

### III. THE “OLD” IMPERIAL PRESIDENCY

The events of the last chapter described the building blocks of executive unilateralism being put in position; from the mid-1960s to the early 1970s they were cemented together. By the time Richard Nixon won reelection, scholarly acclamation for a strong executive branch had been replaced largely by horror.

In 1973 the historian Arthur M. Schlesinger Jr.—previously an advocate of an energetic executive, at least in the persons of Andrew Jackson, FDR, and John F. Kennedy—laid down an enduring marker. Schlesinger’s iconic book, *The Imperial Presidency*, gave Cato’s anti-Federalist forecasts of ancient Rome’s reincarnation on the Potomac a twentieth-century twist. By “imperial” was meant the absolute power of modern presidents but also their relative power, as altered by the office’s predilection for expansion across the constitutional map. Schlesinger still claimed to favor presidential strength. But Nixon, he argued, sought instead presidential supremacy,

a new balance of constitutional powers, an audacious and imaginative reconstruction of the American Constitution. He did indeed contemplate, as he said in his 1971 State of the Union message, a New American Revolution. But the essence of this revolution was not, as he said at the time, power to the people. The essence was power to the presidency.

Schlesinger devoted most of his focus to the war powers and “the rise of presidential war.” However, he also criticized the efforts of the Nixon administration to centralize budgeting powers and unilaterally shape

policy outcomes via impoundment; to manage the press; to build up a large, politicized staff; to greatly expand the “secrecy system”; and, relatedly, to broaden the notion of executive privilege.<sup>1</sup>

Schlesinger was not alone, and the assessments of other contemporary observers were, if anything, even harsher. One 1968 piece suggested the office was “defective,” a “Frankenstein monster.” George Reedy, a longtime staffer to Lyndon Johnson, suggested that patriotic reverence had become “idolatry” compounded by presidents’ isolation from “the company of lesser breeds.” Unfortunately, Reedy continued, “divinity is a better basis for inspiration than it is for government.” By 1973 some even rued the rise of Roosevelt: liberal senator Alan Cranston (D-CA), for example, lamented that “those who tried to warn us back at the beginnings of the New Deal of the dangers of one-man rule that lay ahead on the path that we were taking . . . may not have been so wrong.” Political scientists Hargrove and Nelson artfully combined these threads when they observed that the presidential image after Nixon had taken on a whiff of brimstone—shifting from “Savior” to “Satan.”<sup>2</sup> The “presidential government” that seemed imminent and desirable in 1944 and even 1964 seemed horrifying in 1974.

What lay behind the presidency’s rather abrupt drop through the circles of paradise? This chapter will explore and update the charges brought by Schlesinger and others, with specific attention to the decade or so leading up to the resignation of Richard Nixon. The main focus will be on the Johnson and Nixon policies in Vietnam—especially their political impact—and on the Watergate scandal, broadly defined.

Enough years have passed that many do not remember why people were so exercised at the time or why “gate” has become a standard suffix to scandal. But even a cursory list of the relevant events shows how sweeping the indictment against the presidency had become. The counts start with petty (and not so petty) campaign sabotage and quickly ratchet up to burglary, bribery, extortion, fraud, destruction of evidence, domestic espionage, obstruction of justice, and abuse of various aspects of executive power—from efforts to inflict punitive tax audits on political opponents to refusal to spend money appropriated by Congress to secret aerial and ground warfare against a neutral nation.<sup>3</sup> Stephen Ambrose rightly observes that, “had there never been a Watergate, there still would have been a war between Nixon and Congress” over policy

issues ranging across domestic, economic, and foreign affairs.<sup>4</sup> But my use of the term *Watergate* will follow common practice in encompassing the various battles of that war under its broad label, a collection of transgressions that rose past the confines of the building that lent its name to the era and landed right in the Oval Office.

What follows is not a comprehensive history of the key “imperial” decade, 1965–74, given how carefully these events have been chronicled elsewhere. The books on Vietnam alone could fill a small library, and Watergate is not far behind.<sup>5</sup> Instead, the idea is to give a sense of the developments in executive power that so alarmed scholarly observers—and, more important, political actors—by the early 1970s. If the post-Watergate era is one of reaction, to what were people reacting?

This chapter will answer that question in the context of four substantive areas of presidential behavior and authority: unilateral executive action and executive privilege; budgetary powers and politics; foreign policy, focusing on the war powers and intelligence gathering; and ethics. Together, these categories cover the scope of executive powers whose history was discussed in chapter 2. They will be used to organize the discussion in the following three chapters as well.

## EXECUTIVE AUTHORITY & GOVERNMENTAL SECRECY

Lyndon Johnson, it is said, was reviewing marines bound for Vietnam. As he walked across the tarmac toward a departing helicopter, an officer caught up and pointed another way: “Sir, that’s your helicopter over there.” Johnson stopped him. “Son,” he replied, “they’re *all* my helicopters.”<sup>6</sup>

Such was Johnson’s view of executive authority, and possessiveness began at home. If the Brownlow Committee had found in 1937 that “the President needs help,” by the 1960s he had help to spare. The president’s White House staff had risen from Roosevelt’s handful of administrative assistants with a “passion for anonymity” to a large bureaucracy in its own right, frequently taking a very visible center stage in policy-making and serving as a buffer to and sometime substitute for the cabinet secretaries. Johnson had some four hundred staff in the White House Office, allowing him to build capacity for domestic policy formulation

through aides such as Joseph Califano, who oversaw a series of task forces aimed at bypassing the cabinet departments. He also continued and expanded Kennedy's reliance on the NSC staff. Some analysts have laid the blame for Johnson's Vietnam decision making at the feet of an insular advising process that wallowed in "groupthink," providing a forum for railing against opponents rather than testing the policy's assumptions and seeking contradictory opinions.<sup>7</sup>

Still, when Nixon arrived in the White House he dramatically accelerated these developments. While pledging fealty to "cabinet government," especially in domestic policy, Nixon expanded and empowered the White House staff. A small but telling point concerns lunch: in the Eisenhower administration, there was one White House mess. In the Johnson administration there was one mess, but two servings. Under Nixon, a second dining area had to be added.

Whatever else that action may imply about the new administration's hungers, recent scholarship has established the Nixon years as a clear "tipping point" for White House staff organization. Both its size and the range of its responsibilities expanded greatly.<sup>8</sup>

This was not accidental. Nixon liked an orderly, hierarchical system, and properly staffing issues out required more people. Further, the growth of the presidential branch was intended to counter, and substitute for, the civil service-dominated executive branch, by then nearly 3 million employees strong. Johnson wanted control of that bureaucracy, but Nixon felt he needed it. He feared (not without reason) that the permanent bureaucracy, after spending twenty-eight of thirty-six years under Democratic presidents, opposed him and would subvert his programs.

Thus Nixon sought to build up a counterbureaucracy in the Executive Office. While raw numbers should be read with some caution, the trend is clear: by 1972 the White House Office employed close to six hundred people and the EOP had grown to fifty-six hundred employees (compared to fourteen hundred in 1952). In the first Nixon term alone the EOP budget nearly doubled, to \$54 million per year. Managing all this required resurrecting and expanding upon the Eisenhower innovation of a full-time chief of staff, a role filled by H. R. Haldeman with ruthless efficiency through his own West Wing mini-secretariat.<sup>9</sup>

The president's men also became far more functionally specialized,

both in domestic and foreign policy. Under Henry Kissinger, the NSC staff was to be the main source of foreign policy advice and even operations; most of Nixon’s foreign policy endeavors—Vietnam, detente, the opening to China—ran through the NSC, not the State Department. The NSC staff went from eighteen professionals to fifty, and its budget tripled. Kissinger himself took over the chair of most of the upper-level interdepartmental committees (and, not coincidentally, a prestigious office just down the hall from the president’s); one new assignment even gave Kissinger budget review power over the State Department and Pentagon.<sup>10</sup> Kissinger was also given the authority to order background research studies without going through the cabinet-level membership of the NSC itself, aiding Nixon’s predilection for back-channel diplomacy.

In 1970 Nixon created the Domestic Council to parallel the NSC: like the NSC, the Domestic Council came with an executive director (John Ehrlichman) and a sizeable staff that could act independently of the putative council membership. One aide told an interviewer, “there isn’t anything in the domestic area that we don’t handle, and when we set this up we defined domestic as anything that wasn’t obviously foreign. So there’s quite a range.” Though this boast perhaps overstated the case, at the same time Nixon transformed the BoB into the Office of Management and Budget (OMB). The new emphasis on the “M” in OMB was designed to facilitate Nixon’s efforts to shape the way executive agencies created and implemented policy. As Ehrlichman put it in a 1972 memo to Caspar Weinberger, then OMB’s director, “I’m for whatever will strengthen the President’s hand vs. the bureaucracy.” This meant focusing on management—so long as it wasn’t boring public administration theory but rather “management in the get-the-Secretary-to-do-what-the-President-needs-and-wants-him-to-do-whether-he-likes-it-or-not sense.” The goal was to gain for Nixon the ability to control bureaucratic structures, personnel, processes, and, thereby, outcomes.<sup>11</sup>

Nixon also paid significant attention to public relations and outreach; indeed, “public opinion was a guiding concern of the Nixon White House.” While Johnson established polling as a stand-alone operation within the White House, Nixon expanded in-house polling quite dramatically, both in terms of its capacity and its political orientation. He commissioned nearly twice as many private polls (230 in all) between

1969 and 1972 as LBJ did between 1963 and 1968, and those polls were qualitatively superior—more detailed, more sophisticated, and more precisely timed and targeted. The White House polled not just on election trial heats but on multiple policy issues, from Vietnam to busing to the environment.<sup>12</sup> With results in hand, Nixon formed a nascent office of public liaison to reach out to organized interest groups (and to help organize those that might be helpful). And he created an Office of Communications to coordinate press relations, including efforts to bypass the White House press corps by releasing material directly to local media outlets deemed more sympathetic to the administration’s programs than the national networks.

Another segment of Nixon’s strategy to get a handle on the wider executive branch was organizational. Unhappy with cabinet-level loyalty—Ehrlichman commented that the secretaries only appeared at the White House for Christmas parties, since they had gone off and “married the natives”—Nixon used his appointment power to seed the bureaucracy at the operational level with those personally loyal to his programmatic initiatives and to fire at least some of those who resisted the Nixon line. He also sought to reorganize the cabinet into a smaller group of more functionally consistent departments; failing in this, he briefly implemented an experiment in which certain departments would report through others via so-called supersecretaries, who also held White House staff appointments. For example, Treasury Secretary George Shultz became the assistant for economic resources, overseeing the Treasury and Commerce Departments, the U.S. Trade Representative, and the Federal Reserve. (This double appointment also meant that the new assistant could claim executive privilege regarding his communications with the president.)

