

## REVIEW

*Watergate and the Constitution.* PHILIP B. KURLAND. The University of Chicago Press, Chicago, 1978. Pp. x, 261. \$12.50.

*James Hamilton*†

Watergate was more than a clash of personalities and personal ambitions. It was also a confrontation of philosophies of government, of constitutional notions as to how this country should operate. Professor Kurland, in his book *Watergate and the Constitution*,<sup>1</sup> writes cogently about the constitutional conflicts born of (or revived by) Watergate. The scope of his undertaking is broad: the book deals, for example, with Congress's investigatory and impeachment powers, the executive's privilege to deny information to Congress, the role of the federal courts in arbitrating disputes between the two other branches, the difficulties in criminally prosecuting a sitting President, and the diminished vitality of separation of powers principles in the modern day. It is a work requiring the capabilities of a scholar such as Professor Kurland who brings to the task a deep understanding of both constitutional law and American history.<sup>2</sup>

### I

Professor Kurland's central theme is that, starting with the

---

† Member of the District of Columbia Bar. The reviewer was Assistant Chief Counsel to the Senate Select Committee on Presidential Campaign Activities (the Watergate Committee).

<sup>1</sup> P. KURLAND, *WATERGATE AND THE CONSTITUTION* (1978) [hereinafter cited without cross-reference as KURLAND].

<sup>2</sup> Every author must make choices as to his subject matter. I would have preferred a more extended treatment of the congressional privilege against interference in legislative activities than Professor Kurland offers. *See id.* at 37. This privilege—set forth in the speech or debate clause, U.S. CONST. art. I, § 6, cl. 1—was invoked by the Watergate Committee in several cases challenging its investigatory powers.

Kurland declares with some imprecision that the "congressional privilege does not extend to criminal acts." KURLAND 37. Actually, in its latest statement on the issue in *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975), the Supreme Court said "Congressmen and their aides are immune from liability for their actions within the 'legislative sphere,' . . . even though their conduct, if performed in other than legislative contexts, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes." *id.* at 510 (quoting *Doe v. McMillan*, 412 U.S. 306, 312-13 (1973)). The cases Professor Kurland cites as authority for his comment—*United States v. Brewster*, 408 U.S. 501 (1972), and *United States v. Johnson*, 383 U.S. 169 (1966)—hold only that a congressman can be prosecuted for nonlegislative criminal acts. *But see Gravel v. United States*, 408 U.S. 606, 621 (1972).

New Deal, presidential power has burgeoned to unacceptable extremes. No longer is the Chief Executive sufficiently restrained by the concepts of separation of powers and checks and balances carefully written into the Constitution by the Framers. We have, Professor Kurland contends—borrowing a phrase made popular by Arthur Schlesinger, Jr.—an “imperial Presidency.”<sup>3</sup> In his chapter entitled “Separation of Powers and Checks and Balances,” Professor Kurland states: “The primary evil revealed by the events of Watergate was the presidency: not the man but the office. It was and is bloated with unrestrained power, available for use for good or evil, with little or no accountability for the use to which it is put.”<sup>4</sup> A few pages later he expands on this assertion:

We are governed today by a constitution far different from that which [George] Washington bequeathed to us. And the most basic changes have been brought about by means other than constitutional amendment, as Washington would have had it. We have seen a concentration of power in the presidency achieved to some degree by usurpation but more largely by the abdication of responsibility by the Congress. We are, indeed, threatened by the despotism that Washington decried, whether it be called “benevolent” or not.<sup>5</sup>

President Nixon, Professor Kurland believes—again borrowing a Schlesinger phrase—was striving for a “plebiscitary Presidency.”<sup>6</sup> In a “plebiscitary Presidency” the Chief Executive, once elected, is considered to embody the will of the people: his official judgments are infallible and to oppose him is antidemocratic. Nixon was not alone in these Gaullist views, Professor Kurland argues; other Presidents and scholars of the presidency have harbored similar aggrandized perceptions of presidential power. What alarms Professor Kurland is that the nation has tolerated such notions of presidential power.

The tragedy of Watergate lies not in the pitiful character of the man exiled from the White House; it lies rather in the continued failure of the nation to take steps first to cabin and then to dissipate that accumulated power, the failure to revive our constitutional notions of limitations on authority.<sup>7</sup>

---

<sup>3</sup> KURLAND 170.

