The original documents are located in Box 55, folder "President - Wright Patman Investigation Background (2)" of the Philip Buchen Files at the Gerald R. Ford Presidential Library.

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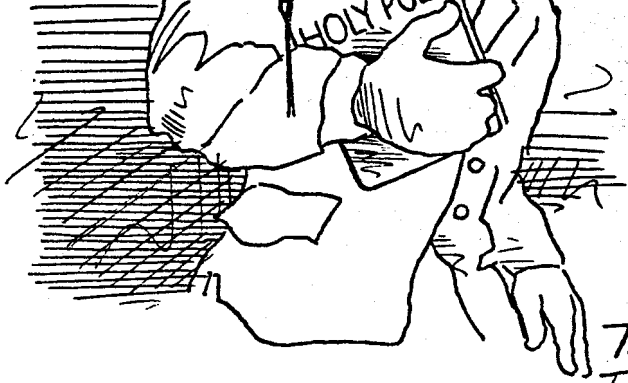

Taylor Jones
The Charleston Gazette
1974

Wash. Mo. 10/75

Is the President a Perjurer?

by Marjorie Boyd

In April 1973 *The Washington Monthly* told the story of how the Nixon White House blocked a pre-1972-election investigation of the Watergate break-in by Rep. Wright Patman's House Banking Committee. We presented it as a classic illustration of how the White House can put pressure on legislators to prevent effective review of presidential activity. At the time it was difficult to know how much wider the Watergate scandal would expand. The aborted Patman investigation kept popping up here and there during the revelations of the next two years. John Dean testified that it was one of the more successful aspects of the cover-up. The House Judiciary Committee included White House interference with the Patman investigation in its final reckoning of Watergate, as a part of the Article of Impeachment covering obstruction of justice. So this episode already has shown it is capable of sending out sizeable ripples. And the biggest ripples may be yet to come.

Appearing briefly in *The Washington Monthly*'s story on the Patman hearings, in the cast of White House spear carriers was the name Rep. Gerald Ford. This fact excited no special attention at the time, for he was only the House Minority Leader. Just a few months later, in November 1973, Ford was being questioned by Senate and House committees in hearing to confirm his nomination as Vice President. At this point, Ford's behavior the previous year became more important.

In the Senate Rules Committee's hearing on the Ford nomination, Senator Robert Byrd was Ford's most aggressive questioner. Byrd's rise from butcher in a West Virginia meat

Marjorie Boyd is the author of "The Watergate Story: Why Congress Didn't Investigate Until After the Election, The Washington Monthly, *April, 1973.*

obtain the next batch of cash. On this note, he and Herb walked out of my office like pallbearers. Now Kalmbach was out; LaRue was in.

Such encounters deflated my confidence, but Haldeman usually pumped me back up. A few days after the Kalmbach ceremony, he saw me in the hall and invited me into his office for a chat. Bob had become very friendly and increasingly open. He had to make a few quick calls, so I wandered around his office examining his mementos. He had a beautiful tapestry from the China trip which I admired, but I soon returned to my favorite artifacts: the three dried bullfrog carcasses. They were gifts from Ehrlichman. As always, I picked up one of the mummified frogs to examine it. The bodies were shaped to depict various froglike activities—jumping, smiling, catching flies. I was absolutely mystified as to why Haldeman would have them on display or what Ehrlichman had in mind, although Higby had once said they had something to do with Haldeman's skills as a former

hearings. It's going to come to a head pretty soon. Patman's got to get his committee to vote him subpoena power, and it's a close question whether we have the votes to kill it. I've been talking to Bill Timmons * and Stans and Petersen on this thing, and Mitchell is working on it, too. We think we can give our guys a leg to stand on by telling them that an investigation will cause a lot of publicity that will jeopardize the defendants' rights in the Liddy trial. But that may not be enough. We really need to turn Patman off."

"Call Connally," said Haldeman. "He may know some way to stop Patman. And tell Timmons to keep on Jerry Ford's ass. He knows he's got to produce on this one."

YOUR CONGRESSMAN

Robert G. Stephens, Jr.