By 1976, then, former Eisenhower and Nixon staffer Stephen Hess could charge that “the modern Presidency has moved toward creating all policy at the White House, overseeing the operations of government from the White House, using White House staff to operate programs of high presidential priority, and representing in the White House all interests that are demographically separable.”<sup>13</sup>

Given Nixon’s fears about bureaucratic unresponsiveness, his “administrative presidency” strategy had potential.<sup>14</sup> However, a large, far-flung White House staff brings with it managerial costs as well as benefits,

since it is inherently harder to monitor. Nixon largely relied on his staff structure to manage for him: he preferred to meet regularly with only a few advisers (especially Haldeman, Ehrlichman, and Kissinger, who became known collectively as the “Berlin Wall”), relying on written memos instead of personal encounters and scheduling large blocks of time for private thinking and writing. Large staffs also tend to bring non-presidential problems into the White House orbit. And they become a tempting center of resources for Executive Office end runs around what the president sees as bureaucratic intransigence but what the bureaucracy sees as strict adherence to the law.

This temptation was too infrequently resisted, resulting in broad claims of presidential power. One theme was the selective enforcement of the laws. In 1969, for example, the administration ordered the Department of Health, Education, and Welfare to ignore the portions of the 1964 Civil Rights Act that required the federal government to cut off funds to colleges that had not desegregated. “Appellants insist that the enforcement of [this statute] is committed to agency discretion,” the circuit court noted, finding instead that enforcement was specifically required by the law. Likewise, in 1971 Congress passed a defense authorization act stating it was now U.S. policy to “terminate at the earliest practicable date” American involvement in Vietnam. Nixon, when he signed the bill, declared this language “without binding force or effect” since “it does not reflect my judgment about the way in which the war should be brought to a conclusion” and (despite its presumed status as the law of the land) “will not change the policies I have pursued and that I shall continue to pursue toward this end.” Prospective impoundments, discussed in more detail later, provide another example. As the district court observed in one such case, the administration was arguing that “the Constitution confers the discretionary power upon the President to refuse to execute laws passed by Congress with which he disagrees.” This, the court ruled, could not stand.<sup>15</sup>

Such broad claims to discretionary power permeated the administration. In late 1971 the White House launched what became known as the “Responsiveness Program,” designed to capitalize on what Nixon aide Fred Malek called “the President’s unique asset in the forthcoming campaign,” namely, “his control of the executive branch.” Various grant programs were targeted toward Nixon supporters and away from likely

opponents; a Cleveland recreation program, among others, lost funding because its beneficiaries, urban blacks, were unlikely to vote Republican.<sup>16</sup>

Sometimes responsiveness pushed in more sinister directions. As early as 1969 the administration sought to use the Internal Revenue Service (IRS) to curtail the activities of left-leaning groups: “what we cannot do in a courtroom via criminal prosecutions,” suggested a White House memo, “IRS could do by administrative action.” The agency eventually created a Special Services Staff, which collected information on some eleven thousand organizations and individuals and conducted more than two hundred audits. Other targeted audit requests—for example, of hostile reporters—were also passed down from the White House; *Washington Post* lawyer Edward Bennett Williams was audited for three consecutive years. In 1972 Ehrlichman demanded information on the tax records of the Democratic National Committee chairman, Lawrence F. O’Brien. Later that year White House counsel John Dean gave IRS commissioner Johnnie Walters a list of nearly five hundred people active in Democratic senator McGovern’s presidential campaign, insisting they be investigated. Walters complained to Treasury Secretary Shultz, who told him to ignore the request.<sup>17</sup>

Such recalcitrance only aggravated the president and his men. As early as 1971 Dean wrote a memo discussing the “use of the available federal machinery to screw our political enemies.”<sup>18</sup> In September 1972, Dean told the president, “One of the things I’ve tried to do, is just keep notes on a lot of the people who are emerging as less than our friends.” Nixon replied, “I want the most comprehensive notes on all of those that have tried to do us in. Because they didn’t have to do it. . . .”

But now [the President went on] they are doing this quite deliberately and they are asking for it and they are going to get it. . . . We, we have not used the power in this first four years, as you know.

*Dean:* That’s true.

*President:* We have never used it. We haven’t used the [FBI] and we haven’t used the Justice Department, but things are going to change now. And they’re going to change, and, and they’re going to get it right—

*Dean:* That's an exciting prospect.

*President:* It's got to be done. It's the only thing to do.

*Haldeman:* We've got to.<sup>19</sup>

Dean was not the only one taking notes. At the same time White House political aide Charles Colson was busy putting together an “Opponents List” as part of the “Political Enemies Project.” This compilation—to which others in the White House also contributed names—became later known simply as the “enemies list,” running to some two hundred people, including entertainers, journalists, and academics along with Democratic politicians and militant activist groups like the Black Panthers. The list underscores how the administration transmuted “opponents” into “enemies” in a manner that pervaded its policies and politics.<sup>20</sup>

In other areas the administration received more cooperation against its “enemies” than Shultz and the IRS had provided.

One was in using emergency and military forces to control the anti-war demonstrations that convulsed Washington throughout the late 1960s and early 1970s. In May 1971, for example, several thousand people were arrested in dragnets and then detained; in 1975 more than a thousand of those detainees were awarded monetary damages as recognition that their civil rights had been violated.<sup>21</sup>

Even more ominously, government agencies were working to provide more systematic intelligence on “subversive” organizations and individuals the president saw as threatening domestic tranquility and national security. The FBI’s COINTELPRO (Counterintelligence Program), begun in 1956, did not end until 1971. It was truncated not because of presidential regret but because of bad publicity accrued when antiwar activists broke into an FBI office, stole COINTELPRO documentation, and distributed it to the media. The stolen memos, and documents obtained later through lawsuits against the bureau, laid out a wide range of surveillance techniques, including infiltration but also warrantless wiretapping, searches (thus, in English, “break-ins”), examination of financial records, and interception of the mail. One 1970 memo recommended making clear to “New Left” circles that “there is an FBI agent behind every mailbox.”<sup>22</sup> Field agents forged letters to var-

ious groups, hoping, in the words of a 1968 memo, to “create factionalism between not only the national leaders but also local leaders, . . . to neutralize all organizational efforts . . . [and] to create suspicion amongst the leaders” about each other’s motives, finances, and loyalty to the cause; in some cases they hoped to incite violence between the groups. One such letter, purportedly from a branch of the Students for a Democratic Society, mocked Black Panthers leader Huey Newton as “Huey the Homo” and urged Panthers to “get high on wine and dream your alcoholic dreams of conquest.” Other calls or notes to reporters passed along, under false names, “facts” about financial links and even sexual liaisons between public figures and antiwar or black militants. The FBI alone had some two thousand agents and one thousand paid informants keeping track of the New Left. It should be stressed that this aggressive undermining of lives and careers rarely stemmed from suspicion of actual criminal activity.<sup>23</sup>

Other agencies got in on the action, too, even after COINTELPRO was formally terminated. The National Security Agency (NSA), with its state-of-the-art spy equipment, had begun conducting electronic surveillance of civil rights and antiwar activists in 1967. In July 1969 Project MINARET was formalized in order to provide “information on U.S. organizations or individuals who are engaged in activities which may result in civil disturbances or otherwise subvert the national security of the U.S.” and on any efforts of foreign governments to influence or aid those activities.<sup>24</sup> This last issue was of great concern to Presidents Johnson and Nixon, who also ordered the CIA to investigate foreign links to domestic protesters, despite the legal ban on such CIA operations within the United States. The CIA’s domestic surveillance program, code-named CHAOS, ran from 1967 to 1974, when investigative journalist Seymour Hersh broke the story in the *New York Times*. During its heyday, more than fifty staffers compiled dossiers on some seventy-two hundred American citizens, conducted their own break-ins (or contracted them out), opened mail (some 380,000 letters, between the CIA’s and FBI’s combined efforts), and tapped phones. The program’s computer files had some three hundred thousand names in them, neatly cross-indexed; however, the CIA could not find the links Johnson and Nixon so urgently sought, and it said so in three separate reports.<sup>25</sup> The agency nonetheless went on to aid the Nixon “Plumbers” (discussed

later) by providing them with disguises, false identity documents, and electronic equipment as well as providing the White House with a psychological profile of Daniel Ellsberg, who leaked the Pentagon Papers to the press in 1971.

To be sure, and as should be clear from chapter 2, these methods of operation were not invented by Nixon but have roots back to the 1940s. Lyndon Johnson was an especially enthusiastic consumer of both domestic surveillance and what might be called personal intelligence (that is to say, intimate gossip). In 1968, suspicious of Nixon’s contacts with South Vietnam, LBJ had the FBI bug Nixon’s campaign plane; Nixon claimed the same had been done even in 1962 when he ran for governor in California. In this sense, then, as noted earlier, Nixon was not without justification when he periodically complained that “everybody does it.” And if Nixon read political opposition as personal enmity, there too he was not always wrong. The vicious attacks on the president’s character that sprang up as the Johnson administration wound down and that continued unabated through Watergate were often simple denigration without any element of constructive deliberation.

It is also worth stressing the context of the times and their resonance in our own. Various organizations were involved in what can only be called domestic terrorism: planting bombs, robbing banks, inciting riots. The assassinations of Martin Luther King Jr. and Robert F. Kennedy, the provocations and subsequent “police riot” of the Democratic National Convention in Chicago, the widespread unrest (a comforting euphemism for vandalism, looting, and assault) both in inner cities and on college campuses—all this, in 1968 alone, led many to wonder whether the country was coming apart. In 1969 a clash in Berkeley, California, left one dead and thirty wounded; the Center for Advanced Study in the Behavioral Sciences in Stanford, California, was firebombed in the spring of 1970. During the fifteen months ending in April 1970, some 37,000 real and threatened bombings were recorded, causing forty-one deaths; Rutgers University was shut down 175 times in 1970 alone by bomb threats. “Never in our history has this country been confronted with so many revolutionary elements determined to destroy by force the government and the society it stands for,” declared the attorney general. In May 1973, thinking back on the various intelligence efforts detailed in this chapter, Nixon argued to Chief of Staff Al

Haig that they “involve[d] groups that were engaging in violence, disruption and unbelievable hell around this place. . . . I don’t think the country is going to get excited about a damn plan that was drawn up by agencies to control the goddamn riots.” Haig replied, “In fact, most people will say ‘thank God.’ Again, if we had done less, we would have been irresponsible.”<sup>26</sup>

Haig’s first point probably had merit; however, his second was on less solid ground. Despite the context, the Nixon administration’s domestic intelligence efforts, and the claims put forth to justify them, ultimately went beyond the defensible to the self-serving. The sweeping language that sought to redefine the “inherent” executive power is rather chilling in retrospect (as, indeed, at the time). In June 1969, for example, Attorney General John Mitchell claimed that unilateral presidential power extended to wiretapping any group investigators believed was seeking “to attack and subvert the government by unlawful means.” In 1973 John Ehrlichman testified that the Plumbers’ activities, including their burglaries, were “well within the President’s inherent constitutional powers” because they were conducted as a response to national security concerns.<sup>27</sup> Combined with the breadth of the Nixonian definition of “enemy” and his self-identification with “the government,” such formulations led quickly to unbounded presidential authority—if all opponents of the administration were enemies attacking the government, then any action was justified.

