addition, press secretary Ronald Ziegler argued that Watergate was merely a "third-rate burglary attempt."¹⁸

On June 23, just six days after the break-in, President Nixon became personally involved in the cover-up. That day, Haldeman presented a plan in the Oval Office directing the CIA to order the FBI to drop its Watergate investigation. "All right, fine," Nixon replied. "Say [to the CIA], 'Look, the problem is that this will open the whole, the whole Bay of Pigs thing, and the President just feels that, ah, without going into the details--don't, don't lie to them to the extent to say there is no involvement, but just say this is a comedy of errors, without getting into it, the President believes that it is going to open the whole Bay of Pigs thing up again. And, ah, because these people are plugging for (unintelligible) and that they should call the FBI in and (unintelligible) don't go any further into this case period!'"¹⁹ This initiative, however, failed because CIA director Richard Helms refused to comply.²⁰

Consequently the administration paid "hush money" to the arrested Watergate burglars. Specifically, between \$423,000 and \$548,000 was paid in exchange for silence concerning the involvement of administration officials.²¹ Because Liddy and Hunt were former plumbers, these payments also purchased their silence on the Ellsberg affair and other crimes committed by the White House. Despite Nixon's continued denials, it is clear that he became deeply involved in the cover-up as a result of the extensive illegal conduct that had occurred throughout his

administration.

The events through June 17 were also significant because of their contribution to a constitutional crisis in which the judiciary would play a substantial role. Its initial involvement was triggered by the five arrests at the Watergate. Shortly after the bugging, Judge John J. Sirica of the United States District Court for the District of Columbia impaneled a federal grand jury to investigate.²²

Its efforts, however, were impeded by the cover-up. Jeb Magruder, for example, committed perjury on several occasions before the grand jury to prevent CREEP employees, other than the seven men already arrested, from being implicated. As the president's deputy campaign director and the next man up the chain of command from Liddy, Magruder had known about and participated in the planning of the break-in weeks before its implementation. Following the arrests in June, he became deeply involved in the cover-up by destroying evidence and permitting hush money payments for the defendants to be made. Although federal prosecutors were largely unaware of this participation, Magruder was summoned for an initial appearance before the grand jury on July 5 to explain his knowledge of the burglary. On this occasion, his testimony was brief and limited to organizational matters. Specifically, he described his basic role at CREEP, how the campaign was organized, and how its officials interacted with the Finance Committee. Magruder was then excused from the proceeding and left with the impression that he was not seriously suspected of any wrongdoing in the affair.²³

Later that week, three FBI agents went to see Magruder and began to ask questions regarding the money which had been used to fund the break-in. Conceding that CREEP had authorized payments to Liddy for

intelligence-gathering operations, he denied any knowledge of Liddy's specific budget or illegal plans.²⁴

In early August, prosecutors informed CREEP's lawyers that Magruder was an official target of their investigation. Accordingly, a second grand jury appearance was scheduled for August 16 as well as a preliminary session with two U.S. attorneys to be held one day earlier. On the fourteenth, Magruder paid a visit to John Mitchell who summarized the broad outline of the cover-up story to be used during the testimony. The next morning, John Dean rehearsed him meticulously by asking a myriad of questions pertaining to CREEP's activities. That afternoon, prosecutors demanded to know why Liddy had been given \$250,000 for intelligence-gathering and security. Magruder replied that Liddy was instructed to prevent violence by radicals from erupting at the Republican convention in Miami Beach; such fears, he insisted, were legitimate due to the events four years earlier in Chicago. When asked to explain why CREEP failed to document how Liddy had spent the money, Magruder vaguely argued that a loosening of controls had occurred because of Mitchell's preoccupation with charges of unethical activity in the campaign. Finally, Magruder argued that he was not involved with any of Liddy's activities because of his personal dislike for the man. After hours of questioning, he left the U.S. attorney's office confident that his perjured testimony had been successful. The prosecutors' anticlimatic questions before the grand jury one day later further indicated that the investigation would not implicate leading officials in Nixon's campaign.²⁵

This optimism was short-lived. During the last week of August, the grand jury subpoenaed Magruder's office and indicated that further testimony would be necessary. Panic swept the campaign because

the diary's entry for January 27 and February 4 read: "AG's office--w/ Dean & Liddy." By linking Liddy with former Attorney General John Mitchell, the diary revealed that Nixon's closest associates were involved in Watergate.²⁶

To solve this dilemma, it was decided that Magruder would once again perjure himself before the grand jury. On September 6, he testified that the January 27 meeting had been rescheduled for February 4 and that only the newly enacted campaign laws were discussed. Convinced that Magruder was being truthful, the grand jury limited its indictments on September 15 to the basic seven defendants: Liddy, Hunt, McCord, Barker, Sturgis, Martinez, and Gonzales. Perjury had indeed constituted a central part of the Watergate cover-up.²⁷

Pleased that Magruder and other ranking CREEP officials were not indicted, Nixon congratulated Dean for his role in the cover-up:

Oh well, this is a can of worms as you know a lot of this stuff that went on. And the people who worked this way are awfully embarrassed. But the way you have handled all this seems to me has been very skillful putting your fingers in the leaks that have sprung here and sprung there.²⁸

In addition, the president discussed plans for reorganization within the executive branch as a means of weeding out entrenched liberals and other political opponents held over from the Kennedy and Johnson administrations.²⁹

Three days later, Sirica assigned the Watergate case to himself because 1) he was serving as "Chief Judge" of the district court; and 2) his involvement in Republican Party politics would discourage critics from claiming that the proceedings were politically motivated. Sensitive to charges that the defendants could not receive a fair

trial because of widespread publicity, Sirica issued a "gag order" on October 4 that enjoined government officials and affected parties from making extrajudicial statements concerning the case. And despite pressure to have the case tried before the presidential election, Sirica set the trial date for November 15 to ensure that the prosecution and defense would have sufficient time to prepare.³⁰

