

Mr. President,

Last month marked the 30th anniversary of the break in of the Democratic National Headquarters -- the event that led to the unraveling of Watergate, the worst political scandal in American history.

President Ford called it our "long, national nightmare," and looking back on it, it was. It was "nightmare" that included the Plumbers unit, the secret White House team that kept track of the president political opponents, the White House "enemies list" which was a roster of the Administration's opponents to be harassed by the IRS and the FBI, John Dean's warning about "a cancer on the presidency," and the incredible hearings of Senate Select Committee on Watergate featuring Senator Howard Baker probing question: "what did the President know and when did he know it?"

The long national nightmare included the revelation of the White House tapes, then transcripts of the tapes with all those "elective deleteds" to cover up President Nixon's coarse and crude remarks, then the suspicious 18 ½ minute gap on the tape containing a conversation between Nixon and Halderman three days after the break in, then the "Saturday Night massacre during which President Nixon fired Attorney General Elliot Richardson, Deputy Attorney General William D. Ruckleshaus, and Special Prosecutor Archibald Cox in effort to keep the White House tapes from being turned over to the courts, and finally the revelation of the tape of June 23, 1973, that "smoking gun" that finally prompted Congressman Trent Lott to remark: "I hope he [President Nixon] will resign, but if not I have no alternative but to vote for Article I. (obstruction of justice)."

It was a nightmare that included the indictment, conviction, and sentencing of 20 of the president's chief men, the House Judiciary committee's three articles of impeachment

charging President Nixon with obstruction of justice, abuse of power, and contempt of Congress, and the president of the United States resigning in disgrace.

Determined that this nightmare would never happen again, Congress enacted a number of measures, including the Federal Election Commission, the Congressional Budget Office, the War Powers Resolution, the Freedom of Information Act (FOIA), and the Presidential Materials and Preservation Acts. These reforms sought to eliminate abuses in the presidential election process and to ensure greater congressional participation in military policy, especially when it involves military action. And they sought to prevent the abuse of presidential power by assuring greater accountability on the part of top officials by ensuring greater access to government information.

I was a member of the Congress at the time. In fact, I was the Senate Democratic Whip, and how well I remember not only the Watergate scandal, but the atmosphere and the culture that created it. As President Nixon's counsel, John Dean, later pointed out, Watergate was "an inevitable outgrowth of a climate" that had developed over the previous years of the administration.

Foremost, the Nixon Administration possessed an arrogance and outright contempt for Congress that prompted it to operate in a cloud of secrecy and outside our constitutional system of government.

I recall the Nixon Administration attempting to create an entire Executive system to bypass Congress. It has been called a "personalized presidency," and an "Administrative presidency," but whatever you call it, President Nixon wanted an Administration where the federal government would be run out of the White House while the Executive Departments, which are subjected to congressional oversight, were, for all practical

purposes, stripped of policy making powers.

Foreign and military policy was run, not by the State Department or the Defense Department, but out of the White House by the National Security Council with National Security Adviser Henry Kissinger in command.

To run domestic policy, the Nixon Administration created the White House Domestic Council, which was patterned after Kissinger's version of the National Security Council.

According to former Nixon Administration official, Richard Nathan, the intent was "to achieve policy aims through administration action as opposed to legislative change."

(Nathan, 7)

I recall the Nixon Administration using the budget to achieve policy objectives, mainly the destruction of programs that it did not like. The Nixon budget strategy, writes Nathan, "represented such a strong use of fiscal powers as to effectively constitute a new type of executive power. Whole programs would be stopped by impoundment."

I recall major bills, like revenue sharing, being drafted in secret by the White House staff and then suddenly dropped on Congress. (Nathan, 6)

I recall the Nixon's Administration's defiance of Congress and the Constitutional process.

This included Nixon Administration officials refusing to appear before Congress. It included the Nixon Administration efforts to "stonewall" Congress by denying information to congressional committees. It included the Nixon Administration's efforts to belittle Congress and its constitutional responsibilities.