While the era’s domestic dissent was periodically harrowing, it was closer to a particularly virulent crime wave than a systematic threat to national security. Nixon knew this. While as late as 1973 he would argue that “some of the disruptive activities were receiving foreign support,” a long litany of reports (whether from the CIA or Nixon’s handpicked Commission on Campus Unrest) had found no support for that claim; John Dean later testified that “we never found a scintilla of viable evidence indicating that these demonstrators were part of a master plan.”<sup>28</sup> They represented instead deep dissatisfaction with government policies, at home and especially abroad.

The administration placed little credence in the notion that changes in policy would result in changes of attitude. As Nixon aide Tom Huston wrote, “Perhaps lowered voices and peace in Vietnam will defuse the tense situation we face, but I wouldn’t want to rely on it exclusively.”<sup>29</sup>

Nor did the president. And the other tools he sought extended far enough past those of previous administrations to represent a shift in kind as well as degree.

A key piece of evidence for that argument is the extent to which the administration sought to use internal security as just another tool for enforcing a political agenda. By the spring of 1970, the White House was dissatisfied with the quality and focus of domestic intelligence efforts. The FBI, Ehrlichman aide Bud Krogh wrote to his boss, was “almost blind to opportunities which could help us” politically; top-level direction was needed to make sure that the Justice Department would “work for the President” instead of in its own bureaucratic interests. FBI head J. Edgar Hoover had grown more cautious, refusing both Johnson and Nixon White House requests to expand COINTELPRO for fear it might lead to bad publicity for the bureau (as indeed it soon would). White House staffer Tom Huston, who had worked on the team preparing Washington for the massive antiwar demonstrations of November 1969, was tasked with enlarging and coordinating internal security matters. As the historian Stanley I. Kutler summarizes, “Huston’s implicit instruction was to bypass the recalcitrant Hoover and provide an intelligence-gathering apparatus that would serve the President’s will more effectively.”<sup>30</sup>

In June 1970 Nixon convened a working group designed to do just that. After complaining that the agencies’ lack of cooperation was obstructing domestic intelligence gathering, the president instructed the group—made up of the FBI, CIA, Defense Intelligence Agency (DIA), NSA, and the White House—to prepare a “threat assessment” and a “range of options” for dealing with its findings. Less than three weeks later, it reported back, arguing that the leftist student groups had “revolutionary aims,” which were “apparent when their identification with Marxism-Leninism is examined.” As a result, a number of options to relax restraints on intelligence gathering were considered. Huston, in transmitting the report to the president, attached a memo stating that “the need for increased coordination, joint estimates, and responsiveness to the White House is obvious to the intelligence community.” He recommended that Nixon choose the most aggressive option in nearly every case. The core of the “Huston Plan” thus provided for increasing

electronic surveillance of “domestic security threats” as well as foreign diplomats; opening and reading the mails; lifting restrictions on “surreptitious entry”; recruiting more campus informants; and creating a permanent Interagency Group on Domestic Intelligence and Internal Security, representing the FBI, CIA, NSA, DIA, and other military counterintelligence units, that would be staffed—thus, run—by the White House. Huston argued that the benefits outweighed the costs, since “existing coverage is grossly inadequate.” He noted that “surreptitious entry” was, well, “clearly illegal,” not to mention “highly risky.” But it was worth it: “it is also the most fruitful tool and can produce the type of intelligence which cannot be obtained in any other fashion.” Nixon approved the report.<sup>31</sup>

Huston’s plan didn’t last, at least not in its original form. Hoover, jealous of ceding ground to the White House, had put himself on record as dissenting from Huston’s recommendations on civil liberties grounds. Nixon, while presumably bemused by Hoover’s arguments, given their author, feared that the FBI chief might expose the plan. By late July Haldeman ordered that the decision memoranda be withdrawn.

However, as the discussion of COINTELPRO, CHAOS, MINARET, and their ilk makes clear, most of the elements of the plan were still implemented: each of these programs was intensified after a new Intelligence Evaluation Committee was activated within the Justice Department in late 1970, bringing together the Huston groups plus the Secret Service and Treasury.

Further, the Nixon White House decided it needed to supplement these official efforts. To do so it created its own private secret police force—in fact, two of them. One, termed the White House “Investigations Unit,” was started in April 1969, when John Ehrlichman put former New York detective John Caulfield on the White House payroll; Caulfield’s assistant, another former New York policeman named Anthony Ulasewicz, was paid out of surplus campaign funds by Herbert Kalmbach, Nixon’s personal attorney and fundraiser. The two investigated a variety of happenings that caught the attention of the White House, from the background of a comedian named Richard M. Dixon, who did impersonations of the president, to a nightclub that counted Speaker of the House Carl Albert (D-OK) among its clients. But the unit’s bread and butter was Sen. Edward M. Kennedy. Nixon’s history

with the Kennedy family went back to 1947, when he entered the House with John F. Kennedy, and since his 1960 defeat to JFK he had been “preoccupied—even obsessed”—with the Massachusetts clan. When the news of Edward Kennedy’s automobile accident at Chappaquiddick broke in July 1969, Ulasewicz was quickly dispatched to Martha’s Vineyard. There he posed as an investigative reporter in an effort to dig up details on the fatal crash. In August Caulfield flew to Hawaii to trail Kennedy as he vacationed there after a trip to India; “no evidence was developed,” Caulfield had to report, “to indicate that his conduct was improper.” As Kennedy’s criticism of Nixon’s Vietnam policy continued that fall, Nixon ordered increased attention to the “Teddy Kennedy fight,” and Haldeman had to be talked out of ordering round-the-clock surveillance.<sup>32</sup>

The Kennedy harassment paled, however, in contrast to the duties of the White House’s second “Special Investigations Unit,” better known as the “Plumbers.” This group, led by Ehrlichman aide Krogh and Kissinger staffer David Young, was named after its major assignment: to plug leaks.

Leaks of sensitive—classified, or merely untimely—information are a staple of Washington life. They are often strategic and are used for many purposes. Nixon was a master leaker himself, going back to his days of investigating Alger Hiss on the House Un-American Affairs Committee.

As president, however, he found them less palatable. Both Nixon and Kissinger, seeking to control the flow of information concerning Vietnam and other foreign policy, were angered when the *New York Times* printed a number of stories about troop withdrawals, the Strategic Arms Limitation Treaty (SALT) talks, and North Korea in the spring of 1969. On May 8 the *Times* reported that U.S. bombers had been raiding Vietcong and North Vietnamese camps in Cambodia—a story that attracted surprisingly little attention at the time, though it would become wildly controversial a year later. Certainly Kissinger recognized its significance at once. Through his then-deputy Al Haig, he asked the FBI to find the story’s source, and eventually wiretaps were placed on *Times* reporter William Beecher, three other reporters, and thirteen members of the White House staff, from NSC aide Morton Halperin (Kissinger’s prime suspect) to speechwriter William Safire. The tap on the latter, as well as another on deputy counsel John Sears, had nothing to do with national

security and everything to do with friendly relations with reporters and others on the Georgetown social circuit. The taps on Halperin and his colleague Anthony Lake continued even after they left the NSC staff, since they went to work for Sen. Ed Muskie's campaign and thus became potential sources of political intelligence. Summary transcripts of the taps—which went on for nearly two years—were distributed around the upper levels of the White House staff, to Haldeman, Ehrlichman, Kissinger, Haig, and the president himself.<sup>33</sup>

Still, as shown by its resistance to the Huston Plan, the FBI was not always so amenable to White House requests. In 1969 Nixon ordered Ehrlichman to create “a little group right here in the White House. Have them . . . find out what’s going on and how to stop it.”<sup>34</sup> If Hoover would not help the president, the president would help himself. And when in June 1971 the Defense Department’s encyclopedic secret history of American involvement in Vietnam, the Pentagon Papers, began appearing in print, Nixon came to decide that an aggressive response was in order. This was not his first reaction; after all, the Pentagon Papers largely incriminated the Johnson and Kennedy administrations, demonstrating that the American public had long been deceived about the scope and success of U.S. efforts in the region. Few of the documents, if any, jeopardized current military operations. (Nixon would later describe another leak by saying, “this does affect the national security—this particular one. This isn’t like the Pentagon Papers.”)<sup>35</sup> But other things, including governmental credibility, were at stake. With so many secret negotiations under way around the globe—with North Vietnam, with China, with the USSR—Nixon and Kissinger feared that the leak would undercut other nations’ faith in the American ability to keep such talks confidential; “the era of negotiations can’t succeed without secrecy,” Nixon told Defense Secretary Melvin Laird. They also worried that the leak might inspire others within the national security bureaucracy to release other, more damaging, information. Further, they were hardly unaware that exposing their predecessors’ deceptions would set a dangerous precedent for their successors to exploit.<sup>36</sup>

Nixon therefore first sought an injunction to prevent publication of the Pentagon Papers; this request for prior restraint, rare in American history, was denied by the Supreme Court. With former NSC staffer Daniel Ellsberg soon identified as the leaker, Nixon’s attention turned to

ways in which Ellsberg could be made an example. “Convict the son of a bitch in the press,” he told his staff at various times. “If you can get him tied in to some communist groups, that would be good.”<sup>37</sup>

Other leaks around this time, regarding U.S. intelligence on Soviet-Indian relations and the SALT negotiations, further infuriated Nixon. “I don’t care how it is to be done, do whatever has to be done to stop these leaks and prevent further unauthorized disclosures,” Nixon told Charles Colson. “I want it done, whatever the cost.” In another conversation he asked, “Does that bother you as being repressive?” Colson replied, “Oh, hell, no,” to which Haldeman added: “We’ve got to be repressive.”<sup>38</sup>

Enter the Plumbers, with an assignment to find out all they could about Ellsberg’s life, motives, and associates. Their main operatives were former FBI agent G. Gordon Liddy and former CIA operative E. Howard Hunt. For Hunt the new assignment was more of the same. On the White House payroll since the summer of 1970, largely as a consultant to Colson, he had worked on forging cables purporting to show that the Kennedy White House had provoked the assassination of South Vietnamese president Ngo Dinh Diem in 1963. He had also dug further both into the Bay of Pigs operation (using files ordered from the CIA by Ehrlichman and, ultimately, Nixon) and into Chappaquiddick and other aspects of Ted Kennedy’s personal life (often using an identity, equipment, and disguises helpfully provided by the CIA).