<sup>4</sup> *Id.* at 153.

<sup>5</sup> *Id.* at 166.

<sup>6</sup> *Id.* ch. 10, especially at 203.

<sup>7</sup> *Id.* at 5.

Professor Kurland is not optimistic that Watergate has altered the dangerous trend toward unrestrained presidential power. Indeed, he rejects the idea that surviving Watergate has restored the nation to health. "Perhaps we have removed a cancerous growth that could have killed us. We have not rid the system of disease. And we shan't do so simply by saying that people are going to be different."<sup>8</sup> It is thus not a happy picture that Professor Kurland gives us. But has he overstated his case?

There is, of course, much truth in what Professor Kurland says. The executive branch has grown to astounding size.<sup>9</sup> The White House, whose staff has ballooned in recent years, and the executive branch generally wield immense power. By adopting administrative regulations, the executive branch—without calling on Congress—daily makes "laws" that affect all aspects of our lives. Presidents Johnson and Nixon showed us that a President can effectively wage war without fretting much about congressional prerogatives and misgivings.

It is also true, as Professor Kurland notes, that the federal courts have aided the accretion of power in the executive branch. He cites three prominent examples of such assistance. The first is the Supreme Court's ruling, in *United States v. Curtiss-Wright Export Corp.*,<sup>10</sup> that the national power over foreign affairs comes not from the Constitution, but is inherent in the nature of a sovereign government, and that this power resides with the executive.<sup>11</sup> The second is the line of Supreme Court cases expanding the commerce<sup>12</sup> and general welfare<sup>13</sup> clauses to the point at which the federal government now possesses the power to regulate a wide array of "local" activities.<sup>14</sup> The third is the series of Supreme Court decisions widening the right of Congress to delegate its "legislative" powers to the executive branch and the independent agencies.<sup>15</sup>

Several court decisions concerning the Watergate investigations had the effect of exalting executive powers and diminishing those of Congress. These included *Senate Select Committee on*

---

<sup>8</sup> *Id.* at 4.

<sup>9</sup> It is only fair to observe, however, that the executive branch has had to expand to administer programs passed by Congress and that the size of congressional staffs has also steadily grown.

<sup>10</sup> 299 U.S. 304 (1936).

<sup>11</sup> *Id.* at 315-17, 320, cited in KURLAND at 172-73.

<sup>12</sup> U.S. CONST. art. I, § 8, cl. 3.

<sup>13</sup> *Id.* cl. 1. The general welfare clause provides that Congress may collect taxes and pay debts to provide for the "general Welfare of the United States."

<sup>14</sup> KURLAND 174.

<sup>15</sup> *Id.* at 175-76.

*Presidential Campaign Activities v. Nixon*,<sup>16</sup> discussed at length by Professor Kurland,<sup>17</sup> which involved the Committee's unsuccessful attempt to obtain five tapes of Nixon's White House conversations. As a prime Watergate example of Professor Kurland's thesis that the judiciary has aided the executive's accumulation of power (while reasserting its own authority to decide conflicts between the other two branches) this case deserves another look.<sup>18</sup>

The court of appeals directed its attention "solely to one species of executive privilege—that premised on 'the great public interest in maintaining the confidentiality of conversations that take place in the President's performance of his official duties.'"<sup>19</sup> The court found such conversations "presumptively privileged" and ruled that this presumption could be overcome only by a "strong showing" of need by the governmental institution seeking the information, "a showing that the responsibilities of that institution cannot responsibly be fulfilled without access to records of the President's deliberations."<sup>20</sup> The court concluded the Committee could not meet this threshold requirement: "Particularly in light of events that have occurred since this litigation was begun and, indeed, since the District Court issued its decision, we find that the Select Committee has failed to make the requisite showing."<sup>21</sup> The principal "events" referred to by the court were the release of the five tapes to the House Judiciary Committee and edited transcripts of those tapes to the public.

The tapes, the court indicated, were not needed to meet Congress's informing function—its duty to tell the public about corruption in government. The court declared that it "need neither deny that the Congress may have, quite apart from its legislative responsibilities, a general oversight power, nor explore what the lawful reach of that power might be,"<sup>22</sup> since the House Judiciary Committee, which had the tapes, was fulfilling this function for the Congress as a whole. The court's reluctance to take a stronger stand is difficult to square with the Supreme Court's assertions that Congress should "look diligently into every affair of government" and may probe the "departments of the Federal Government to expose cor-

---

<sup>16</sup> 498 F.2d 725 (D.C. Cir. 1974).