At this juncture, it is important to consider the extent to which an earlier trial would have altered the election results. According to Sirica, the trial could not have possibly started before late October given the mid-September indictments. Because the proceeding ultimately lasted about four weeks, the verdicts would still have been returned after the election. Moreover, he argues that the cover-up was "firmly in place" in November which would have precluded the case from unfolding during this period.³¹

An additional indication was the desperate condition of George McGovern's candidacy. Following his nomination, the Democratic nominee selected Thomas Eagleton of Missouri as his running mate. When revelations began to emerge that Eagleton had been hospitalized for severe depression, McGovern fully endorsed his running mate. Due to growing political pressure, however, the nominee dumped Eagleton in favor of Sargent Shriver. This episode gave McGovern a weak and indecisive image.³²

Moreover, Nixon's opponent was portrayed as a dangerous radical. His proposals for a complete military withdrawal from Vietnam and a \$1,000 payment for every American regardless of income were especially opposed by many conservative Democrats. The electorate also associated McGovern with the counterculture movement, a notion that was largely inaccurate. Although the nominee attempted to raise Water-

gate as an issue by citing reports in the Washington Post which charged that a cover-up was underway, the electorate remained unconvinced and re-elected Nixon in a landslide.³³ Because of the failure of the McGovern candidacy, therefore, it is difficult to conceive that an earlier Watergate trial would have resulted in Richard Nixon's defeat.³⁴

Meanwhile, Sirica prepared for trial. Due to his back problem and various procedural issues, the proceeding was delayed until January 10, 1973. Prior to this date, however, the judge held a pre-trial session.³⁵ During this conference, Sirica became frustrated because the prosecutors were unable to explain the purpose behind Watergate. Specifically, they failed to account for the money possessed by the defendants at the time of their arrests.³⁶ Sirica, suspecting that a cover-up was being implemented, warned the attorneys that major questions remained unanswered:

. . . this jury is going to want to know somewhere along the line what did these men go into the headquarters for? What was their purpose? Was it their sole purpose to go in there for so-called political espionage or were they paid to go in there? Did they go in there for the purpose of financial gain? Who hired them to go in there? Who started this thing? There are a myriad of problems in this case that I can see coming up and so can you.³⁷

Despite this plea, the prosecution maintained throughout the trial that the burglary was a Liddy inspired operation. To support this allegation, numerous witnesses were called to testify; they included Robert Odle, director of administration and personnel at CREEP; Herbert Porter, scheduling director at CREEP and former aide to Haldeman; Hugh Sloan, treasurer at CREEP and former aide to Haldeman; and Jeb Magruder. These witnesses committed perjury during their testimonies and

continued to cover-up the administration's involvement in Watergate.³⁹

An additional frustration for Sirica were the guilty pleas of Hunt, Barker, Sturgis, Gonzales, and Martinez. Made during the beginning of trial, Sirica felt that this occurrence would further endanger any likelihood of uncovering the truth behind the scandal:

. . . I had no choice but to accept full guilty pleas, but the sudden departure of five of the seven defendants, especially in light of the published suspicions that they were being paid off to plead guilty, made me angry. . . I was determined that despite the pleas, I would make an attempt to find out what else they knew about the case.³⁹

This determination, however, initially failed because the defendants refused to provide any revealing information. The trial ended on January 30 when guilty verdicts were returned against Liddy and McCord on all charges. Sentencing for all seven defendants was scheduled for March 23.⁴⁰

That the break-in trial substantially contributed to the fall of Richard Nixon is clear for three reasons. First, Nixon authorized the continued payment of hush money to the Watergate defendants in exchange for their silence during a meeting with Dean and Haldeman on March 21; this conversation, which was taped and released to the public in 1974, clearly implicated the president.⁴¹ The immediate problem for the administration was E. Howard Hunt. After losing his wife in a plane crash the preceding December, Hunt was now awaiting a prison sentence that could last thirty-five years for a crime he had pleaded guilty to. Because of this predicament, he decided to blackmail the administration by demanding a cash payment of \$72,000 for support and \$50,000 for legal fees. Hunt warned that a failure to provide the money would force him to reveal "seamy things" he had done for Ehrlichman while working at

the White House; this included his involvement in the Ellsberg affair and other illegal activities.⁴²

Relaying this threat to Nixon on March 21, the president replied:

Just looking at the immediate problem, don't you think you have to handle Hunt's financial situation damn soon? . . . It seems to me we have to keep the cap on the bottle that much, or we don't have any options.⁴³

In addition, Nixon addressed the extent to which \$1 million could be raised to purchase the indefinite silence of the defendants:

We could get that. On the money, if you need the money you could get that. You could get a million dollars. You could get it in cash. I know where it could be gotten. It is not easy, but it could be done.⁴⁴

According to Senator Ervin, \$75,000 was delivered to Hunt's attorney that night.⁴⁵ Once the public became aware of these developments, the administration became irreparably damaged.

