The Mythical Presidency

a review
A president is expected to perform the tasks of a mythical hero
but has limited powers…
Presidents seek to make their own mark on the nation and the presidency (Skowronek)

… in a government designed to counter presidential ambition with other ambitions…
The president must work with a bureaucracy

- That is hard to control
- May have powerful allies
- May defy or embarrass him
As bureaucracy has grown, it has become harder to do control.

Presidents have tried to bypass and control the bureaucracy by building a personal counter bureaucracy.

Where court politics and excessive loyalty can create severe problems for the president.
No wonder the real presidency seems to have a lot less power than the mythical one.
Corruption and the Abuse of Power

• Presidential administrations have been rocked by scandals from time to time

• Before the 1970s, these scandals involved personal financial gains
• The Credit Mobilier scandal in the Grant administration

• The Teapot Dome scandal in the Harding Administration
• But these scandals involved personal financial gain

• Watergate was a more serious kind of scandal

• Watergate involved a deliberate effort to undermine the political opposition, to obstruct justice, and to avoid presidential accountability
Watergate
All the conditions exist for the abuse of presidential power –

Deference to the president in foreign policy

Presidential tools for central control, including centralized control of the media message and “governing buy campaigning”

When presidents are politically vulnerable, these pressures have to increase

They must be highest for “preemptive” presidents like Richard Nixon
The Setting:  
The Dominant Political Regime in Trouble, 1968  
Lyndon Johnson, “faithful son” of Franklin Roosevelt, was challenged on the Vietnam war

Eugene McCarthy came close to defeating the incumbent president in New Hampshire

View clips of confrontations between demonstrators and police/National Guard, Chicago 1968
Vietnam tore the Democrats apart in 1968

The 1968 Democratic Convention
Anti-war protests across the nation grow in the late 1960s
Largest Rally in Washington History Demands Rapid End to Vietnam War

Militants Resume Evening Violence

By Richard Haywood

One of the largest crowds of American political activity in recent memory gathered peacefully at the Washington Monument yesterday and demanded an end to the war in Vietnam.

Police Chief Jerry W. Wilson said his estimate of 150,000 people was "conservative." They came from all over the United States and many from as far as Canada.

The demonstration lasted from 5 p.m. to midnight, with a peak crowd of some 75,000 between 9 and 10 p.m.

The rally was organized by the National Mobilization Committee to End the War in Vietnam, a group that has been holding weekly protests at the monument.

The demonstration was peaceful, with only a few incidents of minor violence.

The crowd was addressed by speakers who called for an immediate end to the war and a peaceful solution to the conflict.

The rally ended with a march through downtown Washington, with thousands of people participating.

The weather was cool and clear, with temperatures in the low 60s.
A Plurality President

Richard Nixon narrowly won the 1968 election with only 43% of the popular vote.

The Democrats kept majorities in Congress, creating “divided government” and confrontation.
The Main Character: Richard Nixon (1913-1994)

“I am an introvert in an extrovert profession.”
"Unpredictability is the greatest asset or weapon that a leader can have"

- Richard Nixon
An “Active-Negative” personality

Nixon was suspicious of “eastern elites”

By 1969, Nixon increasingly was depending on loyalists, especially Haldeman and Ehrlichman ("The Palace Guard")
• And, by 1969, Nixon increasingly was concerned about “leaks” of information to the press

• May, 1969 – the New York Times reported that the U.S. secretly is bombing Cambodia

• In response, the White House authorized secret phone taps on reporters and government officials to find the source of the leaks
April 30, 1970: Nixon orders troops into Cambodia

Protests escalate further
Kent State University, 1970 – 4 students killed, 9 wounded by the Ohio National Guard

Jackson State University – 2 killed

500 Colleges closed
The Motive: National Security Leaks

- July, 1970: Nixon orders coordination of security agencies and expanding domestic spying
  - makes 29-year-old Tom Huston responsible.
The Huston Plan

The National Security Agency could intercept and read any citizen’s communications overseas.

Agencies would be authorized to break into suspects’ homes and gather evidence.
Nixon approved the Huston Plan, July 14, 1970

MEMORANDUM FOR: MR. HUSTON

SUBJECT: Domestic Intelligence Review

The recommendations you have proposed as a result of the review have been approved by the President.

He does not, however, want to follow the procedure you outlined on page 4 of your memorandum regarding implementation. He would prefer that the thing simply be put into motion on the basis of this approval.