<sup>17</sup> KURLAND 53-58.

<sup>18</sup> My views on this case are undoubtedly colored by the fact that, along with Sam Dash and others, I represented the Watergate Committee in the case.

<sup>19</sup> 498 F.2d at 729 (quoting *Nixon v. Sirica*, 487 F.2d 700, 717 (D.C. Cir. 1973)).

<sup>20</sup> 498 F.2d at 730.

<sup>21</sup> *Id.* at 731.

<sup>22</sup> *Id.* at 732.

ruption, inefficiency or waste.”<sup>23</sup>

Furthermore, the Senate Select Committee could not make a “strong showing” of need regarding the lawmaking function of Congress. The court said:

While fact-finding by a legislative committee is undeniably a part of its task, legislative judgments normally depend more on the predicted consequences of proposed legislative actions and their political acceptability, than on precise reconstruction of past events; Congress frequently legislates on the basis of conflicting information provided in its hearings.<sup>24</sup>

The court then distinguished Congress’s factfinding role from that of the grand jury. While the grand jury must have evidence to determine whether probable cause to believe an individual has committed a crime exists, there is, the court said, “no comparable need in the legislative process, at least not in the circumstances of this case.”<sup>25</sup>

This case, one fervently hopes, is historically unique, and thus may have limited precedential value. Nonetheless, it must be noted that the court’s test—a “showing that [Congress’s] responsibilities . . . cannot responsibly be fulfilled without access to records of the President’s deliberations”<sup>26</sup>—unduly restricts Congress’s powers of inquiry. Even if Congress can demonstrate a pressing specific need for presidential communications, it may experience extreme difficulties, given the nature of its tasks, in proving that it cannot perform its missions “responsibly” without violating presidential confidentiality.

There are, of course, sound reasons to protect presidential com-

---

<sup>23</sup> *United States v. Rumely*, 345 U.S. 41, 43 (1953); *accord*, *Watkins v. United States*, 354 U.S. 178, 187 (1957). Later rulings by the Court of Appeals for the District of Columbia Circuit have considered whether certain exercises of the informing function were legitimate legislative activities protected by the speech or debate clause, U.S. CONST. art. I, § 6, cl. 1. In *Doe v. McMillan*, 566 F.2d 713 (D.C. Cir. 1977), the court held that limited dissemination outside the halls of Congress of a House committee report containing possibly defamatory materials was within the “legitimate legislative sphere” and was thus protected. But the court has also ruled that providing the Internal Revenue Service with material collected during a congressional investigation is not a privileged exercise of the informing function. *McSurely v. McClellan*, 553 F.2d 1277 (D.C. Cir. 1976) (en banc), *cert. dismissed sub nom. McAdams v. McSurely*, 438 U.S. 189 (1978). *See also* *Hutchinson v. Proxmire*, 579 F.2d 1027 (7th Cir. 1978), *cert. granted*, 99 S.Ct. 832 (1979), which held that the issuance of press releases and newsletters about Senator Proxmire’s presentation of his “Golden Fleece” award for misuse of federal money was protected by the clause. Professor Kurland clearly recognizes the importance of the informing function. *See, e.g.*, KURLAND 28.

<sup>24</sup> 498 F.2d at 732.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 730.

munications. To allow Congress freely to breach the confidentiality of presidential conversations could mean the end of frank advice and opinion in the White House. But Congress, as Watergate demonstrated, at times does have legitimate need to intrude on such conversations. If there is corruption in the White House, Congress should be able to learn about it. The courts should not make this task impossible. Congress also may have valid needs for information not involving presidential conversations over which executive privilege might be asserted—for example, records involving diplomatic or military secrets, foreign covert activities, or communications between a cabinet officer and his staff. We may hope that, if disputes over such matters reach the courts, the rigorous standard applied regarding presidential conversations in the Watergate Committee case will be modified.