A second contribution to the fall of Richard Nixon that arose from the Watergate trial was the McCord letter. Received by Sirica on March 20, the letter stated that political pressure had been applied to the seven defendants to plead guilty and remain silent; that perjury had been committed during the trial; that the proceeding had failed to identify others who were involved in Watergate; that the bugging was not a CIA operation; and that McCord's "motivations were different than those of the others involved but were not limited to or simply those offered in [his] defense during the trial."⁴⁶ On March 23, Sirica read the letter in court, postponed the sentencing of McCord, and sentenced the remaining defendants to lengthy provisional terms with the expectation that they would subsequently cooperate with the Watergate investigation.⁴⁷

The reaction to the McCord letter was swift and immediate. On March 26, Sirica received a letter from Attorney General Richard Kleindienst admonishing him for releasing the McCord letter. Furious, Sirica became convinced that the administration was trying to control his actions as judge in addition to impeding the overall Watergate investigation.⁴⁸

Moreover, the McCord letter had the impact of a bombshell upon the news media and public. The television networks and newspapers saturated Americans with Watergate coverage and would continue to do so until Nixon's resignation. For the first time, millions of Americans believed that Watergate represented a constitutional crisis involving the president and his closest associates.⁴⁹ That the letter helped to unravel the cover-up was understood by Sirica:

In my opinion, this case would never have been broken if McCord had elected to stand pat and had not written the letter to me. That's my conclusion. Once that letter was made public, the parade of people trying to protect themselves began. This was just the beginning of the end. But there was no stopping it.⁵⁰

The collapse of the Nixon administration had started.

A third contribution of the break-in trial was the legislative reaction. Shortly after the verdicts were returned, Sirica announced that he was not satisfied that the full Watergate episode had been uncovered during the trial and that a Senate investigative committee should be established to investigate. On February 7 the Senate obliged. By a vote of seventy to zero, the Select Committee on Presidential Campaign Activities, commonly referred to as the Ervin committee, was created; its responsibility was to investigate the extent to which illegal, improper, or unethical activities transpired during the 1972

presidential campaign.⁵¹

By April 30, the need for such a legislative investigation became especially apparent; on that day Nixon announced the resignations of Haldeman and Ehrlichman. In addition, he stated that Dean would be leaving the White House and that Richard Kleindienst would be replaced by Elliot Richardson. The new attorney general subsequently named Archibald Cox as special prosecutor. These events further convinced Americans that the president was involved in the scandal.⁵²

On May 17 the Select committee was convened by Senator Sam Ervin; these televised hearings were dominated by the testimony of extensive witnesses who charged the administration with illegal conduct that had transpired throughout the Nixon presidency. As a result, the public learned that Watergate was not simply an isolated incident; rather, it was part of a systematic scheme to subvert the democratic process.⁵³

IV

During the course of these hearings, a second critical conflict emerged that would involve the judiciary; namely, the battle for the White House tapes. On July 13 and 16, Haldeman's former aide Alexander Butterfield revealed the existence of the White House taping system to the Ervin committee. Consequently Archibald Cox and the committee requested Nixon to hand over the tapes containing the critical Watergate conversations. The president refused.⁵⁴

Cox responded on July 23 by issuing a subpoena which called for the release of tape recordings to the grand jury. Though signed by Sirica, the president refused to comply. In a letter to the court dated July 25, Nixon briefly stated that such compliance was not obligatory under the Constitution due to the notion of "executive

privilege." Specifically, it was argued that presidents are entitled to some privacy from judicial and congressional inquiry:

With the utmost respect for the court of which you are Chief Judge, and for the branch of government of which it is a part, I must decline to obey the command of that subpoena. In doing so I follow the example of a long line of my predecessors as President of the United States who have consistently adhered to the position that the President is not subject to compulsory process from the courts. The independence of the three branches of our government is at the very heart of our constitutional system. It would be wholly inadmissible for the President to seek to compel some particular action by the courts. It is equally inadmissible for the courts to seek to compel some particular action from the President.⁵⁵

Refusing to accept this defense, Cox obtained from Sirica, at the formal request of the grand jury, an "order to show cause" requiring Nixon to provide a complete legal justification for not complying with the subpoena. On August 7, presidential counsel Charles Alan Wright replied by submitting a brief which asserted that the institution of the presidency would be irreparably damaged if Nixon were forced to surrender the tapes. He particularly noted that presidents would not be able to function should conversations in the Oval Office be subject to ongoing scrutiny by the judiciary and congress. Moreover, Wright argued that no legal precedent existed to justify the subpoena. For these reasons, its terms were unacceptable.⁵⁶

Following Nixon's rejection of the order to show cause, Wright and Cox appeared before Sirica to deliver oral arguments on August 22. One week later, Sirica issued the court's opinion. Two legal issues were specifically addressed. First, it was decided that although an executive privilege exists under Article II of the Constitution to protect the privacy of presidents, its terms are not absolute; more-

over, courts may determine when its use may be invoked with respect to specified documents or materials pertaining to a case. According to the opinion, a presidential claim of privilege cannot be sustained when 1) a strong showing of necessity for evidence in a criminal case can be shown; and 2) military secrets are not involved. Sirica then pointed out that conflicting testimonies before the Select committee failed to produce conclusive evidence concerning White House involvement in Watergate; as a result, the president could not make a claim of executive privilege with respect to the tapes.⁵⁷

The second legal issue addressed in the opinion concerned the remedy needed to resolve the dispute. Specifically, Sirica held that the court had the authority to enforce the subpoena by requiring production of the tapes for inspection in camera. This ruling required Nixon to hand over nine tapes to Sirica; any portion of these materials relating to criminal liability would be delivered to the grand jury for its deliberations. Although the president later claimed in his memoirs that the court's decision on this issue was unprecedented, Sirica's order was firmly based on United States v. Burr (1807) which squarely ruled that a subpoena may be directed to the chief executive.⁵⁸