The Plumbers’ first formal assignment was to work on the “neutralization of Ellsberg,” as Hunt put it in a July 1971 memo. He laid out at least two ethically dubious maneuvers: obtaining a CIA psychological profile of Ellsberg and seeking “to obtain Ellsberg’s files from his psychiatric analyst.”<sup>39</sup> The CIA proved compliant, despite the rules ostensibly barring it from performing such evaluations on American citizens at home; but the Plumbers were unhappy with the profile’s conclusion that Ellsberg was sane. They sent it back, demanding revisions, and obtained a slightly juicier conclusion (the leaks were “an act of aggression at his analyst, as well as at the President and his father”). Still unsatisfied, and seeking a jackpot of incriminating information, Krogh and Young wrote to Ehrlichman proposing a “covert operation” that would “examine the medical files still held by” Dr. Lewis Fielding, Ellsberg’s psychiatrist. Ehrlichman agreed, so long as it would be “done under your assurance that it is not traceable.” He later claimed Nixon himself approved the

plan; Nixon in his memoirs denies prior knowledge, but he admits that “it was at least in part an outgrowth of my sense of urgency about discrediting what Ellsberg had done and finding out what he might do next. Given . . . the peril I perceived, I cannot say that had I been informed of it beforehand . . . I would have automatically considered it unprecedented, unwarranted, or unthinkable.”<sup>40</sup>

Hunt and Liddy thus recruited a team of burglars, largely made up of Cuban exiles trained by Hunt during his CIA days on the Bay of Pigs operation; the project was paid for (unwittingly) by money obtained from the dairy lobby by Colson. The duo, supplied once more with false identities and disguises from the CIA, cased the Fielding office building. But the subsequent operation was not a success. It was supposed to leave no trace but instead left so many that the office had to be trashed in order to make the entry look like a run-of-the-mill robbery. Receiving little useful information, Hunt and Liddy urged a raid on Ellsberg’s apartment as well.

This request was declined. Others were not—in May 1972, for example, the Plumbers team broke into the Chilean embassy in Washington, evidently to gain information about the plans of the socialist Allende government as well as to cover their other break-ins by making them appear to be CIA operations.<sup>41</sup> The Plumbers also installed wiretaps, most notably on a navy officer—who, rather bizarrely, had been spying on the Nixon NSC on behalf of the Joint Chiefs of Staff. As the election wore on, Hunt and Liddy found themselves over at the Committee to Re-elect the President (CRP or, irresistably, CREEP); their exploits there are discussed later in this chapter.

“At this point,” concludes J. Anthony Lukas, “the White House [had] moved across the line from . . . prodding other agencies into direct operations more appropriate to a secret-police force.” It is hard to reject the analogy. Indeed, one need only read the multiple references in the Nixon transcripts to the Brookings Institution. Not once but at least six times the president explicitly ordered that it be raided to obtain whatever information its staff had on Lyndon Johnson’s late fall bombing halt in 1968: “You’re to break into the place, rifle the files, and bring them in.” Planning got under way before, in this case at least, Nixon’s staff had the sense to ignore his commands.<sup>42</sup>

## A CODA: EXECUTIVE PRIVILEGE

The Plumbers' job flowed from the avowed need to keep secrecy. Thus, the rise of “executive privilege” discussed in chapter 2—that is, the claim that information on these activities could be kept from Congress and even the courts—requires additional consideration here.<sup>43</sup> As noted earlier, the phrase itself arose only in the 1950s. But the behavior it described (and by its new name subtly legitimated) goes back to the Washington administration, which concluded it had the right to withhold information from Congress concerning military operations and diplomatic negotiations. More generally, over time presidents had claimed the right to determine what, in James Polk's phrase, was “compatible with the public interest to communicate.” Largely these concerned sensitive issues of foreign relations.

Later, as the presidential branch grew, the claim expanded to provide for the confidentiality of advice to the president from his staff, using the model of lawyer-client privilege. As Nixon summed up the matter of confidentiality, “it is absolutely essential, if the President is to be able to do his job as the country expects, that he be able to talk openly and candidly with his advisers about issues and individuals. . . . This kind of frank discussion is only possible when those who take part in it can feel assured that what they say is in the strictest confidence.”<sup>44</sup>

Some aspects of executive privilege had been generally accepted by Congress, with conflicts resolved case by case. Johnson relied more heavily on classification than on executive privilege, though his staff certainly claimed it from time to time, the more so as public criticism of Vietnam escalated. White House staffer DeVier Pierson would argue that “principle and precedents” excused “immediate staff assistants” from testifying about matters relating to their duties on behalf of the president.<sup>45</sup>

However, Nixon pushed the envelope much further. In March 1973 he claimed that executive privilege could be claimed on behalf of former as well as current staff; in May he applied it not just to information requested by Congress but to that subpoenaed by grand juries. He also extended it to “all documents, produced or received by the President or any member of the White House staff in connection with his official

duties.” After all, he claimed, “the manner in which the president exercises his assigned executive powers is not subject to questioning by another branch of the government. . . . [I]t is equally appropriate that members of his staff not be so questioned, for their roles are in effect an extension of the Presidency.” The separation of powers, in this case, was to be absolute.<sup>46</sup>

This view was exemplified by Attorney General Richard Kleindienst in testimony before a Senate subcommittee in April 1973. Kleindienst argued that the president could direct any member of the executive branch to refuse information in response to congressional request. Sen. Ed Muskie couldn’t quite believe it: “the Congress, in your view, has no power to command the production of testimony or information by anyone in the executive branch under any circumstances?” None, said Kleindienst, if the president says so. *Every employee?* Muskie asked. Right, said Kleindienst: “your power to get what the President knows is in the President’s hands.” Sen. Sam Ervin tried again: “Your position is the President has implied power under the Constitution to deny the Congress the testimony of any person working for the executive branch . . . or any document in [their] possession?” Yes, said Kleindienst. But, he suggested, “you have a remedy, all kinds of remedies—cut off appropriations.” Or, he added, almost as a dare, you could “impeach the President.”<sup>47</sup>

The battle over executive privilege would, of course, go down that very path.

### WAR POWERS, INTELLIGENCE OVERSIGHT, & FOREIGN POLICY

On August 2, 1964, the U.S. destroyer *Maddox* reported it had been attacked by three North Vietnamese torpedo boats as it sailed in international waters some sixteen miles from North Vietnam’s coast. It fired back, sinking one enemy vessel and damaging another.

Though it was not widely known, South Vietnamese ships and commandos backed by American ships and military advisers had since February been conducting a series of secret “34-A” raids against North Vietnamese coastal areas. They were designed to bolster Southern morale

and put the North on notice of American steadfastness toward its ally. At the same time, American vessels were on patrol near Northern waters, gathering electronic intercepts and other intelligence and generally making a show of force. The *Maddox* was on such a mission when it was attacked, near where a 34-A operation had taken place two days before; presumably the North Vietnamese thought the ship had been part of the offensive and tried to counterpunch.

The Johnson administration, likewise, did not want to send a signal of weakness. Thus it ordered the continuation of the *Maddox*'s patrol, along with a reinforcing destroyer, the *C. Turner Joy*. On the evening of August 4, North Vietnamese orders to attack both ships were intercepted. In Washington, President Johnson decided that he would request congressional support for a retaliatory strike if such an attack occurred. Defense Secretary Robert McNamara argued that “we cannot sit still as a nation and let them attack us on the high seas and get away with it.” Later that afternoon, Johnson ordered strikes on North Vietnamese torpedo boat bases and oil storage facilities. And he requested that Congress pass what would become known as the Tonkin Gulf Resolution.<sup>48</sup>

The language of the resolution was straightforward: “That the Congress approves and supports the determination of the President, as Commander in Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.” It noted that the United States was “prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any” Southeast Asia Treaty Organization (SEATO) member or protocol state (such as South Vietnam, Cambodia, or Laos) “requesting assistance in defense of its freedom.” The resolution would expire when “the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise,” or when Congress canceled it.<sup>49</sup>

As seen in chapter 2, the Tonkin Gulf Resolution was not the first blank-check delegation of power Congress had granted the president: the language was explicitly modeled by Johnson’s staff to mirror the Formosa Resolution of 1955 and the Middle East Resolution of 1957. Nor was it drawn up in response to the Tonkin incidents, for as the Pentagon Papers later showed, drafts were ready as early as May 1964.

In early versions a dollar limitation was placed on military operations, but this was discarded by August, making the blank check literal as well as figurative.<sup>50</sup>

In presenting his case to the public and Congress, Johnson stressed the North's "open aggression on the high seas," arguing on August 5 that "the attacks were deliberate. The attacks were unprovoked." They were, he said, "aggression—deliberate, willful, and systematic aggression." Defense Secretary McNamara took a similar line, testifying before a Senate committee that the ships were engaged in a "routine patrol in international waters." Congress reacted quickly and nearly unanimously: the resolution passed the House by a vote of 416–0, the Senate, 88–2. Rep. Ross Adair's (R-IN) comment was typical of the debate: "the American flag has been fired upon," he argued. "We will not and cannot tolerate such things."<sup>51</sup>

It turned out, of course, that the facts were rather hazier than the administration's presentation of them. The patrol was not routine, nor was either attack entirely unprovoked. Indeed, the second may never have happened. As early as August 4, the commander of the *Maddox* telegraphed word that "many [of the] recorded contacts and torpedoes fired appear doubtful. Freak weather and over-eager sonarman may have accounted for many reports. No actual visual sightings by *Maddox*." Johnson later speculated disgustedly that the "stupid sailors were just shooting at flying fish." Other evidence suggests some attack did occur. But certainly the case for "systematic aggression" by the North was not strong.<sup>52</sup>

Sen. Jacob Javits (R-NY) would later write, backtracking a bit, that "the language of the Gulf of Tonkin resolution was far more sweeping than the congressional intent." However, as he added, "whatever President Johnson's position . . . Congress had the obligation to make an institutional judgment as to the wisdom and propriety of giving such a large grant of its own power to the Chief Executive."<sup>53</sup> That judgment was, apparently, positive. Nearly a year later, in July 1965, Johnson requested \$700 million in supplemental appropriations for Vietnam, a clear up-or-down vote on administration policy: it passed by near unanimous votes in both chambers. The president took full advantage of this broad legislative support to expand troop operations in the region.