Relevant here is the admonition of the Supreme Court that Congress—as well as the courts—has the “right to every man’s evidence”<sup>27</sup> and that all witnesses have an “unremitting obligation”<sup>28</sup> to respond to congressional subpoenas. Moreover, the Court has said that “the power of Congress to conduct investigations . . . is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes.”<sup>29</sup> “[T]he scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution.”<sup>30</sup> These pronouncements suggest that the courts should not be quick to support claims of executive privilege against the Congress and that they should weigh competing executive and congressional claims without unduly tipping the balance toward the executive. Judicial recognition of Congress’s legitimate investigatory powers is one way to forestall the coming of an “imperial Presidency.”<sup>31</sup>

---

<sup>27</sup> *United States v. Bryan*, 339 U.S. 323, 331 (1950) (quoting 8 J. WIGMORE, EVIDENCE § 2192 (3d ed. 1940)).

<sup>28</sup> *Watkins v. United States*, 354 U.S. 178, 187 (1957).

<sup>29</sup> *Id.*

<sup>30</sup> *Barenblatt v. United States*, 360 U.S. 109, 111 (1959). Professor Kurland observes, KURLAND 17, that the text of the Constitution does not give Congress inquisitorial power. The Constitution, however, does give Congress “legislative powers,” U.S. CONST. art. I, §§ 1, 8, and the Supreme Court has ruled that “the power of inquiry—with process [subpoena power] to enforce it—is an essential and appropriate auxiliary to the legislative function.” *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927). See also *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 504-05 (1975).

<sup>31</sup> The courts have not made it as difficult for other supplicants to obtain presidential materials. In *United States v. Nixon*, 418 U.S. 683 (1974), the Supreme Court ruled that a claim of executive privilege for presidential conversations “cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice” where a “specific need for evidence in a pending criminal trial” is demonstrated. *Id.* at n.13. Earlier

## II

Having agreed that executive power has grown to a worrisome level, that Congress is frequently subservient, and that the courts have often aided the executive's grab for power, the question remains whether things really are as bad as Professor Kurland portrays. Do we actually have an "imperial Presidency" and a lackey Congress? I think not.

Examples of congressional independence and assertiveness are easily found.<sup>32</sup> The recent congressional investigations into the executive intelligence apparatus, though flawed in many ways, at least demonstrated that Congress is no longer content to leave the nation's spying and other covert activities to the executive branch. There are now committees in both Houses specifically charged with overseeing intelligence operations. After Watergate, congressional committees are not willing to take "no" for an answer when they call for executive records. Various congressional panels in the recent past have had the temerity to cite Cabinet members—Henry Kissinger, Rogers Morton, and Joseph Califano—for contempt for refusing to produce subpoenaed items (although no criminal prosecution has resulted from these actions).

Memories are short, but in the 1950s the claim was that the executive was pitifully weak, that Congress was too dominant. During the McCarthy era a frequent complaint was that Congress, by abusing its investigatory powers, was attempting to usurp executive functions in foreign affairs and other areas. Alan Barth summed up

---

the Court of Appeals for the District of Columbia Circuit in *Nixon v. Sirica*, 487 F.2d 700, 717 (D.C. Cir. 1973), held that a grand jury's "uniquely powerful showing" of need surmounted the presumption of presidential privilege. Moreover, courts in civil suits by private parties have judged former President Nixon's claims of executive privilege by tests seemingly less stringent than that applied in the Watergate Committee's case. *E.g.*, *Dellums v. Powell*, 561 F.2d 242, 245-49 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 880 (1978); *Halperin v. Kissinger*, 401 F. Supp. 272 (D.D.C. 1975); *Sun Oil Co. v. United States*, 514 F.2d 1020 (Ct. Cl. 1975). *See also* Committee for Nuclear Responsibility, Inc. v. Seaborg, 463 F.2d 788, 791 (D.C. Cir. 1971). Also significant is *Nixon v. Administrator of Gen. Servs.*, 433 U.S. 425 (1977), where the Court upheld the Public Documents Act, Pub. L. No. 93-526, §§ 201-203, 88 Stat. 1698 (1974) (codified at 44 U.S.C. §§ 3315-3324 (1976)), and ruled that Congress's various interests (including its investigatory interests) in preserving former President Nixon's records overcame his claim of executive privilege. Important to the Court's decision was its finding that the intrusion on confidentiality resulting from operation of the Act would be minimal. 433 U.S. at 451-52.