In response to In re Subpoena to Nixon, the president released a statement saying that compliance would not be forthcoming, that an appeal was being considered, and that "alternatives" for sustaining the administration's legal position were being discussed. The next day, Nixon met with his lawyers to evaluate these options; the White House immediately announced that an appeal would be filed. Meanwhile, Cox also decided to appeal Sirica's ruling because of his insistence that the tapes be surrendered directly to the grand jury without prior judicial screening by the judge. The president and special prosecutor,

therefore, set the stage for a protracted legal battle that would ultimately reach the Supreme Court less than one year later.⁵⁹

In October 1973, Nixon's position deteriorated even further. On October 10, for instance, Spiro Agnew resigned the vice-presidency and pleaded "no contest" to charges of bribery and income tax evasion.⁶⁰ Two days later, the United States Court of Appeals upheld Sirica's order that Nixon must surrender the nine subpoenaed tapes. Faced with a constitutional crisis, the president remained convinced that he need not obey court decisions.⁶¹

Instead, he offered Cox a compromise. This proposal, known as the "Stennis compromise," consisted of four elements. First, the president would prepare written summaries of the subpoenaed tapes. Second, Senator John Stennis would review the summaries, verify their accuracy, and submit them to the district court. Third, Cox and Nixon would urge the court to accept the summaries as a substitute for the actual tapes. Finally, Cox would make no further attempts to obtain additional documents by judicial process.⁶²

Cox refused. Nixon responded by ordering Attorney General Elliot Richardson to fire the special prosecutor on October 20. He resigned instead of obeying. Deputy Attorney General William French Smith was then ordered to fire Cox; he too refused and was fired. Finally, Solicitor General Robert Bork was directed to carry out the dismissal; he complied. That evening, press secretary Ronald Ziegler announced that the president had abolished the office of special prosecutor.⁶³

This so-called "Saturday Night Massacre" devastated Nixon's standing as president. Americans were infuriated that he would arrogantly dismiss Cox who had been promised full cooperation by the administration. The media was also shocked; newspapers and magazines

demanded that Nixon resign. Three days later, twenty-one bills were introduced in the House of Representatives calling for an impeachment investigation.⁶⁴

The significance to these events cannot be understood without an appreciation for the role of the judiciary. There is little doubt that Nixon would not have fired Cox had Sirica and the appellate court not ordered the surrendering of the nine White House tapes. Though dissatisfied with Cox prior to these judicial decisions, Nixon would likely have retained the special prosecutor to avoid the public outcry had he been permitted to hide the White House documents.

Moreover, the very reason for the public outburst was that Nixon had defied the courts. Americans reasoned that no law would prevent executive abuses if a president could ignore court orders at will. Thus, the judiciary had truly forced Richard Nixon into a no-win situation by October 20; he could either turn over the tapes and expose his Watergate involvement or further break the law by ignoring court decisions. At this point, there was little likelihood that Nixon could survive in office.⁶⁵

Despite these odds, the president struggled to save his administration. Realizing that a new strategy was necessary, Charles Alan Wright informed Sirica on October 23 that the president would release the nine subpoenaed tapes. Three days later, Nixon announced that Leon Jaworski would be appointed as the new special prosecutor.⁶⁶

These steps, however, failed to satisfy the public. It was revealed that two of the subpoenaed tapes did not exist.⁶⁷ Moreover, an eighteen-and-a-half minute gap existed in a tape containing an important conversation between Nixon and Haldeman on June 20, 1972--just three days after the break-in. Although it was claimed that

Rose Mary Woods, Nixon's personal secretary, accidentally caused the erasure while transcribing the tapes, many Americans were convinced that the administration was continuing its cover-up of Watergate.⁶⁸

In response to the legal issues raised by the gap's disclosure, Sirica announced the appointment of a panel of six experts--selected by the White House and special prosecutor--to investigate. In January, its report was submitted to the court. The panel concluded that the gap contained between five and nine "separate and contiguous" erasures made by hand operated controls. During testimony before Sirica, one expert was specifically asked whether the gap could have been accidental. He replied that it "would have to be an accident that was repeated at least five times."⁶⁹

Convinced that these findings were accurate, the judge requested that Jaworski take the matter before the grand jury. Although the White House announced its full cooperation in this continuing investigation, the president's aides and supporters began to attack the credibility of the six experts. Dr. Michael Hecker of the Stanford Research Institute, for example, challenged their conclusion that the erasure had been intentional. And Charles Rhyne, Rose Mary Woods' secretary, declared that the panel's report was prepared by "professors who don't know what they're doing." Meanwhile, the administration refused to allow FBI agents to interview those who had access to the tapes. These obstructions contributed to Jaworski's failure in obtaining the necessary evidence for an indictment to be issued from the grand jury; as a result, it was never determined who caused the crucial gap covering key aspects of the June 20 conversation.⁷⁰

By the beginning of 1974, Watergate had crippled Nixon's ability to effectively govern the nation. Still, the Watergate crisis inten-

sified. Pursuing their investigations, Jaworski and the House Judiciary Committee requested that Nixon surrender additional White House tapes and documents. The relevance of this request became especially evident on March 1; that day, H. R. Haldeman, John Ehrlichman, John Mitchell, hatchet-man Charles Colson, Haldeman aide Gordon Strachan, CREEP deputy manager Robert Mardian, and CREEP attorney Kenneth Parkinson were indicted on charges of conspiracy. All but Mardian were also charged with obstruction of justice; and all but Colson, Mardian, and Parkinson were indicted for perjury. Moreover, Nixon was named by the grand jury as an unindicted co-conspirator in a confidential report to Sirica.⁷¹

Weeks after these indictments, Sirica issued an additional subpoena which ordered Nixon to produce sixty-four tapes and documents to be used as evidence during the upcoming trial.⁷² Deciding not to confront the judiciary, the president announced on April 29 that over 1,200 pages of printed transcripts would promptly be released. Though incomplete and heavily edited, the documents shocked the public. Conservatives and liberals alike were outraged that a president would resort to extreme profanity while participating in an illegal cover-up. Sirica, whose recent decision was a major factor in the presidential decision to release the documents, had once again contributed to the unravelling of Watergate.⁷³