REPORTS

★ ★ ★ GEORGIA ★ ★ ★

10th CONGRESSIONAL DISTRICT

NOT PRINTED AT GOVERNMENT EXPENSE

OCT 1972

OCT '1972

STATEMENT ON WATERGATE HEARING BY CONGRESSMAN ROBERT G. STEPHENS, JR. ON HIS OWN BEHALF AND ON BEHALF OF CONGRESSMAN TOM GETTYS (D-S.C.) AND CONGRESSMAN CHARLES GRIFFIN (D-MISS.)

We have read the staff report on the Watergate case and we draw this conclusion. It does not reveal that any law needs to be changed, but only asks whether any law has been violated.

To be specific, the report asks:

1. Did Mr. Stans and others violate the law that prohibits foreign nationals from making political contributions?

2. Did any banks violate the Foreign Bank Secrecy Act by keeping inadequate records?

3. Did any bank violate the law in transfer of campaign funds between Mexico and the United States?

4. Were the laws that pertain to the granting of a charter to a new national bank violated by the Comptroller of the Currency?

5. Has the Committee to Re-Elect the President violated any election laws?

From these facts, we conclude that the staff report shows that there is no jurisdictional justification for our Banking and Currency Committee to investigate. Therefore, to proceed further will place us in the indefensible posture of fostering a political witch hunt, it being clear that no other reason exists for our intervention.

Who has jurisdiction if we do not? The United States Department of Justice in the criminal aspects of the matter. And the United States District Court in the civil aspects of the matter.

Where, if anywhere, should the Banking and Currency Committee in its legislative capacity come into the forum? Not now, at any rate, because it is premature. Action by the Committee now is premature because there are cases pending which allege violations of the laWs we passed. These cases must be made to demonstrate the adequacy of the existing laws. If any of the statutes alleged to have been violated prove, by the decisions, to have loopholes, such as in the Foreign Bank Secrecy Act, then - and not until then - is the time to call the Banking and Currency Committee - or other proper Committees - into action.

We have also considered the public interest in whether the Banking and Currency Committee should proceed with what would surely be a highly publicized and spectacular public hearing.

In assessing this, we profess that the public has a right, just as in any criminal affair, to expect that the ends of justice are served in the sordid Watergate Caper in which there are alleged crimes of burglary, wiretapping, and election laws violations.

But, let us look at the duty of Congress in this a little more.

Congress has the responsibility to enact laws implementing the guarantees of the rights of citizens under our Constitution and to determine whether laws are administered according to the intents of Congress. The former is our legislative function. The latter is our oversight function.

In the matters before us, criminal proceedings are pending in the United States District Court against several persons indicted by a grand jury. Furthermore, civil suits are awaiting trial wherein plaintiffs allege damages as a result of the Watergate Caper. They seek civil redress in these actions.

As clearly outlined, we believe that the Courts of the United States are the proper places at this time for determining the guilt or innocence of those indicted and the settlement of the damage suits.

Congress, as well as the Courts, also has a duty to the individuals charged in the criminal cases and to those litigants who are parties in the civil cases. This duty is to assure in both cases a fair and impartial trial.

It is our firm conviction that widespread publicity stemming from a forum of the Congress - especially from a forum without jurisdictional justification - would seriously impede that fair and impartial trial to which all parties are entitled in the pending cases.

We do not condone any of the crime or civil wrongs alleged in this matter. We simply believe the Banking and Currency Committee is not the proper forum for trial.

Believing firmly in the foregoing analysis of the fairness to all involved, we believe further action by the Banking and Currency Committee should be postponed until the conclusion of the actions now pending in the Courts.