<sup>32</sup> Anyone who has watched President Carter's difficulties in convincing Congress to pass his energy and tax bills realizes that Congress is an independent, and at times an obdurate, branch of government. Mr. Carter cannot control the Hill, even though the Hill is controlled by his own party. The most persistent criticism of Mr. Carter by Congress and the media is not that he is "imperial," but that he has not been effective. After the Camp David Summit, however, Congress and the media have rightly had kinder things to say about Mr. Carter's performance.

this view in the title to his lucid book, *Government by Investigation*.<sup>33</sup>

I take much more comfort than Professor Kurland from the fact that the Congress, the special prosecutors, the courts, and the press could combine to rid the country of a corrupt President and his erring cohorts. The road was tortuous; there were many setbacks. But eventually—perhaps with some luck—the system worked. Although the Senate Watergate Committee was not able to obtain presidential tapes, it did discover their existence and publicly present the bulk of the evidence about White House corruption that led to Nixon's downfall. The special prosecutors met with stubborn presidential resistance: the first special prosecutor, Archibald Cox, was fired when he refused to yield to Nixon's demands that he drop his pursuit of critical evidence. Yet Leon Jaworski, with the help of the courts,<sup>34</sup> did obtain the tapes he needed and was able to prosecute successfully the chief offenders among Nixon's coterie. The House Judiciary Committee, building on what was done before, issued articles of impeachment, and little doubt exists that, had Nixon not resigned, the full House would have impeached him and the Senate removed him from office. Nixon was pardoned for his crimes, but—most importantly for the nation—he was forced from the White House.

If, in the future, we find ourselves burdened with another Nixon, I suspect a constitutional way will be found to dispose of him. To do so may not be easy, but there is much to be said for *not* making removal of a President a simple task. Such excising should be done only with severe provocation, not upon political whim.

### III

To argue that the situation is not as dire as Professor Kurland believes is not to contend that reforms are unnecessary. To remedy what he perceives as the principal problems revealed by Watergate—"the failure of Congress to perform adequately its function as

---

<sup>33</sup> A. BARTH, *GOVERNMENT BY INVESTIGATION* (1955). See also T. TAYLOR, *GRAND INQUEST* (1955).

<sup>34</sup> *United States v. Nixon*, 418 U.S. 683 (1974); *Nixon v. Sirica*, 487 F.2d 700 (D.C. Cir. 1973). The Supreme Court's opinion was, of course, the death knell of the Nixon presidency. Years earlier, in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Court condemned as unconstitutional another abuse of presidential power—President Truman's attempt to seize American steel mills. One anticipates that the federal courts, although they may have fostered the growth of the executive's influence, will continue to resist unconstitutional assertions of power by the President that fundamentally threaten the basis of our democracy. Perhaps the Watergate Committee's case would have been decided differently had other governmental entities been unsuccessful in the efforts to obtain White House tapes.



a check on the executive, and the inordinate concentration of power in the hands of the White House staff"<sup>35</sup>—Professor Kurland suggests the creation of a Congressional Legal Counsel, a proposal made by the Watergate Committee. Contrary to Professor Kurland's statement that the "notion of congressional counsel seems to have disappeared,"<sup>36</sup> a bill creating this office, the Public Officials Integrity Act of 1977,<sup>37</sup> was passed by the Senate in 1977. Moreover, the Congress has now passed, and the President signed into law, the Ethics in Government Act of 1978,<sup>38</sup> which establishes a *Senate* Legal Counsel. The law provides a lawyer only for the Senate because the House would not agree to a joint office that would represent both houses.

The Senate Legal Counsel has a number of important responsibilities. The Counsel is the Senate's litigator. He or she will defend the Senate and its committees, members, officers, and employees in civil suits arising out of official actions. The Counsel will also institute litigation to enforce subpoenas, intervene or appear as *amicus curiae* in actions where Congress's powers and responsibilities are at issue, and seek immunity orders for Hill witnesses from the federal courts. The law also gives the Counsel certain advisory functions.<sup>39</sup>

The proposal Professor Kurland offers would, unwisely I think, expand the functions of the Congressional Legal Counsel far beyond those set forth in Senate Bill 555 and the 1978 Act. Professor Kurland would charge the Congressional Legal Counsel with investigation and (where appropriate) prosecution of corrupt executive, judicial, and legislative officials before the House Judiciary Committee, in impeachment proceedings, or before other congressional committees.<sup>40</sup> Furthermore, he would give the Counsel a broad oversight function regarding the execution of federal laws by the executive branch. Thus, he states:

I should add that I think that the Office of Congressional Counsel should have . . . still one more important function, that of the oversight of the execution of the laws legislated by Congress. For one of the problems that is not adequately addressed by Congress now is that once legislation has been en-

---

<sup>35</sup> KURLAND 198.