Following its receipt of the transcripts, the House Judiciary Committee notified the president that the printed versions were unacceptable substitutes for the actual tapes. Consequently Jaworski obtained from Sirica a decision on May 20 that ordered the enforcement of the subpoena calling for Nixon to produce the sixty-four tapes. The matter was directly appealed to the United States Supreme Court.⁷⁴

On July 24, 1974 its decision was announced. In United States v. Nixon, the Supreme Court voted unanimously that the president must surrender the tapes. In the opinion, written by Chief Justice Warren Burger, four issues were specifically resolved. First, it was decided that Sirica's ruling of May 20 was appealable as a final order; as a result, the case was properly before the Supreme Court for review. At the outset, Burger acknowledged that judicial orders calling for the production of evidence in a criminal trial are generally not appealable unless the party seeking review openly resists the order and thereby risks a contempt citation. This rule, however, is not absolute. In this case, the justices reasoned that encouraging the president to flatly resist compliance with Sirica's order merely to obtain an appeal would be "unseemly" and would "present an unnecessary occasion for constitutional confrontation between two branches of government."⁷⁵ As a result, the Court held that an exception to the requirement of submitting to contempt was appropriate and that the case could therefore be properly adjudicated.⁷⁶

The second issue addressed in the opinion was whether justiciability was present. Under Article III of the Constitution, a dispute cannot be subject to a federal court's jurisdiction unless a bona fide case or controversy exists between two separate parties. In his brief to the Supreme Court, White House attorney James St. Clair had argued that justiciability was lacking because the case constituted an intra-branch dispute between a subordinate and superior officer of the executive branch; as a result, two separate parties were not involved.⁷⁷

The Court rejected this assertion. According to Burger, the "mere assertion of a claim of an 'intra-branch dispute,' without more, has

never operated to defeat federal jurisdiction; justiciability does not depend on such a surface inquiry."⁷⁸ He then cited United States v. ICC (1949) which observed that judges are required to look beyond the names that symbolize the parties to determine whether Article III has been satisfied. Applying this principle to the facts in U.S. v. Nixon, Burger stated that the special prosecutor had been granted specified and unique powers by the attorney general as a means of pursuing his investigation of Watergate. This delegation of authority directly gave Jaworski the power to contest a presidential claim of executive privilege if necessary to obtain relevant evidence. The special prosecutor, therefore, was independent with respect to his legal duties and had the ability to pursue litigation against the White House despite his subordinate role within the executive branch. The justices consequently concluded that justiciability was present in the case.⁷⁹

The next issue addressed by the Court was whether Sirica's issuance of the subpoena satisfied the requirements of Rule 17(c) in the Federal Rules of Criminal Procedure. This statute provides:

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents or objects or portions thereof to be inspected by the parties and their attorneys.⁸⁰

In his argument before the Court, St. Clair claimed that the subpoena was "unreasonable and oppressive" because 1) the president was being

subjected to a mere "fishing expedition" primarily designed to damage his administration; and 2) the contents of the tapes constitutes inadmissible hearsay. As a result, Sirica violated Rule 17(c) by signing the subpoena.⁸¹

The justices disagreed. According to the Court, three hurdles pertaining to the tapes must be cleared before a subpoena may be issued: relevancy, specificity, and admissibility. Burger had little difficulty in deciding that the tapes were relevant and specific to any future criminal trial of administration officials who had been indicted on March 1. Although the opinion does not address this issue at length, it suggests that Sirica's subpoena had been carefully tailored to the needs of a future prosecution at the time the order was issued. Little evidence suggested that the special prosecutor or the judge were simply making unreasonable requests as a means of hastening the impeachment process. This ruling shattered St. Clair's argument that Jaworski was primarily motivated by politics instead of pursuing a reasonable investigation governed by established legal principles.⁸²

The Court likewise adjudged the tapes to be admissible. St. Clair's argument that the tapes were inadmissible hearsay was based on his belief that they were a collection of out-of-court statements by persons who would not be subject to cross-examination during trial. Burger, however, pointed out that most of the tapes contained conversations involving several defendants who would likely be cross-examined. He then provided specific examples in which this evidence could be used during trial that would not violate the hearsay rule. Following this determination, the chief justice concluded that the requirements of Rule 17(c) had been fully satisfied when Sirica issued the subpoena.⁸³

The final and most critical issue addressed by the Court was

whether Nixon's claim of executive privilege could defeat Sirica's order to release the tapes. According to St. Clair, the president was entitled to an absolute privilege which would prohibit the judicial process from obtaining White House documents without his permission under any circumstances. This contention was based on two grounds which had earlier been asserted by the administration in Sirica's courtroom: first, there is a need for the protection of communications between high government officials to ensure an efficient decision-making process; and second, the doctrine of separation of powers grants the executive branch a strong degree of independence within its own sphere.⁸³

The Court rejected this argument. At the outset, it cited Marbury v. Madison (1803) to dismiss St. Clair's suggestion that presidents may decide when executive privilege will be used. In that case, the Supreme Court held that Section 13 of the Judiciary Act of 1789 was unconstitutional; in so doing, it established the principle of judicial review and the right of courts to determine what the law is. Nixon, therefore, was not entitled to an absolute privilege merely because he had asserted it; instead, the judiciary would determine the extent to which presidential documents may be protected from judicial examination.⁸³