# # # # # # # #

October 3, 1972

ROBERT M. GRAY (1908-1967)

THOMAS SEARING JACKSON •
JOHN L. LASKEY •
ARTHUR C. ELGIN •
H. DONALD KISTLER
KENNETH WELLS PARKINSON
THOMAS PENFIELD JACKSON •
ARTHUR C. ELGIN, JR. •
JAMES P. SCHALLER
KARL H. MICHELET
HERMAN G. LAUTEN
DIANE M. SULLIVAN
JAMES E. BRAMMER
PATRICIA D. GURNE
JOHN S. MILES
NICHOLAS S. McCONNELL

• ADMITTED IN MARYLAND

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June 29,1973

The Honorable Garry Brown,
404 Cannon House Building,
Washington, D.C.20515

Dear Mr. Brown:

I listened to the testimony of John W. Dean, III on June 25,1973 when he testified that I had drafted your letter to the Attorney General dated September 8,1972. Of course, as you know, I did not, nor did I have anything to do with expressing any of the ideas which you set out in the letter.

I believe Mr. Dean is confused on this subject. The facts are that after you wrote your letter to the Attorney General on September 8, 1972, Mr. Dean asked me to prepare a draft response to be signed by the Attorney General. This I did and I enclose a copy of this draft.

I hope this matter can be cleared up.

Sincerely yours,

Kenneth Wells Parkinson

KWP:daa
Enc.

EXHIBIT NO. 7.

The Honorable Garry Brown,
Congress of the United States,
House of Representatives,
Washington D.C.20515 .

Rec'd
JUN 29 1973

Dear Mr. Brown:

I have carefully considered your letter to me of September 8,1972 noting that Chairman Patman of the House Banking and Currency Committee has announced that the full Committeewill meet at 10:00a.m.,Thursday morning, September 14, to hear testimony from the Honorable Maurice Stans, Chairman of the Finance Committee to Re-elect the President, as well as the testimony of Phillip S. Hughes, Director of the Office of Federal Elections, General Accounting Office, concerning their knowledge of the "financial aspects of the Watergate burglary". You say that many members of the Committee may question the wisdom of still a further investigation of this matter by the Committee and you have asked for my advice with respect to three important questions as follows:

1.

2.

3.

Let me first say that while the jurisdiction of the Committee to conduct such an investigation appears to be most unclear as no committee resolution has been passed to support such an investigation and thus the perameters of the investigation are unknown, the question of Committee jurisdiction is a matter for the Committee to decide. Therefore, the appropriateness of Mr. Stans appearance before the Committee is a question that must be decided by the Committee in the first instance and finally by Mr. Stans himself. However, your questions raise many troublesome problems.

This Department and the United States Attorneys Office for the District of Columbia have conducted an intensive investigation of the Watergate episode of June 17th, a Federal grand jury here bears the responsibility to present an indictment of those individuals who have violated the law in that regard. The United States Attorney bears the responsibility, following indictment, to prosecute those indicted and to insure that justice is done. At trial the petit jury must decide guilt or innocence. This process, well known to you, and the members of your Committee must be safeguarded and protected from outside influence, prejudice and passion. I am therefore deeply concerned that hearings before your Committee, open to the public, widely reported in the media in this city where the grand jury sits and from which the petit jury must be selected at trial, must necessarily have an adverse impact upon the proper administration of justice in this case.

Government attorneys have sworn to uphold the Constitution of the United States and the laws of the land, and while we are duty bound to prosecute those accused of crime we also have a duty to see that the civil rights of accused are honored and protected.

My answers to your three questions are as follows:

1. It would not be proper for Mr. Stans to testify before your Committee on these matters which he may have testified on deposition in O'Brien v. McCord, et al., Civil Action No.1223-72 as Judge Charles R. Richey has ordered that all depositions be sealed and not be made public in order to protect the rights of the individual accused.

2. It would not be proper for Mr. Stans or any witness who may have appeared before the grand jury to testify before your Committee with respect to testimony given before the grand jury, as this would violate the secrecy of the grand jury which is fundamental to our system of justice. The

secrecy of the grand jury must always be maintained to prevent a miscarriage of justice resulting from undue influence upon the jury or reprisals resulting from premature disclosures.

3. Five individuals have been arrested and charged with burglary arising out of the June 17th event. Their counsel have on numerous occasions claimed that their constitutional rights to a fair trial before an impartial jury have been impaired by the very considerable pbulicity in the media since June 17th. Further publicity flowing from hearings before your Committee can only serve to provide them with additional constitutional arguments that justice may be denied to them.