"Quite clearly," I wrote in my history of the Senate, "President Nixon set out to

circumvent Congress."

"Had Nixon succeeded," wrote Arthur Schlesinger, "he would have effectively ended Congress as a serious partner in the constitutional order."

I recall some of my own words as the Senate Democratic Whip, when I attempted to call attention to the Nixonian attitude and approach to government.

In address to the National Capitol Democratic Club (March 27, 1974), I complained of the Nixon Administration's "subtle, but sustained and unjustified attacks upon the legislative branch." (NYT 3/28/74)

On *Face the Nation* (May, 1974), I pointed out that with President Nixon "we have a law and order President who refuses to the House Committee information which it is entitled to under the Constitution... *What we are seeing is defiance up and down the line.*"

At one stage, I was referred to the Nixon Administration as a "Brownshirt operation" that used "Gestapo tactics."

Cloaked in secrecy and shrouded in arrogance, the Nixon Administration became one in which the president and his sycophants felt they operated outside the constitutional process and beyond congressional oversight. "Even before Watergate," writes Nathan, "Nixon's management strategy was criticized as dictatorial, illegal, and impolite." (Nathan p. 85)

My point is, Mr. President, Watergate did not just happen. Years of executive secrecy and arrogance and contempt for Congress created it. As John Dean write, it was an

"inevitable outgrowth."

What concerns me, Mr. President, is that when I think of these preconditions that led to Watergate, I keep thinking of the current administration. I am concerned, no, let me say that I am alarmed, that with the Bush Administration, we are witnessing another Nixonian approach to government.

Like the Nixon Administration, the Bush Administration demonstrates a clear and outright contempt for the Congress. One Administration official after another, including Treasury Secretary O'Neil, OMB Director Daniels, and Defense Secretary Rumsfeld, have sought to belittle and demean Congress as Lilliputians attempting to tie down the Administration with its rules, regulations, and constitutional procedures.

Like the Nixon Administration, the Bush Administration has taken to formulating major legislation in private. The Administration's Homeland Security proposal was pieced together by just four men in the basement of the White House.

Like the Nixon administration, the Bush Administration seeks to create special agencies that can operate from the White House without congressional oversight, and outside our constitutional system of government.

Like officials in the Nixon Administration, high level officials in the Bush Administration like Homeland Security director Tom Ridge and OMB director, Mitch Daniels refusing to appear before Congress.

Like officials in the Nixon Administration, officials in the Bush Administration Vice President Cheney and President Bush himself have attempted to stonewall congressional

investigations by refusing to turn over to Congress information needed for congressional investigations.

"Not since Richard Nixon went to work in the Oval Office," writes Nixon's former chief counsel, John Dean, "has there been as concerted an effort to keep the real work of the president hidden."

Like the Nixon Administration, the Bush Administration seeks to cut Congress out of American foreign policy. Major arms reduction pact with Russia have been executed in the guise of an executive agreement or coordinated unilateral declarations. The President has unilaterally withdrawn the United States from the Antibalistic Missile Treaty, allowing the Administration to begin development of a new Antibalistic missile defense system. The Pentagon is taking steps to shield cost estimates and time tables from the Congress.

Adding to my concern that the Bush Administration, like the Nixon Administration, is creating an atmosphere and a culture that could well breed another Watergate is that this Administration is seeking to avoid or overturn the very reforms that Congress enacted to help ensure that Watergate could never happen again.

The fiasco in Florida over the 2000 election made a mockery of the Federal Election Commission.

The Bush Administration is flouting the budget reforms that came out of Watergate by refusing to spend money that Congress has appropriated..

Seeking to overturn the Freedom of Information Act, Attorney General John Ashcroft is

encouraging federal agencies to withhold unclassified records.

Seeking to overturn the Presidential Materials and Preservation Acts, the President has issued an executive order to limit access to presidential papers.