The formal official memorandum should, of course, be prepared and that should be the device by which to carry it out.

I realize this is contrary to your feeling as to the best way to get this done. If you feel very strongly that this procedure won't work you had better let me know and we'll take another stab at it. Otherwise let's go ahead.

H. R. Haldeman
The Huston Plan

The Huston plan implemented, July 25
Spring 1971: Nixon to Haldeman, on the Bookings Institution:

• "break into the place, rifle the files, and bring them out....I want a break-in. I want the Brookings safe cleaned out. And have it cleaned out in a way that makes somebody else look bad."
The leak of the Pentagon Papers outraged Nixon.

http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB48/nixon.html

Nixon: “people have gotta be put to the torch for this sort of thing…”
The Weapons:
Surveillance
& Plugging The Leaks
The Solution to Leaks:
The Plumbers Unit

G. Gordon Liddy

September, 1971: Ellsberg’s psychiatrist’s office is burglarized
“Goal Displacement”
in the White House Staff

- Nixon and his advisors viewed his goals as the same as the nation’s interest
- The goal of Nixon’s success became dominant in the White House.
- Therefore it became vitally important to support the president no matter what – so the president’s goals displace all other White House objectives
Spring-Summer 1972:
The Democrats nominated George McGovern for President.
McGovern criticized the Vietnam War and argued for an end to the war as soon as possible.

The Nixon loyalists believed it was even more imperative to reelect Nixon.
1972: the central White House goal increasingly focused on reelecting the plurality president

- A separate Committee to Re-Elect the President is formed
- (it became known as “CREEP”)
- January 27, 1972: Liddy gave a presentation in the U.S. Department of Justice about ways the Plumbers could help win Nixon’s reelection.
- March 30: The Attorney General, John Mitchell, approved a wiretap of the Democratic National Committee
The Democratic National Committee’s offices were in the Watergate complex.
June 17, 1972: Five men, one of whom says he used to work for the CIA, are arrested at 2:30 a.m. trying to bug the offices of the Democratic National Committee at the Watergate hotel and office complex.

Frank Willis, security guard, Watergate
One of the five men arrested was James McCord, an ex-CIA official. He now worked for the Committee to Re-Elect the President.
Two Washington Post reporters working on the city desk covered the crime in the city court.

Carl Bernstein (l) and Bob Woodward (r)
August 1, 1972:  
The Washington Post reported that

A $25,000 cashier's check, apparently earmarked for the Nixon campaign, wound up in the bank account of a Watergate burglar.
The Oval Office, June 23, 1972

- **Nixon**: But they've traced the money to 'em.
- **Haldeman**: Well they have, they've traced to a name, but they haven't gotten to the guy yet.
- **Nixon**: Would it be somebody here?
- **Haldeman**: Ken Dahlberg.
- **Nixon**: Who the hell is Ken Dahlberg?
- **Haldeman**: He's ah, he gave $25,000 in Minnesota and ah, the check went directly in to this, to this guy Barker [one of the Watergate burglars]
- **Nixon**: Maybe he's a ...bum. ... He didn't get this from the committee [CREEP] though, from [CREEP finance chairman Maurice] Stans.
- **Haldeman**: Yeah. It is. It is. It's directly traceable and there's some more through some Texas people in--that went to the Mexican bank which they can also trace to the Mexican bank...[the FBI will] get their names today ...
- **Nixon**: Well, I mean, ah, there's no way... I'm just thinking if they don't cooperate, what do they say? They they, they were approached by the Cubans. That's what Dahlberg has to say, the Texans too. Is that the idea?
- **Haldeman**: Well, if they will. But then we're relying on more and more people all the time. That's the problem.
Nixon swept the 1972 election
Questions remained:

• Was someone trying to cover up a crime with “hush money” to the burglars?

• Was the White House involved in the break-in and cover up?

• What did President Nixon know and when did he know it?
January 30, 1973: Liddy and McCord are convicted of conspiracy, burglary, and wiretapping

The story grows, and new details implicate The White House Staff
April, 1973: Haldeman, Ehlichman resign; John Dean fired
B. A Select U.S. Senate Watergate Committee began televised hearings

The Investigations

Spring and Summer, 1973: Two Government Investigations get underway

A. A Special Prosecutor, Archibald Cox, is appointed to investigate Watergate
The Investigations

Dean testified that the President was told about the coverup in March, 1973

Committee Chair
Sam Ervin
(D-South Carolina)

Ranking Minority member
Howard Baker
(R-Tennessee)
But how to tell who was telling the truth?