I trust that your important questions and those answers will receive the careful attention of your Committee.

EXHIBIT NO. 3.

GARRY BROWN
3D DISTRICT, MICHIGAN

COMMITTEE ON
BANKING AND CURRENCY

COMMITTEE ON
GOVERNMENT OPERATIONS

JOINT COMMITTEE ON
DEFENSE PRODUCTION

Congress of the United States
House of Representatives
Washington, D.C. 20515

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September 8, 1972

The Honorable Richard G. Kleindienst
Attorney General of the United States
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

It no doubt has come to your attention that the Banking and Currency Committee of the House of Representatives, upon which I serve, has, through its Chairman and activities of staff members, become interested and involved in the investigation of the so-called Watergate bugging incident.

Although many of us on the Committee may question the wisdom of still a further investigation of this matter under the auspices of our Committee, it would appear that some of the financial transactions tangential to the incident may come within the purview of our Committee's jurisdiction and, therefore, the Chairman of the Committee may be justified in the interest he has expressed. However, the plans of the Chairman for pursuit of this investigation have raised a serious question in my mind.

The notice members have received from the Chairman indicates that the full Committee will meet at 10:00 A.M., Thursday morning, September 14 to hear testimony from The Honorable Maurice Stans, Chairman of the Finance Committee of the Committee to Re-Elect the President, as well as the testimony of Phillip S. Hughes, Director of the Office of Federal Elections, General Accounting Office, concerning their knowledge of the "financial aspects of the Watergate burglary." I am sure the testimony of these gentlemen would add significantly to the Committee's knowledge of the incident; however, I am well aware of the restrictions which have been placed on or are applicable to the testimony of Mr. Stans regarding this matter and feel that in the interest of all concerned your advice with respect to the propriety of Mr. Stans testifying before our Committee in either Executive or Open Session should be sought.

Specifically, I would appreciate as prompt as possible answers to the following questions:

1) Would it be inappropriate or improper for Mr. Stans to testify before our Banking and Currency Committee with respect to his knowledge of the financial aspects of the Watergate incident in view of the embargo which has been placed by Judge Richey on his testimony by deposition which has been taken in the civil suit arising out of the Watergate incident?

2) Would it be inappropriate or improper for Mr. Stans to testify before our Committee with respect to this matter in view of the pending action of the Grand Jury in returning criminal indictments arising out of the Watergate incident?

3) Would it be inappropriate or improper for Mr. Stans to testify before our Committee with respect to this matter because of the impact publicizing of such testimony might have on the ultimate trial of any or all of those indicted as a result of the Grand Jury action, especially insofar as such publicity might be used as a basis for a claim that the accused, or any of them, may have been prejudiced thereby?

I realize that your office is not technically involved in the civil action. However, your opinion with respect to the substance and significance of Judge Richey's Order placing an embargo upon the testimony of Mr. Stans in that action would be most helpful.

With respect to question "2" above, it has also occurred to me that the absolutely secret nature of the Grand Jury deliberations makes it impossible for any of us to know whether or not Mr. Stans might be called upon to testify before our Committee with respect to matters which he may have been called upon to testify about before the Grand Jury, if he so testified, and that his testimony before the full Committee would be violative of the secrecy mandates of the Grand Jury proceedings.

Inasmuch as I know not what position Mr. Stans will take with respect to the Chairman's request that he appear to testify before our Committee on Thursday, I ask these questions only for the purpose of being better informed should a confrontation arise and should I be called upon as a member of the Committee to support or oppose whatever position is taken by Mr. Stans on the Chairman's request for his appearance. I hasten to add that although this inquiry relates only to Mr. Stans' testimony, it is equally relevant to whomever else, similarly situated, the Chairman might feel prompted to call as a witness should this investigation be expanded upon.

In view of the significance of the questions I have asked and the limited time involved, I urgently request that my questions receive your immediate attention and response.

With best regards,

Respectfully,

GARRY BROWN

EXHIBIT NO. 4.