<sup>36</sup> *Id.* at 195.

<sup>37</sup> S. 555, 95th Cong., 1st Sess. (1977).

<sup>38</sup> Pub. L. No. 95-521, 92 Stat. 1824 (1978) (codified in scattered sections of 2, 5, 18, 28, 39 U.S.C.).

<sup>39</sup> *Id.*

<sup>40</sup> KURLAND 196.

acted, it tends to become a license for executive and judicial action which frequently does not conform either to the language or the spirit of the laws as enacted. Some mechanism should be created to keep Congress informed, through its appropriate committees, perhaps, of what both the executive and the judicial branches of the government are doing when they allegedly enforce its laws. This function could be performed by the Office of Congressional Legal Counsel.<sup>41</sup>

I agree that a Congressional Legal Counsel is needed to represent Congress in court (and have so testified).<sup>42</sup> I believe, however, that the responsibilities Kurland would give this office are unduly broad. Congress's oversight function is already enshrined in statute:

In order to assist the Congress in—

- (1) its analysis, appraisal, and evaluation of the application, administration, and execution of the laws enacted by the Congress, and
- (2) its formulations, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation, as may be necessary or appropriate,

each standing committee of the Senate and the House of Representatives shall review and study, on a continuing basis, the application, administration, and execution of those laws, or parts of laws, the subject matter of which is within the jurisdiction of that committee.<sup>43</sup>

Each standing committee, therefore, is already required to oversee executive operations in its area of expertise. Certain committees—for example, the Senate Government Affairs Committee—have subcommittees that are specifically assigned responsibility for investigations. Some committees perform this task better than others, but all have an oversight responsibility that is as important as (and is a corollary to) their lawmaking function. To superimpose upon the committee structure an office of Congressional Legal Counsel vested with additional oversight responsibilities would be superfluous. In Congress, as well as the executive branch, we should seek less bureaucracy, not more. The solution seems to be not a new oversight office, but better performance by existing committees.

---

<sup>41</sup> *Id.* at 196-97 (quoting *Watergate Reorganization and Reform Act of 1975: Hearings Before the Senate Comm. on Government Operations on S. 495 and S. 2036, 94th Cong., 1st Sess.* 256-58 (1975) (statement of Philip B. Kurland)).

<sup>42</sup> *Watergate Reorganization and Reform Act of 1975: Hearings Before the Senate Comm. on Government Operations on S. 495 and S. 2936, 94th Cong., 1st Sess.* (1975).

<sup>43</sup> 2 U.S.C. § 190d(a) (1976).

I also have difficulty with the concept that a separate congressional office is needed to investigate corrupt government officials and to bring impeachment proceedings. The House Judiciary Committee performed its impeachment role exceptionally well in the Watergate affair with a staff it chose. I fail to see why another office should be given impeachment responsibilities.

Moreover, other committees have actively investigated corruption of other government officials. The Senate Watergate Committee was successful in examining wrongdoing in the Nixon administration. The Senate Government Affairs Committee diligently (if not particularly skillfully) investigated the various financial dealings of former OMB Director Bert Lance. Both the House and Senate Ethics Committees have recently inquired into allegations of improper conduct by their congressional brethren. My experience in representing clients before the House Ethics Committee is that its investigation of Korean influence peddling, while imperfect, was at least conducted with considerable zeal. Does Congress require some sort of Grand Inquisitor to perform such investigatory functions? I think not, and I seriously doubt that Congress will create an office endowed with many of the oversight and investigatory prerogatives that now rest with standing committees.<sup>44</sup>

\* \* \*

Enough of criticism. My disagreements with Professor Kurland regarding the Congressional Legal Counsel and other matters should not overshadow my admiration for his book. It is a work of eminent scholarship that covers a sweep of issues that could only be handled by a man of great learning. It is also a highly readable book, flavored with Professor Kurland's own brand of acerbic humor. I have no doubt that it will be read, referred to, and respected for years to come.

---

<sup>44</sup> Placing too much power in one office could lead to abuses of investigative authority. The McCarthy experience has taught us that misuse of Congress's powers of inquiry for political gain or self-promotion is a real danger.