The Watergate committee staff interviewed Alexander Butterfield under oath.
The Investigations

• “FRED THOMPSON, WATERGATE COMMITTEE MINORITY COUNSEL: From 1970, then until the present time, all of the president‘s conversations in the offices mentioned and on the telephones mentioned were recorded, as far as you know?”

• ALEXANDER BUTTERFIELD, PRESIDENT NIXON‘S DEPUTY ASSISTANT: That‘s correct, until I left.
The Investigations

Both the Senate Committee and the Special Prosecutor subpoenaed the tapes

Nixon refused to surrender them because of “executive privilege”
October 20, 1973:
The “Saturday Night Massacre”
Nixon ordered Cox fired;
The Attorney General and Deputy AG refuse

Finally, Solicitor General Robert Bork fired Cox
After the “Saturday Night Massacre,” Nixon’s popularity plummeted

Nixon: “I’m not a crook”
The Investigations

A new special prosecutor, Leon Jaworski, was appointed.
April, 1974:
Nixon released transcripts of tapes instead of the tapes
United States v. Nixon (1974): Special Prosecutor Jaworski and Nixon Attorney James St. Clair take the battle over the tapes to court in the constitutional dispute of the century:

Nation versus Leader

Does the President of the United States have to obey the law like everyone else?
Pika and Maltese: The Supreme Court is usually deferential to presidential power, particularly in foreign affairs.
The U.S. Supreme Court, 1974

President Nixon had appointed 4 of the 9 justices
The Dispute:

• Can the president refuse to turn over the original tapes on grounds of executive privilege?

*Nixon Lawyer James St. Clair*
Memorandum

TO: Leon Jaworski
   Special Prosecutor

FROM: Carl B. Feldbaum
       Peter M. Kreindler

SUBJECT: Factors to be Considered in Deciding Whether to Prosecute Richard M. Nixon for Obstruction of Justice

In our view there is clear evidence that Richard M. Nixon participated in a conspiracy to obstruct justice by concealing the identity of those responsible for the Watergate break-in and other criminal offenses. There is a presumption (which in the past we have operated upon) that Richard M. Nixon, like every citizen, is subject to the rule of law. Accordingly, one begins with the premise that if there is sufficient evidence, Mr. Nixon should be indicted and prosecuted. The question then becomes whether the presumption for proceeding is outweighed by the factors mandating against indictment and prosecution.
The Special Prosecutor’s argument:
the President is not above the Law

Special Prosecutor Leon Jaworski
The Court ruled unanimously against the president on July 27, 1974.

“"Our starting point is the pending criminal prosecution. "The President’s need for complete candor and objectivity from advisers calls for great deference from the courts.”

We should respect Executive Privilege

BUT…
in a criminal trial,
“The very integrity of the judicial system an public confidence in the system depend on full disclosure of all the facts ... 

"We conclude that when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based solely on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice. The generalized assertion of privilege must yield to the demonstrated, specific need for evidence in a pending criminal trial."
NIXON MUST SURRENDER TAPES, SUPREME COURT RULES, 8 TO 0; HE PLEDGES FULL COMPLIANCE

House Committee Begins Debate on Impeachment
Summer 1974 –
the House Judiciary Committee
begins impeachment hearings
- it, too, had asked for the tapes, including
July 23, 1972
• The tapes showed that the president was fully aware of the coverup from the start and ordered the CIA to obstruct the investigation.
After they heard what was on the tapes, the House Judiciary Committee and voted overwhelmingly for impeachment.
Nixon became the first & only president to resign

THE WHITE HOUSE
WASHINGTON
August 9, 1974

Dear Mr. Secretary:

I hereby resign the Office of President of the United States.

Sincerely,

The Honorable Henry A. Kissinger
The Secretary of State
Washington, D.C. 20520

http://www.americanpresidents.org/presidents/president.asp?PresidentNumber=36
Eventually, 20 Nixon associates and subordinates spent time in jail.

Haldeman and Ehrlichman each spent 18 months in jail.
What did the evidence show?

- The Nixon Administration used national security to harass political enemies and cover up its abuse of power
- Nixon followed developments very closely
- The Attorney General burned evidence in a criminal case
- Nixon’s personal attorney raised $220,000 for the burglars’ defense and to buy their “cooperation”
- Haldeman and Ehrlichman kept an “enemies list”
The Post-Watergate Mentality: Partisan Politics by Other Means

**Figure 1.1**

Federal Indictments and Convictions of Public Officials, 1970–1996*

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*Reporting procedures for these statistics were modified in 1983, so pre- and post-1983 data are not strictly comparable.