GARRY BROWN
3d District, Michigan

COMMITTEE ON
BANKING AND CURRENCY

COMMITTEE ON
GOVERNMENT OPERATIONS

JOINT COMMITTEE ON
DEFENSE PRODUCTION

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Washington, D.C. 20515

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September 8, 1972

The Honorable Maurice Stans
Committee to Re-elect the President
1701 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Dear Mr. Stans:

Having been out of town yesterday afternoon and this morning, Chairman Patman's notice of a Banking and Currency Committee meeting set for Thursday morning, at which you have apparently been requested to appear and testify, did not come to my attention until this time.

Obviously, I know not whether you have agreed to so testify or what will be your decision in this regard if you have not as yet accepted or declined the Chairman's invitation. However, as a lawyer, your proposed appearance and testimony before the Committee prompts serious questions in my mind.

In view of Judge Richey's embargo upon the depositions which have been taken in the civil case involving the Watergate incident and in view of the Grand Jury's deliberations, I feel the propriety of your testifying before the Committee, especially since it has been suggested in news accounts that such session would be "open," should be carefully considered.

I, therefore, request that whether or not you have responded to the Chairman's invitation to testify, you discuss this matter promptly with your legal counsel. Inasmuch as I would like to be as well informed as possible about the ramifications of your acceptance or nonacceptance of the Chairman's invitation, I would appreciate being provided with any memorandum your legal counsel might be willing to prepare in this regard.

Since members of the Committee, including myself, may be called upon to take further procedural action with respect to a declination of the Chairman's invitation by you on Thursday morning, I would appreciate receiving any communication from your legal counsel that you may care to provide at the earliest possible moment.

With best regards,

Sincerely,

GARRY BROWN

GARRY BROWN
3D DISTRICT, MICHIGAN

COMMITTEE ON
BANKING AND CURRENCY

COMMITTEE ON
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September 26, 1972

The Honorable Richard G. Kleindienst
Attorney General of the United States
Department of Justice
Washington, D. C. 20530

Dear Mr. Attorney General:

You will recall I wrote to you on September 8, 1972 requesting your opinion with respect to the appropriateness and propriety of the Banking and Currency Committee calling to testify in Open Session persons connected with the Committee to Re-elect the President insofar as the testimony of such persons might have bearing on the Watergate incident. At the time I wrote to you, my particular interest concerned the calling of former Secretary Stans since the Chairman of our Committee, Mr. Patman, had already requested his appearance.

Subsequent to my writing to you, I received a telephonic communication from Deputy Attorney General Erickson's office which advised me that a response would not be made to my letter at that time since it appeared that issues I had raised were moot due to the declination by Mr. Stans of Chairman Patman's invitation to appear before the Committee.

Last evening, I received notification from Chairman Patman that on October 3 a meeting of the Committee would be held for the purposes of considering further proceedings in connection with the investigation, such notice specifically stating that a resolution would be presented calling for the issuance of subpoenas for unnamed persons. I have every reason to believe that among those called would be former Secretary Stans, former Attorney General Mitchell, and others who have been named in the media as having had some connection with the financial transactions allegedly associated with the Watergate incident.

Although the issues raised in my referenced letter may have been moot for a time, those issues are very real and require comment at this time, especially since the publicizing of our hearings and testimony of those who may be called will clearly have an impact upon prosecution of the indictments which have issued in this matter. I don't presume to consider myself extremely well-informed on this subject; however, I have reviewed the Delaney case, 199 Fed. 2d 107 (1st Cir. 1952), and find it to be extremely pertinent to what our Committee proposes to do, especially if any of those who have been indicted

are called to testify. In turn, it seems to me that the thorough investigation the Chairman of the Committee proposes to conduct cannot be accomplished without the calling of some of those who have been indicted.

Your prompt reconsideration of my earlier request and appropriate response will be much appreciated.

With best regards,

Respectfully,

GARRY BROWN

EXHIBIT NO. 6.

OCT 2 1972
Hand delivered 4:55

Honorable Wright Patman
Chairman
Committee on Banking and Currency
House of Representatives
Washington, D. C.