Still, even in 1965, the administration was not entirely candid about

its plans. Operation Rolling Thunder, a massive bombing campaign of North Vietnamese targets, had kicked into gear in February. This was presented again as simple tit-for-tat, this time for an attack on a U.S. army barracks in Pleiku. But in fact it represented an important escalation and a new commitment by the United States to further escalation thereafter. By 1966 the State Department had asserted very expansively “the constitutional powers of the President” to repel sudden attacks on American interests. The president was to be the sole judge of what counted toward those interests—he could decide that Vietnam, for example, qualified. “Under this theory,” Schlesinger commented, “it was hard to see why any future President would ever see any legal need to go to Congress before leading the nation into war.”<sup>54</sup> The administration claimed in 1967 that the Tonkin Gulf Resolution was the “functional equivalent” of a declaration of war, but LBJ himself said he didn’t need it then, or later, to go to war.<sup>55</sup>

Presumably such arguments also applied to events in the Dominican Republic in 1965. A military coup in 1963 had replaced elected president Juan Bosch, somewhat to the relief of American policymakers, who distrusted Bosch’s anticommunist credentials. When a rebellion aimed at restoring Bosch was launched in the spring of 1965, Johnson sent in the marines. He argued that foreign nationals in the country were in danger and that the rebellion had communist, probably Cuban, backing (“people trained outside the Dominican Republic are seeking to gain control,” he told the nation). Ultimately, more than twenty-five thousand troops were deployed, without congressional authorization. Notably, Congress did not object; the House even passed a resolution backing interventions aimed at preventing communist takeovers of Western Hemisphere governments. Still, Johnson’s expansive rhetoric was just as notable. The president described the murders of some fifteen hundred civilians, “murdered and shot, and their heads cut off,” for example. The U.S. ambassador, he claimed, was sheltered under an embassy desk while the bullets flew through the window above him and “a thousand American men, women, and children . . . were pleading with their President for help to preserve their lives.” None of this, nor the extent of Cuban involvement in the rebellion, could be proved.<sup>56</sup>

The hyperbole involved soon raised grave doubts about Johnson’s credibility. Indeed, by the time of the Tet Offensive in early 1968, the

Johnson administration had plunged into a “credibility gap” regarding the progress of the war. Johnson’s case was not helped by ongoing hearings probing the attacks in the Gulf of Tonkin. Nor had the commitment of more and more troops (half a million by 1967) and the most massive aerial bombing in the history of warfare made discernible progress on the battlefield, despite the administration’s repeated optimistic assertions. Even Johnson’s stress on the international nature of the coalition fighting alongside the United States—including forces from the Philippines, South Korea, and Thailand—was undercut when it became known that those forces had been heavily subsidized with U.S. aid on a quid pro quo basis. The presence of one Thai division in South Vietnam cost the United States at least \$260 million.

Tet proved to be a military victory for the United States, but it was a psychological disaster. In March 1968 Johnson announced he was limiting the bombing of North Vietnam as a way of encouraging peace talks to begin. And, stunning the nation, he announced he would not run for reelection that fall.<sup>57</sup>

“We will not make the same old mistakes,” Henry Kissinger said in 1969 of the new Nixon administration and Vietnam. “We will make our own.”<sup>58</sup> When it came to asserting executive power, the administration did both. “With Nixon as with Johnson,” Schlesinger charged, “the central role for Congress in foreign affairs was to provide aid and comfort to the Commander in Chief. He never sought its advice before major initiatives.”<sup>59</sup>

As already noted, secrecy was the watchword of the Nixon administration. Even the famous 1972 trip to China, while widely supported after the fact, was planned in secrecy and carried out without congressional—or the State Department’s—involvement. Kissinger’s first trip to Beijing involved a faked illness in Pakistan followed by supposed seclusion at the Pakistani president’s private estate. “The P obviously is really cranked up about this whole Chinese thing,” Haldeman wrote in his diary. “P even lied to Billy Graham.”<sup>60</sup>

Still greater secrecy obtained in Vietnam, where the theater of war was expanded even as “Vietnamization” promised the gradual withdrawal of American combat forces. The Vietcong had long used the Ho Chi Minh Trail through neighboring—but neutral—Cambodia to

move troops and supplies from North to South Vietnam. In March 1969 Nixon approved a plan to bomb enemy sanctuaries inside Cambodia. The new front (code-named MENU) was a closely held secret; “knowledge of the operation,” its official military history notes, “was limited to individuals essential to its successful execution, and a procedure was carefully devised to conceal the bombing.” That procedure involved briefing pilots on night missions over Vietnam, then diverting them via ground control instructions over Cambodia; false reports on each mission were filed through regular channels, while real reports were filed separately and secretly. “While the MENU attacks were taking place,” the official history concludes, “only a few United States officials were aware of the B-52 operations in Cambodia, and the U.S. public had no knowledge of the attacks at all.” Nearly four thousand sorties were flown, lasting until late May 1970.<sup>61</sup>

By then another Nixon initiative in Cambodia was convulsing American public opinion. After a March 1970 coup brought a pro-American faction to power there—removing the neutral regime of Prince Sihanouk—Nixon approved the use of South Vietnamese troops on the ground in Cambodia to attack Northern sanctuaries and drive the North Vietnamese into the arms of Cambodian troops. Instead, as its troops moved farther into Cambodia, North Vietnam began full-scale support for the murderous Khmer Rouge guerrillas fighting the new Cambodian government. In late April Nixon decided to up the ante by secretly ordering the use of thirty-two thousand U.S. ground troops in assaults inside Cambodia. In an address from the Oval Office on April 30, he claimed that American policy since 1954 “has been to scrupulously respect the neutrality of the Cambodian people” but that the North Vietnamese forces in that country were “building up to launch massive attacks on our forces and those of South Vietnam” as well as to attack the Cambodian capital. The operation was not an “invasion,” he stressed, since Cambodia itself was not being attacked—it was an incursion for Cambodia’s benefit as well as for the longer-term safety of American and South Vietnamese troops.<sup>62</sup>

Nixon ended his speech by acknowledging that public opinion would be against his decision. If anything, he underestimated the reaction: widespread demonstrations broke out, and at Kent State and Jackson State protesters were killed by nervous National Guardsmen and police.

Congress reacted angrily as well. Even Senate Minority Leader Hugh Scott (R-PA) reproached Nixon for having kept him in the dark. In June the Senate voted to repeal the Tonkin Gulf Resolution and to pass the Cooper-Church amendment denying funding to military operations in Cambodia, though the amendment was carefully circumscribed to allow the president, as commander in chief, to “protect the lives of U.S. armed forces wherever deployed.” The House did not go along, rejecting even the modified amendment.<sup>63</sup>

In the short term, Nixon defused the political crisis by removing most American troops from Cambodia by the end of June; privately, he reacted to domestic criticism by beginning work on the Huston Plan. But the frenzy had little effect on long-term policy. Nixon would continue to refuse to accept congressional declarations of policy regarding Southeast Asia. Nixon’s theory of the war power, as an influential 1972 law review article by Francis Wormuth stressed, was one that highlighted the president’s ability to act unilaterally. The administration argued that the president’s constitutional authority included “the power to deploy American forces abroad and commit them to military operations when the President deems such action necessary to maintain the security and defense of the United States.” In defending the Cambodian incursion Assistant Attorney General William Rehnquist cited authority under Supreme Court precedent as well as the “tactical” decision-making power granted the commander in chief.<sup>64</sup>

Such tactics continued. In May 1972 Nixon announced he had approved a naval blockade of North Vietnam and the mining of Haiphong Harbor, to go along with a renewed escalation of the bombing campaign. A week before the 1972 election, Kissinger famously declared that “peace is at hand”: the public, and Congress, were therefore rather surprised to find that the most massive bombing of the war had begun on December 18, after Nixon’s landslide electoral victory. The so-called Christmas bombings of Hanoi and other northern cities dropped thirty-six thousand tons of bombs in ten days, more than had been dropped during the entirety of 1969, 1970, and 1971 combined.

Legislation seeking to end the war began to move through Congress as soon as it convened in January 1973. Later that month, however, a peace agreement was announced. The war was not over for the Vietnamese, but American involvement was effectively over. Some fifty-

eight thousand American servicemen had died—more than one-third of them since Nixon took office in 1969.<sup>65</sup>

The end of the war did not end the use of unilateral power, in that region and elsewhere. For example, though military action in Cambodia was by now forbidden by law, in early 1973 American bombing resumed (this time against rebels battling the Lon Nol government). Further, covert actions continued unabated around the globe. Indeed, the unimpeded use of intelligence agencies is another aspect of the “imperial presidency.” As noted in chapter 2, throughout the cold war covert operations were utilized by presidents to extend the reach of the United States in areas ranging from Iran to Guatemala to the Congo to Cuba. Kirsten Lundberg estimates that between 1951 and 1975 the CIA engaged in some nine hundred major “projects.”<sup>66</sup>

Some of these were in Southeast Asia. Within Vietnam, the Phoenix Program of pacification within South Vietnam sought to weed out Vietcong sympathizers lurking in the general population. Military, State Department, and CIA personnel set up interrogation centers in all 235 districts of the country—during 1969 alone some 19,534 Vietcong suspects were “neutralized,” over 6,000 of them killed. In 1971 the CIA’s William Colby said the program had killed 20,587 South Vietnamese since its inception in 1968, with an additional 30,000 jailed. A program of assassination, though officially denied, was by many accounts part of the Phoenix repertoire.<sup>67</sup>

In Cambodia, U.S. special forces had been quietly crossing the border in conjunction with South Vietnamese troops since at least mid-1967—some four hundred such missions in 1967–68 and more than a thousand in 1969–70 before the “official” invasion. Whether the CIA helped to underwrite the overthrow of Prince Sihanouk is still disputed. Certainly Lon Nol knew he would have immediate U.S. support; and it is intriguing that a memo from Kissinger to Nixon discussing Nol’s plan for expanding the Cambodian military was dated the day *before* the coup. Efforts in Laos went back even further, to the 1950s, and took off under the Kennedy administration, aiding Meo tribes against communist Pathet Lao guerillas. Later efforts, less successful, involved crossings from South Vietnam in attempts to cut off the Laotian portion of the Ho Chi Minh Trail. By the mid-1960s the CIA was, in the words of the agency’s Richard Helms, “flat out in its effort to keep the tribes viable militarily”;

some \$300 million a year was budgeted for these covert operations. The CIA's own proprietary air force, Air America, had more than fifty planes and twenty helicopters, moving freight and carrying out rescues; six bases and forty-five thousand troops were in neighboring Thailand, supporting Laotian operations. Operations in Laos continued into 1973.<sup>68</sup>