The Burger opinion then rejected St. Clair's assertion that a need for confidentiality and the separation of powers doctrine justified an absolute privilege. The Court reasoned that a release of communications between government officials which are unrelated to national security would not seriously threaten the administration's ability to function as a governmental institution. Moreover, the separation of powers established by the Constitution was not intended

to provide absolute independence for the executive, legislature, and judiciary; instead, the branches were to operate with reciprocity within the federal system. The chief justice concluded that any serious danger to a workable government originated from the White House because of its refusal to obey judicial orders.⁸⁴

Following its refusal to accept an absolute privilege, the Court ruled that presidential communications are nevertheless "presumptively privileged" with respect to judicial or legislative examination. Quoting United States v. Burr (1807), Burger stated that courts should not be permitted to "proceed against the president as against an ordinary individual."⁸⁵ Accordingly, the Court insisted that Sirica's subpoena was valid only if the special prosecutor's interest in its enforcement outweighed any legitimate interest of the White House in retaining possession of the tapes.⁸⁶ After considering the arguments made by St. Clair and Jaworski, Burger decided that even a presumptive privilege could not help the administration in this instance:

We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial.⁸⁷

The president, therefore, was ordered to fully comply with Sirica's subpoena of April 18.

This ruling, which demonstrated the independence of the judiciary, completely destroyed any chance that Nixon could avoid impeachment and removal from office. Because of the decision, the president was forced

to release the June 23, 1972 conversation during which he approved Haldeman's plan directing the CIA to order the FBI to cease its Watergate investigation.⁸⁸ Shocked that the president was involved in the cover-up less than one week after the break-in, Republican loyalists quickly abandoned their support for Nixon. At a meeting of the Senate Republican Policy Committee, the senators clearly felt betrayed that the administration had been deceptive from the beginning. Barry Goldwater was especially furious. "There are only so many lies you can take and now there has been one too many," he declared. "Nixon should get his ass out of the White House--today!"⁸⁹ On August 7, he and other Republican congressional leaders informed Nixon that he faced certain impeachment in the House and conviction in the Senate. At this point, the president's closest associates began to prepare for the transition to a new administration.⁹⁰

Meanwhile, the House Judiciary Committee passed three articles of impeachment. The first charged the president with a failure to "take care that the laws be faithfully executed" by seeking to obstruct the investigation into the Watergate break-in. The second article stated that Nixon had "abused the powers vested in him"; this abuse included the program of illegal wiretapping, the misuse of the FBI and IRS for political harassment, the creation of the plumbers, and other activities. Finally, the committee charged that the president had sought to impede the impeachment process by refusing to surrender the White House tapes to the Congress. Faced with a hopeless situation, Nixon announced his resignation on August 8 to be effective at noon the following day.⁹¹

for the White House tapes, it is appropriate to offer several conclusions. First, Nixon would have undoubtedly finished his second term had the judiciary not taken an activist and independent role in uncovering the scandal. In particular, the McCord letter, the establishment of the Ervin committee, the Saturday Night Massacre, and release of the White House tapes were all caused by or strongly related to judicial action and decisions throughout the crisis. Though the Congress also contributed to Nixon's fall, it failed to investigate until after the burglars were convicted in January 1973. Indeed, the judiciary was the only branch of government that seriously investigated Watergate in 1972.⁹²

The actions of Judge Sirica especially contributed to the fall of Richard Nixon. Though pressured by the administration, Sirica continued to search for the causes of the scandal and to demand accountability for those responsible. In his memoir To Set The Record Straight, Sirica indicates his support for judicial activism that made his decisions possible:

The basic strength of our system of government is tied to the continuing independence of the judicial system from political and social pressures. As a trial judge, I found that the greatest pleasure I derived from my work was that very independence. And I offer no apologies or regrets to anyone for the action I took in the break-in trial. . . . Simply stated, I had no intention of sitting on the bench like a nincompoop and watching the parade go by. If the action I took constitutes the action of a so-called "activist judge," I plead guilty to the charge.⁹³

The decisions of appellate courts and the Supreme Court also reflected an aggressive judiciary. By rejecting the administration's "executive privilege" defense, the judiciary demonstrated its willingness to challenge an imperial president who had little appreciation

for constitutional limitations on his power.

A second conclusion is that the judiciary assumed this activist demeanor because the administration participated in extensive illegal conduct which was not related to national security. This becomes especially clear when placing judicial activism into historical perspective. Between 1790 and 1956, for example, the Supreme Court adjudicated approximately 800 cases dealing with presidential power. Of these, only thirty-eight, or less than five percent, were decided against the president. Indeed, the Supreme Court has succeeded in expanding, rather than contracting, presidential authority in many instances.⁹⁴

This is especially true when national security issues are decided. The Supreme Court, for instance, has decided that the president's war powers are virtually unreviewable; that these powers may be extended into postwar periods; that he may order the execution of aliens; that 100,000 Japanese-Americans may be relocated and confined; and that the Gulf of Tonkin Resolution constituted sufficient congressional ratification for continued American combat in Vietnam.⁹⁵

However, the Court is more likely to rule against presidents on matters not related to national security. Thus, it decided that specific provisions of the New Deal were unconstitutional; that the president does not have an unlimited ability to dismiss independent agency commissioners; that Harry Truman could not legally order the federal government to seize major steel mills during a strike; and that the president does not have unlimited discretion to refuse to spend money appropriated by Congress.⁹⁶

Also unrelated to national security was Watergate. Despite Nixon's assertions to the contrary, his administration participated in Water-

gate solely for domestic political purposes. This factor, in addition to the extensive criminal conduct of the White House, contributed to the first Supreme Court decision in which an incumbent president was compelled to do an affirmative act.⁹⁷

It has occasionally been suggested that the legacy of "Earl Warren liberalism" contributed to the activist demeanor of the judiciary during Watergate. This is a misleading assumption. In U.S. v. Nixon, each Nixon appointee, except William Rehnquist who did not participate, voted against the president. And Judge Sirica, who had participated in Republican Party politics and voted for Nixon, certainly did not have a strong liberal reputation within the federal judiciary.