Dear Mr. Chairman:

Congressman Garry Brown has informed us by letter of September 26 that the Committee on Banking and Currency of the House of Representatives is considering extensive public hearings into financial aspects of the so-called Watergate "bugging" incident. Mr. Brown's letter and recent newspaper reports of the Committee's plans indicate that the Committee may hear a number of persons who are likely to be called as witnesses for the Government or for the defendants in the pending criminal prosecution of seven persons indicted in connection with the Watergate incident.

While it is of course important that the public be fully informed concerning the subject matter involved in the Committee's hearings, the Department of Justice feels obliged to draw to the attention of the Committee some law enforcement and civil liberties' considerations that may bear on the desirability or propriety of such hearings being held shortly before the criminal trial at which some of these persons are likely to be called as witnesses. The public interest in a prompt and successful prosecution may be imperiled by widely publicized hearings held at this time. And the basic rights of the defendants to a speedy, fair and impartial trial may be jeopardized by prejudicial publicity or the delay engendered by it.

In a remarkably similar situation some 20 years ago, the conviction of a former public official for corruption was vacated by the United States Court of Appeals for the First Circuit because of the pretrial publicity engendered by a congressional investigation between the time of indictment and the time of trial. The official, a Collector of Internal Revenue, was removed from office and indicted on various charges of corruption in office. Prior to the trial, the House Ways and Means Committee conducted an investigation and public hearing of the official's conduct, over the protest of both his counsel and the Department of Justice. The Government expressed its concern to the Committee with respect to what the court subsequently found to be the case: "the committee hearing afforded the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial." Delaney v. United States, 199 F.2d 107, 110 (C.A. 1, 1952). The defendant's objection to the hearing was, of course, the adverse publicity which the court also found had prejudiced the fairness of the trial.

In Delaney the court emphasized that the prejudicial publicity had been generated by the Government, rather than by independent press inquiry. It held that the fact that the hearing was not conducted by the same branch of Government responsible for the prosecution did not diminish the harm to the defendant. "[W]e perceive no difference between prejudicial publicity instigated by the United States through its executive arm and prejudicial publicity instigated by the United States through its legislative arm." 199 F.2d at 114. While the court did not question the authority of Congress to proceed with the hearing while the indictment was pending, it held that the constitutional rights of the defendant were nevertheless entitled to protection either by a change of venue or a delay in the trial sufficient to offset the adverse publicity.*

* Supreme Court decisions subsequent to the Delaney case reinforce the Sixth Amendment right of a criminal defendant to a speedy trial and suggest that a lengthy continuance may prevent a subsequent prosecution, at least where the defendant requests an early trial. See Dickey v. Florida, 398 U.S. 30 (1970); Klopfer v. North Carolina, 386 U.S. 988 (1967).

"We think that the United States is put to a choice in this matter: If the United States, through its legislative department, acting conscientiously pursuant to its conception of the public interest, chooses to hold a public hearing inevitably resulting in such damaging publicity prejudicial to a pending indictment, then the United States must accept the consequence that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury, may find it necessary to postpone the trial until by lapse of time the danger of prejudice may reasonably be thought to have been substantially removed." Id. at 114.

Other courts, in discussing Delaney, have suggested that the congressional committee should not have conducted the public hearings prior to the defendant's trial. The Second Circuit, in United States v. Flynn, 216 F.2d 354, 375 (C.A. 2, 1954), cert. denied, 348 U.S. 909, suggested that the hearings should either have been postponed until after Delaney's trial or held in private. Similarly, in Silverthorne v. United States, 400 F.2d 627, 633 (C.A. 9, 1968) the court commented: "While the reversal in Delaney was necessitated because of the fact of prejudicial publicity, this result is inextricably bound up in the rationale that such publicity was caused by the action of the United States Government at a time when restraint would have been the more prudent course of action."

This emphasis on governmental involvement in the generation of adverse publicity has been repeated by the Supreme Court. In Rideau v. Louisiana, 373 U.S. 723 (1963), the Court found a violation of due process in the trial of a defendant in the same parish where television publicity of his interrogation by the sheriff was intense.