These were not the only notable covert operations of the Nixon years. One, particularly intriguing in light of later events, included \$16 million in aid to the Kurds of Iraq, who were supporting the Shah of Iran. That aid was cut off abruptly under President Ford in 1975, much to the Kurds' chagrin. Most notoriously, in 1970 Nixon personally ordered efforts to prevent Salvador Allende, a socialist, from becoming president of Chile. Chile to that point was "one of the CIA's outstanding success stories,"<sup>69</sup> democratic and very friendly to American multi-national corporations. The 1964 runoff election, which Allende lost, was influenced in part by \$20 million in U.S. subsidies (the equivalent of eight dollars per voter) to organizations supportive of his opponent's candidacy. When Allende was elected after all in 1970, Nixon authorized "Track II," assigning the CIA to induce a military coup and even to support assassination. Immediate efforts failed, but continuing initiatives to destabilize the regime and aid sympathetic figures in the military paid off in 1973, when General Augusto Pinochet—who would go on to lead one of the most repressive regimes in history—led a coup in which Allende was murdered. By some accounts American military attaches were in the field with some of the Chilean troops participating. Richard Helms would later be convicted of perjury for his role in covering up the CIA's involvement.<sup>70</sup>

Again, these sorts of activities go back some time. But what shifted during the Nixon years was that many of the bureaucratic safeguards for oversight of covert action—for example, the "Special Group" of the NSC—were evaded. The "40 Committee," which replaced the Special Group in 1970, had putative representation from across the executive branch. But the 40 Committee was not consulted about Cambodia, the Kurds, or Track II in Chile. Kissinger, the chair, held very few meetings, preferring one-on-one phone polls that diminished the chance for the give-and-take of debate and made sure he alone had full information. The Cambodian operation is a good example. Rather than go through the Defense and State Departments, the CIA alone was utilized for the

planning, complete with a back channel direct to Saigon. A CIA analysis, completed in April 1970, concluded that the invasion would be unsuccessful in preventing further use of Cambodia by North Vietnam, even if American troops were used; that report never made it to the White House, as Director Helms refused to consider it until early June. By then the incursion had become an excursion.<sup>71</sup>

To the end, Nixon remained unrepentant in his exercise of unilateral foreign policy powers. His veto of the War Powers Resolution (WPR) claimed that its restrictions “upon the authority of the President” were “both unconstitutional and dangerous to the best interests of our nation.” And a White House “Vietnam White Paper,” touting the peace agreement and distributed to members of Congress in January 1973, eschewed graciousness. Instead, it flayed the “incessant attacks from the United States Congress. . . . No president has been under more constant and unremitting harassment by men who should drop to their knees each night to thank the Almighty that they do not have to make the same decisions that Richard Nixon did.”<sup>72</sup>

But by then, legislators seemed more inclined to bring Richard Nixon to his knees instead.

## THE BATTLE OF THE BUDGET, PART I: DEFICIT POLITICS

A leading student of American fiscal policy has termed the period 1966–73 the “seven years’ budget war.”<sup>73</sup> To be sure, the technicalities of budgeting rarely excite as much popular passion as the news from the front. But the distribution of public resources is at the very heart of politics: it determines who gets what.<sup>74</sup> There are some \$2.5 trillion of “what” to distribute in the contemporary federal budget.

Doing so is clearly a congressional prerogative. After all, the Constitution states that no money shall be spent by the federal government that is not appropriated, and the power to tax and appropriate is clearly given in Article I to the Congress. “The power of the purse,” James Madison noted in *Federalist* No. 58, represents “the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people.”<sup>75</sup>

However, the fragmented nature of a bicameral Congress makes

efficient budget planning and coordination difficult at best, shrinking the range and firepower of Madison's "weapon." That didn't matter much while government was small and the scope of its functions limited, since the House and Senate could consider spending and revenue measures without too much internal division of labor. But as government grew, especially with and after the Civil War, appropriations responsibilities were widely distributed across multiple legislative committees. At the same time, executive budgeting was decentralized: most departments and agencies sent their spending requests directly to Congress, without coordination by, or the approval of, the president's office. Arriving on Capitol Hill, the requests were considered in isolation both of each other and of available revenues. The usual results were duplicative or contradictory policy—and overspending.

The 1921 Budget and Accounting Act addressed one side of the problem by requiring a unified, coherent executive budget and creating the BoB as presidential enforcer. But it did nothing to require a coherent process for its consideration. Instead, the revenue and expenditure sides of the budget were split off and handled separately. Then the expenditures were further separated, sent to a host of different subcommittees and treated as independent measures throughout their legislative gauntlet. Combined with entitlement spending—on Social Security, Medicare, pensions, farm supports, interest on the national debt, and the like—no one could predict in advance what government spending might actually be in a given year. As the *New York Times* commented, the United States did "not have a fiscal policy but a fiscal result."<sup>76</sup>

The result was to empower the president, even to the point of what some observers called "presidential dominance." The budget economies required by the Depression set in motion a process of central legislative clearance, which used the BoB to gain presidential control over agencies' fiscal needs (and eventually over their legislative policy proposals as well). When Congress and the president were of the same party, legislators tended to defer to the president's spending requests, keeping variation within a reasonable range; when Congress and the president were of different parties—which was relatively rare until 1969—presidents waved their veto pen. Dwight Eisenhower, for example, frequently set aside budget bills he thought showed insufficient economies. "As a result," James Sundquist has observed, "even an opposition Congress

was not able to break freely from the bounds the president set for it and put into effect its own independent fiscal policy.” Presidents used budgets to reinforce their programs and vice versa; this culminated in the outburst of new domestic programs from 1964 to 1966.<sup>77</sup>

But the Great Society was an expensive proposition. As the real war in Vietnam expanded, it became a *casus belli* of the budget war: it was costly and, many in Congress thought, unjustified. Thus legislators balked at raising taxes to pay for it. At the same time Lyndon Johnson pushed for both Vietnam guns *and* Great Society butter. “Both of these commitments involve great costs,” he admitted in his fiscal 1967 budget. But “they are costs we can and will meet.”<sup>78</sup> That course, combined with already promised New Deal entitlement spending and a soft economy, caused deficits to rise from \$1.6 billion in fiscal 1965 to over \$25 billion by fiscal 1968.

Impoundment—the refusal to spend money appropriated by Congress—was one of the strategies followed by Johnson to bridge the gap. This was not a new tool. And as noted in chapter 2, Congress had even endorsed it at times, specifically giving presidents starting with Theodore Roosevelt the authority to withhold funds under certain circumstances. Normally the power was used to defer, or spread out, spending rather than to make cuts in a particular program. Where presidents pushed the point, as Franklin Roosevelt did in the 1940s by refusing to release infrastructure appropriations he considered detrimental to the war effort, other political actors usually pushed back. Indeed, when Johnson announced he would withhold highway trust fund monies, Congress amended the 1958 Highway Act to make clear that “no part of any sums” under the law “shall be impounded or withheld from obligation.” But Johnson was able to implement other unilateral cuts. In 1966 (after Congress added \$312 million to a farm bill) he announced he would cut agriculture expenditures that exceeded his requests; later that year he directed that savings be found in programs ranging from housing to parklands and that the “excess” spending be canceled.<sup>79</sup>

During this period, Congress was consistently unable to take decisive action to reconcile spending and revenues. Always politically painful, specific programmatic cuts were made even harder by the 1960s explosion in the number of protective interest groups watching over every sliver of the federal pie. Congress chose to let the president make the

calls, in fiscal 1968 pairing a new income surtax with spending ceilings on nonentitlement (and non-Vietnam) expenditures. Johnson was given the power to withhold monies beyond the ceilings.<sup>80</sup>

The new tax and impoundment powers balanced the budget in fiscal 1969. But to achieve that result, Congress had delegated the power of the purse. And the first full year of the Nixon administration, fiscal year 1970, marked the start of the modern era of budget deficits: surpluses would not return until fiscal year 1998. Entitlement spending quickly rose at more than twice the level allowed under the rather pliable budget ceilings, adding billions to the deficit. Further, the economy's performance continued to sink, with GDP growing less than 2 percent a year, inflation nudging 9 percent by 1974, and unemployment rising 60 percent between 1969 and 1974. High inflation and high unemployment were two bad things the dominant Keynesian economic model said weren't supposed to go together. Yet as they did they spurred more spending, especially on social programs.

President Nixon, facing a Democratic Congress, saw both fiscal and political ground to gain in calling for lower spending. "Just because Congress passes the buck doesn't mean the president has to spend it" went one joke pushed into speeches by White House communications staffers. Nixon and his aides lost no occasion to run down legislative spending habits, attacking the "hoary and traditional procedure" of the "credit-card" Congress. As will be discussed in a moment, Nixon called for budget caps and aggressively impounded funds. It is worth noting, however, that he was perfectly happy to spend money where it would help politically. As the 1972 election approached, Nixon pushed not a balanced budget but a "balanced full employment budget," supported stimulative tax cuts without offsetting decreases in spending, and signed into law 20 percent benefit hikes for Social Security recipients.<sup>81</sup>

At the same time, he sought tighter control of departmental administration, helped by the transformation in 1970 of the Bureau of the Budget into the Office of Management and Budget. OMB, as its future director told Nixon, will "act as your principal agent for improving the management and responsiveness of the Executive Branch." To do so it was given a new layer of political appointees above its civil service employees working on budget analysis, and new OMB director George Shultz moved from the Old Executive Office Building into an office in

the White House itself. Nixon’s OMB, especially later under director Roy Ash, took a very aggressive stand on the “battle of the budget,” a phrase Ash used in memos to the president. One handwritten note assured Nixon, “Don’t worry—we’re hanging tough.” In another memo Ash concluded that, while “[i]n the process we have reached an impasse with the Congress on many matters . . . the Hill still seems to have considerable respect for Executive strength.”<sup>82</sup>

Even if so, Congress was certainly aggrieved by Nixon’s version of the impoundment strategy, which was far more aggressive than his predecessors’—“unprecedented in scope, severity, and truculence,” as one scholar observed.<sup>83</sup> Here, as in other areas, Nixon upped the ante at the outset by defining his powers as inherent and nonnegotiable. In 1971 Caspar Weinberger, then Nixon’s deputy budget director, conceded to a Senate panel that Congress had the power to *appropriate*. But he continued that it “does not follow from this, however, that the *expenditure* of government funds involves an exclusively legislative function.” Indeed, “a law appropriating funds is permissive and not mandatory in nature.” Deputy Attorney General Joseph Sneed argued that “substantial latitude to refuse to spend” derived from the “‘executive power’ vested in [the president] by the Constitution,” since good administration implied a duty to avoid fiscal instability. Nixon himself put it plainly: “The Constitutional right of the President of the United States to impound funds . . . is absolutely clear.”<sup>84</sup>

The president’s actions in this area were correspondingly grandiose, especially after a 1972 election campaign during which he made Congress and its budgetary irresponsibility major themes. In January 1973 Nixon announced that he would put “restraining Federal expenditures at the top of the list of economic policies.” He proposed a spending ceiling of \$250 billion and soon announced he would impose it administratively, “with or without the cooperation of the Congress.” The amounts subsequently impounded were enormous, encompassing as much as \$15 billion by 1973—an astonishing 20 percent of discretionary spending.