Moreover, the Warren Court was noted for its activism in civil rights, criminal procedure, and first amendment issues; its legacy does not include confronting excessive presidential power. Although it invalidated numerous state and local laws, the Warren Court was reluctant to challenge presidential decisions during its tenure.

A final conclusion is that the Watergate experience does not constitute a guarantee that similar abuses will be uncovered by the judiciary in the future. Despite the activist role that the courts assumed, Nixon almost succeeded in covering up the scandal. Had the Watergate burglars not been arrested, for example, it is questionable that any investigation would have followed. And had Nixon not installed the taping system, the evidence needed to implicate his administration would have been lacking.⁹⁸

Despite this dilemma, the judiciary continues to serve as an important limitation on presidential power. It remains to be determined whether it will challenge the executive branch more

aggressively as a result of the Watergate experience.

Notes

¹Tip O'Neill and William Novak, Man of the House (Random House, 1987), p. 234.

²The article was in fact based on a report from a British correspondent who had witnessed the bombing. See Stephen E. Ambrose, Nixon: The Triumph of a Politician 1962-1972 (New York: Simon and Schuster, 1989), p. 272.

³Richard Nixon, RN: The Memoirs of Richard Nixon (New York: Grosset and Dunlap, 1978), pp. 386-89; Ambrose, pp. 272-73; Presidential statement May 22, 1973 in Watergate: Chronology of a Crisis, vol. 1 (Washington D.C.: Congressional Quarterly, 1973), p. 91.

⁴Presidential statement of May 22, 1973, p. 92.

⁵Anthony Lukas, Nightmare (New York: Viking Press, 1976), pp. 33-34; Theodore White, Breach of Faith: The Fall of Richard Nixon (New York: Atheneum, 1975), pp. 134-36.

⁶Meeting: The President, Haldeman and Dean, Oval Office, September 15, 1972 (5:27 - 6:17 p.m.) in The Presidential Transcripts (New York: Dell, 1974), pp. 37-38; John Dean, Blind Ambition (New York: Simon and Schuster, 1976), p. 316; Lukas, p. 13.

⁷Stanley I. Kutler, The Wars of Watergate: The Last Crisis of Richard Nixon (New York: Alfred A. Knopf, 1990), pp. 104-105.

⁸Presidential statement of May 22, 1973, p. 92.

⁹*Ibid.*; William Manchester, The Glory and the Dream (New York: Bantam, 1980), p. 1239; Douglas T. Miller, Visions of America (St. Paul: West, 1988), p. 258.

¹⁰O'Neill, pp. 235-36; Kutler, p. 435.

¹¹O'Neill, pp. 235-37; Kutler, p. 435.

¹²Dean, pp. 72-73.

¹³Lukas, p. 149; Kutler, p. 107.

¹⁴G. Gordon Liddy, Will (New York: St. Martin's Press, 1980), pp. 196-99; Jeb Stuart Magruder, An American Life: One Man's Road to Watergate (New York: Atheneum, 1974), p. 195; Dean, p. 79; White, pp. 157-58.

¹⁵Miller, pp. 196-97; John J. Sirica, To Set The Record Straight (New York: W. W. Norton, 1979), pp. 44, 48.

¹⁶Miller, p. 301.

¹⁷Manchester, p. 1280; Miller, p. 298.

¹⁸Miller, p. 297.

¹⁹Meeting: The President and H. R. Haldeman, Oval Office, June 23, 1972 (10:04 - 11:39 a.m.) in U.S. News and World Report, August 19, 1974, pp. 69-70. See also H. R. Haldeman, The Ends of Power (Times Books, 1978), pp. 32-35.

²⁰Miller, p. 297.

²¹Ibid.; Manchester, p. 1291.

²²Sam Ervin, The Whole Truth (New York: Random House, 1980), p. 9.

²³Magruder, pp. 238-39; Lukas, p. 243.

²⁴Magruder, p. 240.

²⁵Ibid., pp. 250-51.

²⁶Ibid., p. 263.

²⁷Ibid., p. 264; Sirica, p. 48.

²⁸Meeting: The President, Haldeman and Dean, Oval Office, September 15, 1972 (5:27 - 6:17 p.m.), p. 36.

²⁹Ibid., pp. 36-43.

³⁰Sirica, pp. 49-52.

³¹Ibid., p. 52.

³²Nixon, pp. 653, 663, 673; Miller, p. 299.

³³The president polled 46 million votes against 28.5 million for McGovern.

³⁴Nixon, p. 543; Manchester, p. 1287; Carl Bernstein and Bob Woodward, All the President's Men (New York: Simon and Schuster, 1974), p. 197.

³⁵This was held on December 4.

³⁶Sirica, pp. 55-57.

³⁷Ibid., p. 57-58.

³⁸Ibid., pp. 63-64, 73-80.

³⁹Ibid., 69-70.

⁴⁰Ibid., pp. 69-71, 88-89.

⁴¹Meeting: The President, Dean and Haldeman, Oval Office, March 21, 1973 (10:12 - 11:55 a.m.) in The Presidential Transcripts, pp. 107-11.

⁴²Ibid., p. 108; White, p. 199; Dean, p. 192; Ervin, p. 39.

⁴³Meeting: The President, Dean and Haldeman, Oval Office, March 21, 1973 (10:12 - 11:55 a.m.), p. 112.