Other Abuses of Power show the stresses of the presidency even if they are not in the same league as Watergate

- “Iran-Contra”: Frustrated by restrictions on supplying aid to the “Contras” who opposed left-wing leader Daniel Norriega in Nicaragua, Reagan officials

- secretly sold missiles and spare military parts to Iran hoping to secure release of the captured hostages and

- secretly used the money to fund the Contras
Nixon’s Prerogative Theory of Presidential Power has not gone away

Pike & Maltese, chapter 1
FROST: So what in a sense, you're saying is that there are certain situations, and the Huston Plan or that part of it was one of them, where the president can decide that it's in the best interests of the nation or something, and do something illegal.

NIXON: Well, when the president does it that means that it is not illegal.

FROST: By definition.

NIXON: Exactly. Exactly. If the president, for example, approves something because of the national security, or in this case because of a threat to internal peace and order of significant magnitude, then the president's decision in that instance is one that enables those who carry it out, to carry it out without violating a law. Otherwise they're in an impossible position.
Some of President Bush’s legal advisors urged him to take the widest possible interpretation of presidential power and prerogatives.
“Thirty pages into a memorandum discussing the legal boundaries of military interrogations in 2003, senior Justice Department lawyer John C. Yoo tackled a question not often asked by American policymakers: Could the president, if he desired, have a prisoner's eyes poked out?

The specific prohibitions, he said, depended on the circumstances or which "body part the statute specifies."

“But none of that matters in a time of war, Yoo also said, because federal laws prohibiting assault, maiming and other crimes by military interrogators are trumped by the president's ultimate authority as commander in chief.”
Does the Constitution apply to the war on terror?

• "Our office recently concluded that the Fourth Amendment [banning unreasonable searches and seizures] had no application to domestic military operations," the footnote states, referring to a document titled "Authority for Use of Military Force to Combat Terrorist Activities Within the United States."

– October 23, 2001
  memo by John Yoo,
  Deputy Assistant Attorney General
You know, you see these bums, you know, blowin' up the campuses.

Listen, the boys that are on the college campuses today are the luckiest people in the world

… And here they are, burning up the books. Storming around about this issue,

I mean, you name it, get rid of the war, they'll be another one.
The Tapes: “The Smoking Gun”

http://www.hpoi.org/record.php?id=92

• Some Key Players:
  – Gray = Patrick Gray, FBI Director
  – Felt = Mark Felt, 2nd in command of the FBI
  – Helms = Richard Helms, CIA Director
  – Walters = Vernon Walters, 2nd in command at the CIA
  – Barker = Bernard Barker, a Plumber
  – Gemstone = Liddy’s plan for the 1972 election
Scandals of the Clinton Administration

• “Whitewater” - was an alleged “sweetheart” land deal involving Governor & Mrs. Clinton
• a special prosecutor (Kenneth Starr) was appointed to investigate land deals
• But Starr got evidence on an affair with a White House intern, Monica Lewinsky and a potential coverup
• The story became public in January, 1998
Clinton publicly denied it: “I did not have sexual relations with that woman, Miss Lewinsky” (January 21)

Days earlier, Clinton had denied the affair under oath in testimony in another case (Paula Jones)

Starr expanded his investigation
August, 17, 1998: Clinton testified before a grand jury

That evening, he admitted the affair on national TV

“Indeed, I did have a relationship with Ms. Lewinsky that was not appropriate. In fact, it was wrong … But I told the grand jury today and I say to you now that at no time did I ask anyone to lie, to hide or destroy evidence or to take any other unlawful action.
• The press had a field day
• September: the Starr report “substantial and credible information that President...Clinton committed acts that may constitute grounds for impeachment”

• October 8: The House voted, 258-176 to open an impeachment inquiry on Clinton (31 Democrats voted for the inquiry)
Impeachment

• December 19, 1998: President Clinton becomes the second President impeached by the House, on two counts
  • On perjury: 228-206, with five Democrats voting for and five Republicans against
  • On obstruction of justice, 221-212, with five Democrats for and 12 Republicans against
• Began in the Senate, January 13, 1999
• The votes (2/3 required to convict) were largely along partisan lines:
  – On perjury,
    55 voted to convict, 45 to acquit
  – On obstruction,
    50 voted to convict, 50 to acquit