Nixon also used targeted impoundments as a way to eliminate entire programs he didn’t like, whether loans for rural electrification or funds for wetlands protection. Some programs were actually canceled prospectively: because they were not in the president’s budget request, they were zeroed out, even though their current authorization had not

expired and they were funded to the end of the fiscal year. In one case, the Office of Economic Opportunity (OEO)—the onetime cornerstone of Johnson’s War on Poverty—was eliminated in the president’s proposed budget. The agency’s acting director, Howard Phillips, started to dismantle the agency’s Community Action Agencies immediately, even before Congress had acted on the new budget.

This amounted to what Sen. Hubert Humphrey (D-MN) termed “policy impoundment,” the modification or even elimination of laws passed by Congress. Impoundments came even when large majorities of legislators made their will clear. In 1972, for example, even though Nixon’s veto of the Federal Water Pollution Control Act Amendments was overridden, the president impounded more than half of the funds committed through the law. His constitutional claim was thus effectively one encompassing absolute veto power. It was, at the least, line-item veto authority by another name. A federal court, overturning the OEO impoundment, pointed out the implications for executive power: “if the power sought here were found valid, no barrier would remain to the executive ignoring any and all Congressional authorizations if he deemed them . . . to be contrary to the needs of the nation.”<sup>85</sup>

In that instance, of course, the power was not found valid. Still, Ash’s claim that the president had asserted himself successfully had some merit. Certainly as regarded economic policy-making, Congress was very deferential, if very calculating. “The vast and influential powers of the Office of the President must be brought to bear against these sharply rising price increases,” demanded then majority leader Carl Albert. Wanting to make absolutely clear that it was the president, not Congress, who was responsible (and thus blameworthy) for the state of the economy, Banking Committee chair Wright Patman (D-TX) likewise argued it was the “duty” of the legislature to give Nixon “all the power he needs when he needs it to protect the people against inflation.”<sup>86</sup> Thus the Economic Stabilization Act of 1970, responding to that winter’s recession, gave Nixon immense discretionary powers to impose wage, price, and rent controls. Nixon had denied any interest in using this authority, but on August 15, 1971, he announced a new economic program that included ninety-day wage and price freezes along with tax and expenditure cuts and a historic shift from the gold standard set up at Bretton

Woods after World War II. This was the first time price and salary controls had been imposed in peacetime. Two additional phases would follow, with decidedly mixed success in battling inflation.<sup>87</sup>

Even in the realm of impoundment, despite its heated rhetoric, Congress often seemed eager enough to pass on the political hot potato. As OMB’s Weinberger pointed out in 1971, Congress had passed any number of conflicting statutes—the 1946 Employment Act, which opposed inflationary policy; a 1970 expenditure ceiling; and the ongoing statutory ceiling on the national debt—at the same time as it approved higher spending levels. In this view, presidents were forced to impound in order to mediate between contradictory congressional directives. And not all legislators disagreed, as much as they chafed under Nixon’s tactics. Sen. Lawton Chiles (D-FL) argued that “Congressional power . . . has been not so much usurped by the Presidency as given up to the Presidency by Congress.” The bottom line, as Sen. Sam Ervin (D-NC) put it later that year, was that “many of us have found it more comfortable to have somebody else—the President—make the hard decisions and relieve us of responsibility.”<sup>88</sup>

In budgeting as elsewhere, Nixon was very happy to do just that.

## ETHICS: THE “WHITE HOUSE HORRORS”

The Watergate crisis centered on executive ethics: those of the president’s men—and those of the president. Much of the chapter so far could be replicated in this section, given that wiretapping, forgery, and abuse of power are normally not considered ethical behaviors. But as Nixon later conceded, “I brought myself down. I gave them a sword. And they stuck it in.”<sup>89</sup> It was the break-in of the Watergate office complex and the subsequent cover-up that gave Nixon’s opponents the “sword” they needed.

On June 17, 1972, such an outcome was hard to foresee. The issues of executive overreach traced previously were not well known to the public or even hugely salient within Washington. Richard Nixon was running a methodical, well-funded reelection campaign, while the Democratic opponent the Nixon camp most preferred, dovish South Dakota

senator George McGovern, was on the verge of clinching the nomination. The president's electoral vital signs were solid—his approval ratings from late May to mid-June hovered around 60 percent.

Still, Nixon had won just 43 percent of the popular vote in 1968, and the Democratic Party retained a solid edge nationally in voter registration. Polls throughout 1971 had shown Nixon consistently behind potential challenger Sen. Ed Muskie of Maine. Another survey in early May 1972 showed Nixon just five points ahead of McGovern, with former Alabama governor George Wallace a credible third. Thus, while in retrospect Nixon's landslide victory seems inevitable, at the time the White House was uneasy.<sup>90</sup>

Those around Nixon were nothing if not true believers. White House operative Charles Colson wrote his staff a memo that summer: "There are only seventy-one days left and every one counts. Ask yourself every morning what you are going to do to help re-elect the President today!" John Mitchell, who had gone from the Justice Department to run CRP, later told congressional investigators, "The most important thing to this country was the reelection of Richard Nixon and I was not about to countenance anything that would stand in the way of that reelection."<sup>91</sup> In this context, the administration's attention to the campaign took on a ruthless edge.

Nixon was especially eager for expanded campaign intelligence that might be used against McGovern and DNC chair Lawrence F. O'Brien. Under pressure from the White House, CRP therefore implemented Project Gemstone, a surveillance plan conceived by former Plumber G. Gordon Liddy, now a CRP lawyer, and approved by campaign manager Mitchell and his deputy, Jeb Magruder.

The fixation with targeting McGovern was ironic, for in surveying the Democratic primary field the Nixon White House had identified the liberal senator as its weakest potential opponent. It had implemented at least three efforts to help him win the nomination by undermining the campaigns of his opponents, especially Muskie and former vice president Hubert Humphrey. White House aides Dwight Chapin and Gordon Strachan recruited college friend Donald Segretti to conduct "dirty tricks" ranging from setting off stinkbombs to mailing fabricated campaign literature (claiming, for example, in the name of Muskie, that Humphrey had been arrested for drunk driving while in the company of

a prostitute). Other operatives, working directly through CRP, also disrupted campaign events and canvassing endeavors; and from the White House itself Charles Colson spearheaded yet another set of tricks, including the famous “Canuck” letter that drove Muskie to a tearful denunciation of *Manchester Union-Leader* publisher William Loeb.<sup>92</sup>

Project Gemstone was of a different order of magnitude. In its original formulation, presented to Mitchell and White House counsel Dean in a meeting held at the attorney general’s office in the Justice Department, it had a million-dollar budget and included kidnaping, sabotage, wiretapping, and entrapment: delegates to the Democratic National Convention were to be lured by call girls to a houseboat wired for pictures and sound. As finally approved, the houseboat was left in dry dock. But the budget was still \$250,000, focusing on electronic surveillance. It was decided that O’Brien’s office at the DNC’s Watergate suite was the first priority.

The team formed to bug the DNC was made up of many of those responsible for the break-in of Daniel Ellsberg’s psychiatrist’s office: the core group was Liddy, his fellow ex-Plumber Howard Hunt, and Hunt’s Cuban connections, augmented by former FBI and CIA agent James McCord, an electronics expert working as head of security for CRP. Their skills had not improved much since the Ellsberg operation. The first Watergate break-in occurred over the Memorial Day weekend; one of the phone taps didn’t work and another gave little useful information about politics (though much about the victim’s personal life). As a result the burglars returned on the night of June 17. That night, they were caught.

It is unlikely that the break-in, by itself, could have brought down the president. But Nixon’s reaction was not remorse, except perhaps at his staff’s inability to do things right, and it was not to cut his losses by coming clean about CRP involvement. Instead, he told Haldeman within a week of the break-in, “Play it tough. That’s the way they play it and that’s the way we are going to play it.” By June 23 he had already approved a plan to have the CIA obstruct the FBI investigation into the burglary. The CIA was to tell the FBI that any further inquiry would lead into sensitive territory: “‘this will open the whole Bay of Pigs thing . . .’—just say this is sort of a comedy of errors, bizarre, without getting into it,” the president urged. “They should call the FBI in and say that

'we wish, for the country, don't go any further into this case, period.'" A week later, on June 30, he mused to Haldeman about another means of turning off the investigation: "I'm not at all sure if Mitchell shouldn't call [Attorney General Richard] Kleindienst and [acting FBI director L. Patrick] Gray and say . . . to halt the investigation." As one account of the scandal observes, "obstruction of justice could hardly be more explicit."<sup>93</sup>

The CIA only briefly complied with the White House directive, soon informing the FBI's Gray that the agency had no interest in the Watergate. John Dean's request that the CIA pay the burglars' bail and salaries was summarily rejected. Gray wavered but restarted the investigation in early July.

The cover-up thus shifted tracks. The burglars were to be kept silent, and relevant CRP and White House staff were to mislead investigators, shredding files and committing perjury if need be. Hunt's White House safe was cleaned out by Ehrlichman and Dean, who delivered its materials on Ellsberg and other Plumbing operations to Gray himself, hinting it should be destroyed. Gray did so. Meanwhile CRP staffers questioned by investigators sought to play down the amount spent on Project Gemstone and to implicate Liddy as the lone perpetrator. Colson assured the burglars that they would receive pardons or commutations from the president. At the same time, the president's personal lawyer, Herbert Kalmbach, was tasked with raising funds to support the families of the burglary team and to keep them silent. A cloak-and-dagger operation ensued, with cash passed to Howard Hunt's wife through bus station lockers and telephone booths.