"Under our Constitution's guarantee of due process, a person accused of committing a crime is vouchsafed basic minimal rights. Among these are the right to counsel, the right to plead not guilty,

and the right to be tried in a courtroom presided over by a judge. Yet in this case the people of Calcasieu Parish saw and heard, not once but three times, a 'trial' of Rideau in a jail, presided over by a sheriff, where there was no lawyer to advise Rideau of his right to stand mute." 373 U.S. at 726-27 (footnotes omitted).

The courts, largely because of a proper concern for freedom of the press, have been reluctant to regulate press coverage of sensational trials. At the same time, the courts have the responsibility to preserve the right of criminal defendants to an impartial trial. Perhaps the most extensive judicial discussion of the balancing of these interests in recent years was the decision in Sheppard v. Maxwell, 384 U.S. 333 (1966). There the Court again vacated a criminal conviction because of excessive publicity, not only prior to but during the trial. While there were a variety of factors involved in that case, the Court emphasized the special obligation of insuring that government officials, in that case the prosecutor, police officers, and the coroner, not contribute to the production of adverse publicity. 384 U.S. at 359.

The United States District Court here in the District of Columbia has recognized its responsibility in this regard by adopting a special rule to guard against adverse publicity prior to criminal trials. Rule 100 of the Court's rules strictly enjoins court personnel and prosecutors not to disclose matter prejudicial to the defendant and further authorizes the judge in a widely publicized or sensational case to issue a special order governing extrajudicial statements by parties and witnesses. It was this rule that Judge Richey invoked in a pending civil action, also emanating from the Watergate incident, in order to protect the rights of the criminal defendants.

This Department is seriously concerned that public hearings on matters related to the Watergate case at this

time may not only jeopardize the prosecution of the case but also seriously prejudice the rights of the defendants. It is distinctly possible that matters which adversely reflect on the defendants, and which would not be admissible at the criminal trial, will become known to the public and to potential jurors as a result of the proposed congressional investigation. This was the result of the advance publicity in the Sheppard case and was one of the principal reasons for the reversal of the conviction.

This matter of prejudice through adverse pretrial publicity has been a matter of grave concern to all lawyers in the United States. It was for this reason that the American Bar Association commissioned a study of the problem as part of its formulation of minimum standards for the administration of criminal justice. In the report on Fair Trial and Free Press the Committee on Minimum Standards observed:

> "Freedom of speech and of the press are fundamental liberties guaranteed by the United States Constitution. They must be zealously preserved, but at the same time must be exercised with an awareness of the potential impact of public statements on other fundamental rights, including the right of a person accused of crime, and of his accusers, to a fair trial by an impartial jury.
>
> * * * * It is important both to the community and to the criminal process that the public be informed of the commission of crime, that corruption and misconduct, including the improper failure to arraign or to prosecute, be exposed whenever they are found, and that those accused of crime be apprehended. If, however, public statements and reporting with respect to these matters assume the truth of what may be only a belief or a suspicion, they may destroy the reputation of one who is innocent and may seriously endanger the right to a fair trial in the event that formal charges are filed.
>
> * * * * [D] uring the period prior to trial, public statements originating from officials,

attorneys, or the news media that assume the guilt of the person charged, that include inaccurate or inadmissible information, or that serve to inflame the community, may undermine the judicial process by making unobtainable a jury satisfying the requisite standard of impartiality." pp. 16-17.

Committees of Congress have been careful in the past to give proper regard to law enforcement and civil liberties' concerns in performing their investigative functions. The Department of Justice is highly concerned that a well publicized congressional investigation at this time will jeopardize the rights of criminal defendants and endanger the prospects of a prompt and successful prosecution. For these reasons the Department, as it did in the Delaney case, asks that the Committee give serious consideration to these concerns before holding hearings on this matter which will undoubtedly come to trial in the very near future.

Sincerely,

Henry E. Petersen
Assistant Attorney General
Criminal Division