In defiance of the War Powers Resolution, the Bush Administration appears to be moving the United States closer and closer to war with Iraq.

During the Nixon years, when National Security Adviser Henry Kissinger ran our foreign policy from the White House, keeping both the State Department and Congress in the dark, the Nixon Administration ended up conducting clandestine bombings of and invasions into Cambodia. These secretive actions not only expanded the Vietnam War, but also increased the strength and power of the Communist forces in Cambodia and helped create the blood bath that took place in that country. When the American people learned of these clandestine activities, it set off a storm of antiwar protests that resulted in the massacre at Kent State University and prompted the Congress to repeal the Tonkin Gulf Resolution.

Mr. President, it is essential that President Bush present his case to Congress before we must use military force to overthrow Saddam Hussein. That is why it is essential that the Congress ask important questions about our potential military involvement in Iraq, including: "If we are successful in getting rid of the authoritarian who is now in power in Iraq, who will take his place?"

Mr. President, the men who drafted our Constitution carefully laid out a system of government that has worked remarkably well for more than two centuries. A major reason our government has been so successful is that our Founding Fathers were wise and

cautious people who had no naive expectations about human behavior. Watching the failings of the states under the Articles of Confederation, George Washington observed that, "We have, probably, had too good an opinion of human nature in forming our confederation." They watched as across the ocean a government based on the goodness of man degenerated into a "Reign of Terror."

Our Founding Fathers were pragmatists, not idealists. They understood that men, including, perhaps I should say especially, those in power, are human – that they are too often motivated and directed by ambition, greed, and a lust for power.

James Madison, the Father of our Constitution, had a shrewd view of human nature. He knew that those who achieve power too often try to amass more power, or in other ways, misuse their power. "If men were angels," he observed in Federalist 51, "no government would be necessary."

According to Madison, history showed that those in power often overreach, and, as a result, power too often can become located in a single person or a single branch of government, either of which is dangerous to liberty. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, Madison wrote, "may justly be pronounced the very definition of tyranny."

Consequently, our Founding Fathers designed a system to block the overreach. They formulated a system of government that safeguards liberty by avoiding the entrapments of tyranny. They did this by splitting constitutional authority into pieces, among the three branches of government, and between the national and state governments, and then balancing the pieces against each other. Rather than depend on the innate goodness of government leaders, they pitted vice against vice. "Ambition must be made to counteract



ambition," wrote Madison. "[T]he Fathers designed a system wherein [human] passions and failings would check each other, rather than a system that would collapse under uncontrolled ambitions," Candace Beckett wrote in her award-winning essay on the workings of the Constitution.

To ensure the powers remained separated, the Framers gave each branch a set of tools with which to prevent encroachment on its powers by either of the other branches. The constitutional doctrine of separation of powers, then, is an institutional device fashioned to prevent the tyranny that our Founding Fathers were sure would result from concentrating all the powers of government in a single person or in one part of the government.

Too many times, too many presidential administrations and federal agencies have attempted to operate outside our constitutionally prescribed system of government, and the consequences have been disastrous.

When the Central Intelligence Agency was established, there was no congressional oversight; it was responsible only to the National Security Council and the president. For years, my predecessor as Majority Leader, Senator Mike Mansfield, argued for the CIA to be brought under congressional oversight: "What I am concerned with is the CIA's position of responsibility to none but the National Security Council." The "CIA is free from practically every form of congressional check," he cautioned, and "there is no regular, methodical review of this Agency." "Our form of government," Senator Mansfield pointed out, "is based on a system of checks and balances. If this system becomes seriously out of balance at any point the whole system is jeopardized."

With the Senate Select Committee to Study Government Operations with Respect to

Intelligence Agencies (the Church Committee), the American people learned just how "seriously out of balance" that agency was. The Senate Committee discovered the CIA had been involved in illegal, improper, and unethical activities, including the overthrow of democratically elected governments, attempts to assassinate foreign leaders, and invasions of foreign countries.