Eventually the scale of the hush money began to frighten Dean, who in his famous "cancer on the presidency" conversation with Nixon on March 21, 1973, discussed how White House aides had decided "there was no price too high to pay" to prevent disclosure before the 1972 election. This led to the criminal liability of various White House aides: "Bob [Haldeman] is involved in that; John [Ehrlichman] is involved in that; I am involved in that; Mitchell is involved in that. And that's an obstruction of justice." He told the president that White House staff were simply not capable of "cleaning" sufficient cash. "This is the sort of thing Mafia people can do." Nixon cut to the chase: "how much money do you need?" Dean hesitated. "I would say these people are going to

cost, uh, a million dollars over the next, uh, two years.” Another pause ensued, followed by the president’s reply: “We could get that.” The conversation continued at some length, identifying sources of funding and the possibilities of clemency for the burglars after the 1974 midterms (rejected, if rather wistfully, as “too hot”).<sup>94</sup>

The corrupting role of money is a key element in Watergate and what Mitchell memorably termed the “White House horrors.” One reason the burglars were so readily tracked back to CRP was that they possessed not only sequential bundles of hundred-dollar bills given to the campaign but a \$25,000 check originally sent to the campaign from a donor in Minnesota and then endorsed directly to the burglars. Not only were the payoffs to the burglars raised from Nixon campaign donors, but the funds came in part from a \$350,000 slush fund kept by Haldeman in a White House safe in order to pay for private polling. Another \$200,000 was raised directly by Kalmbach, who testified later that he solicited \$75,000 of it, in a package of hundred-dollar bills, in a single donation from the president of the Northrop Corporation.<sup>95</sup>

Beyond the obvious lesson (avoid transferring large amounts of money to criminals), the 1972 campaign set other negative standards for campaign finance as well. All told, Nixon and McGovern spent over \$90 million in their campaigns, with Nixon outspending McGovern two to one. Nixon’s \$61 million eclipsed prior records—it was more than both campaigns had spent in 1968. A number of donors gave the campaign upward of \$100,000; Ray Kroc of McDonald’s fame gave \$250,000; Chicago businessman Clement Stone gave over \$2 million (after nearly \$3 million in 1968). And when the dust cleared, it became clear how aggressively the money had been raised. A new campaign finance law requiring disclosure of contributors’ names kicked in on April 7, 1972. CRP’s finance director therefore encouraged big donors to pony up before then: in the sixty days leading up to April 7 some \$20 million was collected. Doing so was quite legal, depending on the money’s source; later allegations suggested, however, that some of it had come from corporations or from abroad. It didn’t help matters that, six days after the break-in, the records of the pre–April 7 contributions were destroyed—or that some donations that arrived after this date were backdated by CRP.

The administration did like one thing about the disclosure law.

“Those lists there, are we looking over McGovern’s financial contributors?” Nixon asked in the summer of 1972. “Are we looking over the financial contributors to the Democratic National Committee? Are we running their income tax returns? Is the Justice Department checking . . . ? . . . [W]ith all the agencies of government, what in the name of God are we doing about the McGovern contributors?” When he was told “nothing,” Nixon exploded: “We have all this power and we’re not using it.”<sup>96</sup>

As should be clear by now, this was a little pessimistic. Further, CRP was working wonders, of sorts, in its own realm. Herbert Kalmbach later received jail time for tutoring donors in how to bypass campaign finance laws. Florida shipbuilder George Steinbrenner, for example, was advised to break his \$100,000 donation into thirty-three smaller chunks purportedly from various employees. A pledging system instituted by CRP for companies doing business with the government, especially defense contractors, raked in some \$840,000, with twenty-one corporations ranging from American Airlines to Phillips Petroleum later found guilty of making illegal donations. (They also donated another \$120,000 to five Democratic candidates.) Firms drew on slush funds; laundered their contributions through dummy accounts, home and abroad; and even created fake bonus schemes for employees that sent the “bonus” in the employee’s name to the campaign treasury. Chrysler Corporation noted that Kalmbach asked for money just as Chrysler was about to file for a delay in implementing auto emission controls.<sup>97</sup> In other cases, donations were traded for jobs, in direct contravention of federal law; in 1971 Nixon declared, “anybody who wants to be an ambassador must at least give \$250,000,” and CRP received \$1.3 million from willing diplomats-in-waiting. One woman became ambassador to Luxembourg after complaining she had given too much (\$300,000) to be sent to Costa Rica.<sup>98</sup>

Two other events helped cement the public belief that the executive branch would trade policy outcomes for campaign income. In 1969 the Associated Milk Producers (AMP) had given the Nixon campaign an illegal cash gift of \$100,000 direct from its treasury. In 1970 they offered to raise some \$2 million. But in mid-March 1971, the Agriculture Department announced that price supports for milk would remain unchanged, and AMP angrily withdrew its fund-raising promise. Two weeks later, after Nixon met with dairy lobbyists and then huddled with

his staff about ways to get political credit for the change, the original announcement was amended—prices would go up. AMP was told to reaffirm its \$2 million commitment. Within weeks, over \$300,000 flowed into CRP coffers from the milk industry; nearly \$700,000 would eventually be raised. It should be noted that AMP also covered its bases with congressional Democrats, donating some \$200,000 to House Ways and Means chair Wilbur Mills and \$40,000 to Hubert Humphrey, Nixon’s 1968 opponent.<sup>99</sup>

Another case involved telecommunications giant ITT, the target of a series of Justice Department antitrust suits. In February 1972 an internal ITT memo was published by columnist Jack Anderson. The memo, by ITT lobbyist Dita Beard, described a deal to contribute \$400,000 to the Republican National Committee (RNC)—offering to underwrite the Republican National Convention in exchange for favorable Justice Department disposition of the lawsuits. The administration claimed the memo was a fake, and Plumber Howard Hunt was dispatched to Denver—as ever, in disguise—to get Beard to disavow it. But a memo by Colson to Haldeman reviewing administration actions on ITT going back to April 1969 told a different story. Most damningly, it noted, “there is a Klein to Haldeman memo dated June 30, 1971, which of course precedes the date of the ITT settlement, setting forth the \$400,000 arrangement with ITT.” Both the attorney general and the campaign had received copies of this as “constructive notice . . . of the ITT commitment at that time and before the settlement, facts which [Mitchell] has denied under oath. We don’t know,” Colson gloomily added, “whether we have recovered all the copies.” Worse still was the transcript of a 1971 conversation Nixon held with then deputy attorney general Kleindienst, ordering the Justice Department to drop the suit and to fire the head of the antitrust division if he did not comply. Kleindienst, having denied all this to Congress, would later plead guilty to perjury.<sup>100</sup>

In an August 1972 conversation with Nixon, Ehrlichman sighed, “we do have a knack for doing this stuff ineptly.”<sup>101</sup> And by late April 1973, Ehrlichman and Haldeman were forced to resign when John Dean began to cooperate with investigators. At the same time Richard Kleindienst was fired and replaced as attorney general by Elliot Richardson,

who appointed Archibald Cox as special prosecutor to begin yet another investigation of Watergate matters. In July 1973 Nixon aide Alexander Butterfield was asked, almost in passing, whether he knew of any recording systems in the White House. Butterfield told the truth: that the Oval Office and other presidential office spaces were consistently taped using voice-activated microphones.

From that point Nixon waged a long and ultimately unsuccessful battle to keep control of the tapes. In late October he ordered Richardson to fire Cox, who was aggressively pursuing release of the tapes. Richardson refused, choosing to resign instead, as did his deputy, William Ruckelshaus. Solicitor General Robert Bork, third in command at Justice, finally consented to follow the president's wishes, closing down the special prosecutor's offices and turning Cox into an instant folk hero. Nixon had miscalculated: in the wake of the fallout from the firings, quickly dubbed the "Saturday Night Massacre," he was forced to appoint a new special prosecutor and promise him the right to conduct an autonomous investigation.

Over time other events ate away at the president's credibility. There came the revelation of an eighteen-and-a-half-minute gap on one of the requested tapes; the resignation of Vice President Spiro Agnew on bribery charges unrelated to Watergate; and charges that Nixon had used government funds to make improvements on his private property. But what hurt most was the court-ordered release of the tapes after a last-ditch effort to release generously edited transcripts was rejected. On July 24, 1974, the Supreme Court ruled unanimously that Nixon must comply with the special prosecutor's subpoenas; that same day the House Judiciary Committee began formal impeachment proceedings. Even before Nixon had fully obeyed the Supreme Court's order, the House Judiciary Committee had approved three articles of impeachment. The first listed nine counts of obstruction of justice; the second, abuses of power, including the use of the IRS, CIA, and FBI so as to be "subversive of constitutional government"; the third, failure to comply with congressional subpoenas during the investigation.<sup>102</sup>

On August 5 Nixon released the transcript of the "smoking gun": the conversation with Haldeman on June 23, 1972, that ordered the misuse of the CIA and showed his early knowledge of the details of the break-in. "I am not a crook," Nixon had declared nine months before, but few

now believed him. On August 6 the members of the Judiciary Committee who had voted against impeachment announced they would change their vote on the House floor. On August 7 the Republican leadership of Congress visited the Oval Office and told Nixon that impeachment was certain and that he would receive at most a dozen votes in a Senate trial. On August 8 Nixon told the American people he would resign the next day. His resignation letter was to the point, one sentence long. But his rambling, emotional farewell to the White House staff the morning of August 9 was more revealing.

“Others may hate you,” he said. “But those who hate you don’t win unless you hate them.”

“And then,” he added, “you destroy yourself.”

## CONCLUSIONS

The powers of the presidency were built up over time less by usurpation than by accretion and often as a matter of law or even congressional initiative.<sup>103</sup> But by the mid-1970s, presidents had pushed their luck too far. If presidents before Nixon showed imperial ambition, it was under his administration that overreach led to the empire’s fall. In 1973, before Nixon resigned, Arthur Schlesinger had already broadened the importance of the Watergate break-in, making it a symbol and a symptom of a broader disease that enervated trust in government—in 1960 more than 70 percent of respondents said they felt the government did “what is right” all or most of the time, but fewer than 30 percent said this was true by 1980<sup>104</sup>—and eroded the body politic. “Watergate’s importance,” he wrote, “was not simply in itself. Its importance was in the way it brought to the surface, symbolized and made politically accessible the great question posed by the Nixon administration in every sector—the question of presidential power. The unwarranted and unprecedented expansion of presidential power, because it ran through the whole Nixon system, was bound, if repressed at one point, to break out at another. This, not Watergate, was the central issue.”<sup>105</sup>

And so was the romantic glow of Camelot dispersed in the harsh glare of Vietnamese rice paddies and the klieg lights of congressional committee hearing rooms. The unilateral use of troops and covert

operatives, the Responsiveness Program—the White House counter-bureaucracy—the civil liberties violations—all these were ideas and abuses that predated the Nixon administration. But they became uniquely his in the extent of their execution. “When the President does it, that means that it is not illegal,” Nixon famously remarked in 1977.<sup>106</sup> Congress, having battled Nixon the president, was now ready to turn its attention to the institution of the presidency. They were ready, in short, to *make* it illegal.