⁴⁴Ibid., p. 110.

⁴⁵Ervin, p. 52.

⁴⁶Sirica, p. 96.

⁴⁷Ibid., pp. 118-19.

⁴⁸Ibid., pp. 110-12.

⁴⁹Ervin, p. 60; Gladys Engel Lang and Kurt Lang, The Battle for Public Opinion (New York: Columbia Univ. Press, 1983), pp. 50-51.

⁵⁰Sirica, p. 116.

⁵¹Ervin, pp. 16, 20-21.

⁵²Presidential address of April 30, 1973 in Watergate: Chronology of a Crisis, vol. 1, p. 35; Dean, p. 297.

⁵³Miller, p. 301.

⁵⁴Nixon, pp. 899-904; Ervin, pp. 186-87; Lukas, pp. 382-83.

⁵⁵Sirica, pp. 137-38; see also Ervin, p. 220; Sirica, pp. 144-45; Howard Ball, No Pledge of Privacy (Port Washington: Kennikat Press, 1977), pp. 22-23.

⁵⁶Ball, pp. 23-24; Sirica, pp. 144-45; In re Grand Jury Subpoena Duces Tecum Issued to Richard M. Nixon, 360 F.Supp 1 (1973) in Sirica, pp. 319-20.

⁵⁷Ibid., pp. 319-28.

⁵⁸Ibid., pp. 319, 328-330; Melvin Urofsky, A March of Liberty (New York: McGraw-Hill, 1988), pp. 194-96; Nixon, p. 909.

⁵⁹Lukas, pp. 394-95.

⁶⁰Miller, p. 301; Spirow T. Agnew, Go Quietly. . . or else (New York: William Morrow, 1980), pp. 13-17, 198-99.

⁶¹Nixon v. Sirica, 487 F.2d 700 (1973).

⁶²Nixon, p. 930; Ervin, pp. 229-30.

⁶³Ibid., p. 239.

⁶⁴Bob Woodward and Carl Bernstein, The Final Days (New York: Simon and Schuster, 1976), p. 71; Miller, p. 301.

⁶⁵White, pp. 269-70.

⁶⁶Woodward, p. 74; Ervin, pp. 243-44; Miller, p. 301.

⁶⁷Nixon, p. 945.

⁶⁸Woodward, pp. 83, 95, 205; Miller, p. 301.

⁶⁹Kutler, p. 431; see also Sirica, p. 199.

⁷⁰Ibid.; Lukas, p. 460; Kutler, p. 431. In addition to the gap, Americans discovered in November that Nixon owed taxes, had become a millionaire in the White House, and had spent taxpayers' money for major home improvements in California and Florida. See Miller, p. 302.

⁷¹Sirica, p. 214; Ervin, p. 276; Nixon, p. 988; Woodward, p. 120; Lukas, p. 476. Convinced that Nixon was involved in the cover-up, the grand jury considered an outright indictment against him; Jaworski, however, informed the jurors that such an action could not be taken against an incumbent president. See Lukas, pp. 475-76.

⁷²Ervin, p. 275. In addition, the House Judiciary Committee issued its own subpoena for 42 tapes and documents. See Sirica, pp. 220-21.

⁷³Presidential address on April 29, 1974 in Watergate: Chronology of a Crisis, vol. 2 (Washington D.C.: Congressional Quarterly, 1974), p. 408; Miller, p. 302; White, p. 297.

⁷⁴Ervin, p. 288; Sirica, p. 224. According to Sirica, this kind of appeal is appropriate when important issues must be quickly resolved.

⁷⁵U.S. v. Nixon, 418 U.S. 683 (1974), pp. 690-92.

⁷⁶Ibid.

⁷⁷Ibid., pp. 692-93.

⁷⁸Ibid., p. 693.

⁷⁹Ibid., pp. 693-97.

⁸⁰Ibid., p. 698.

⁸¹Ibid., pp. 698-700.

⁸²Ibid., p. 700.

⁸³Urofsky, pp. 182-85; U.S. v. Nixon, pp. 684-85, 703-07.

⁸⁴Ibid., p. 707.

⁸⁵Ibid., p. 708.

⁸⁶Ibid.

⁸⁷Ibid., p. 713.

⁸⁸Ervin, p. 290.

⁸⁹Lukas, p. 559.

⁹⁰ Ibid., pp. 563-64.

⁹¹ Edward W. Knappman and Evan Drossman (ed.), Watergate and the White House (New York: Facts on File, Inc., 1974), p. 342; Nixon, p. 1083; Miller, p. 302.

⁹² Sirica, pp. 48-59.

⁹³ Ibid., p. 127.

⁹⁴ Theodore C. Sorenson, Watchmen in the Night: Presidential Accountability after Watergate (Cambridge: MIT, 1975), p. 121; Clinton Rossiter, The American Presidency (1960), pp. 58-59.

⁹⁵ Ibid., p. 56; Sorensen, pp. 122-25; see Johnson v. Eisentrager, 339 U.S. 763 (1950); Ludecke v. Watkins, 335 U.S. 160 (1948); Ex Parte Quinn, 317 U.S. 1 (1942); and Korematsu v. U.S., 323 U.S. 214 (1944).

⁹⁶ Sorenson, p. 49; Lawrence Baum, The Supreme Court (Congressional Quarterly Press, 1981), p. 160. See also Schechter Poultry Corp. v. U.S., 293 U.S. 388 (1935); Humphrey's Executor v. U.S., 295 U.S. 602 (1935); Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 579 (1952); and Train v. City of New York, 420 U.S. 35 (1975).

⁹⁷ Sorensen, p. 121.

⁹⁸ Sirica, pp. 302-03.

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