Senator Mansfield noted, and I quote: "There is a profound difference between an essential degree of secrecy to achieve a specific purpose and secrecy for the mere sake of secrecy.... *Once secrecy becomes sacrosanct, it invites abuse.*"

We saw the abuse with the Reagan Administration which used the National Security Council to bypass the Congress in conducting foreign relations. Its foreign policy became one of selling weapons to a terrorist nation in exchange for hostages, and then using the money to fund an illegal war in Central America!

Selling weapons to a terrorist nation to fund an illegal war -- is that what Executive secrecy is all about? It is what can happen when an Administration flouts the Constitution.

This very point was emphasized by a member of House of Representatives who, during the debate of the creation of the congressional committee to investigate the Iran-Contra scandal during the Reagan Administration, declared:

"No one in the congress decided to sell arms to Iran. No one in the Congress decided to enter to enter into negotiations with the release of hostages. No one in the Congress was involved, to the best of our knowledge, the alleged diversion of funds to the Contras. We are here today because problems developed in the

administration.... The Attorney General of the United States is the one who announced to the world that funds may have been diverted, possibly in violation of the Boland amendment. (CR, 1/7/87)

That Congressman was none other than Representative Dick Cheney, currently the vice president in the Bush Administration. Congressman Cheney went on to serve on the Iran-Contra Committee. At one point during the hearings, he lectured Ollie North:

"There long tradition in the Presidency of presidents and their staffs, becoming frustrated with the bureaucratic organizations they are required to deal with, to increasingly pull difficult decisions or problems in the White House to be managed because there is oftentimes no sense of urgency at State or at Defense or any of the other departments that have to be worked with.... problems ... that automatically lead presidents sooner or later to move in the direction of deciding that the only way to get anything done, to cut through red tape, to be able to move aggressively, is to have it done, in effect, inside the boundary of the White House."

Is this what is going on now?.

I remember the concerns and the issues raised by Members on the other side of the aisle when the Clinton Administration's healthcare task force was forming its policies in secrecy. One Republican Senator (Grassley) denounced the Clinton Administration for operating a "shadow government, without accountability to the American people.... All Americans should know what their Government is doing and how it is spending public funds. That is just the way we ought to do things in a democracy."

Another Republican Senator (Simpson) charged: "The secrecy of the ongoing

negotiations within the confines of the White House is a major concern of mine... Health care is too important of an issue to the American public to deliberate behind the secretive walls of the White House."

I do not dispute either of those statements.

But I do ask, if "health care is too important of an issue to the American public to deliberate behind the secretive walls of the White House," then what about the issue of protecting the lives and safety of the American people? The health care of the American people is certainly important, but so is protecting the American people from terrorists attacks like those of September 11.

Like other members of the Senate, I was taken by surprise by the President's sudden announcement of his plan to create a massive new Department of Homeland Security. In an unbelievable twist of logic, the Administration maintains that it actually consulted with Congress on the proposal. The President's chief of staff was quoted in *The Washington Post* on June 9, 2002, as saying, "We consulted with agencies and with Congress, but they might not have known that we were consulting."

Rumsfeld

one of the few high level Nixon Administration officials who did not end up in prison, ended up in the Bush Administration.

Director of Office of Economic Opportunity (1969-70), Counselor to President Nixon (1970-1973), and Director of the Cost Of Living Council, 1971-1973)

speech to National Defense university (Jan. 31, 2002) and in remarks to the House Armed Services Committee (Feb. 6, 2002) compared the United States Congress to "Lilliputian" tying down the administration.

during debate on articles of impeachment, Sarbanes, who wrote 1st article of impeachment: state: "You must ask yourself whether a chief executive with men who flagrantly abused our constitutional process should be called to account for their actions."  
(CQ Almanac, 1974, 880)

members of Nixon Administration who did not end up in prison, ended up in Reagan Administration: George Schultz (Treasury, new post., Assistant to the president for Economic Affairs): Casper Weinberger (Director of OMB)