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HOGS--THEN AND NOW  
OR  
FROM HOG TO BACON TO PORK

Kit Kat Club  
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John J. Chester

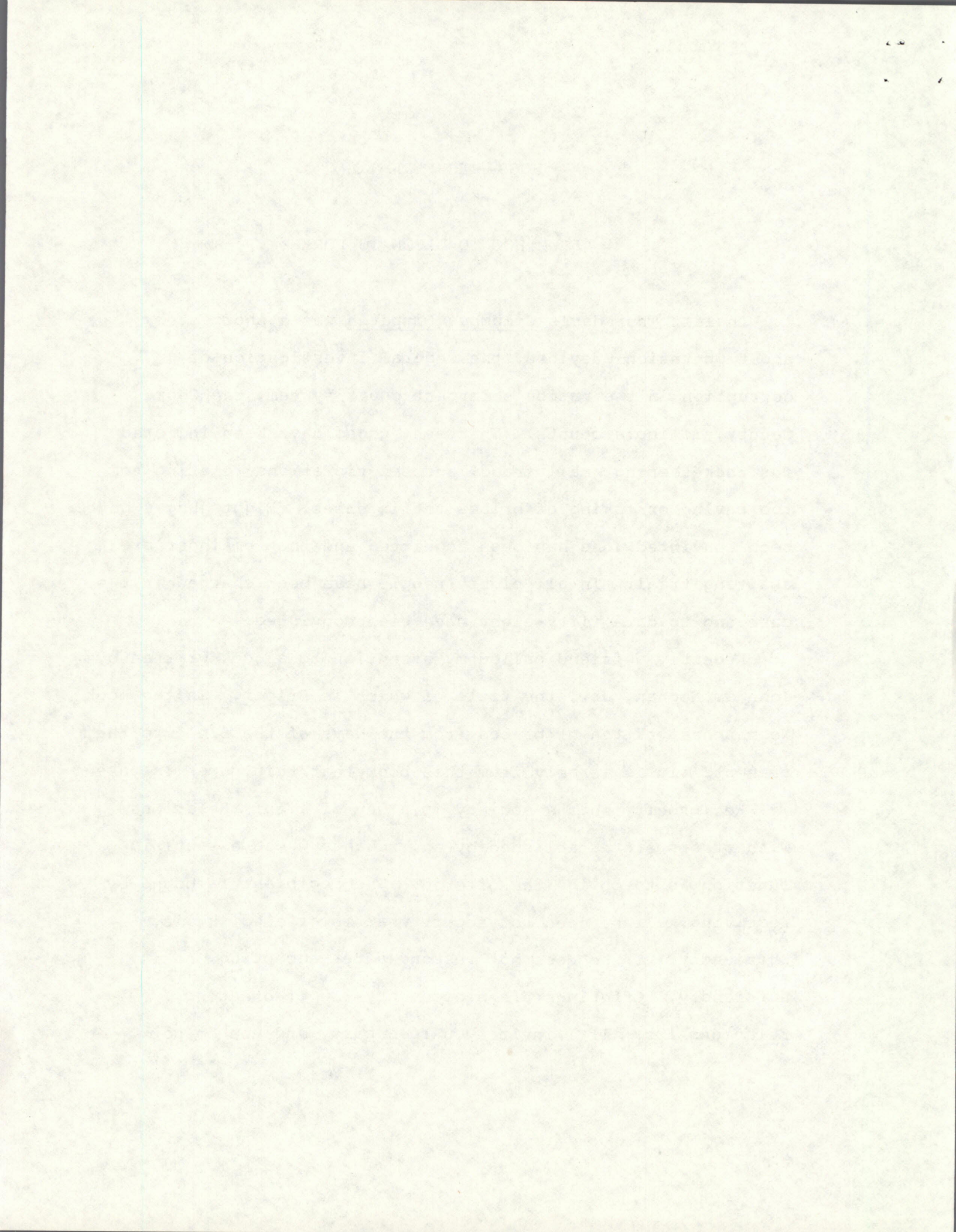
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In last Thursday's Columbus Dispatch was a short story about Operation Greylord, the federal investigation of corruption in the nation's largest court system, the Cook County, Illinois courts. Thirteen judges have been indicted for racketeering, mail fraud, and tax violations relating to the paying or taking of bribes to fix cases. Eight judges have been convicted, one has been acquitted and the remainder are awaiting trial. In all eighty people have been charged in the case and to date fifty-eight have been convicted.

Recently a friend called my attention to a book written by John T. Noonan, Jr., the title of which is Bribes. In the book Noonan has written of bribes from the days of the Bible to the present. It is largely from this book that this paper is taken.

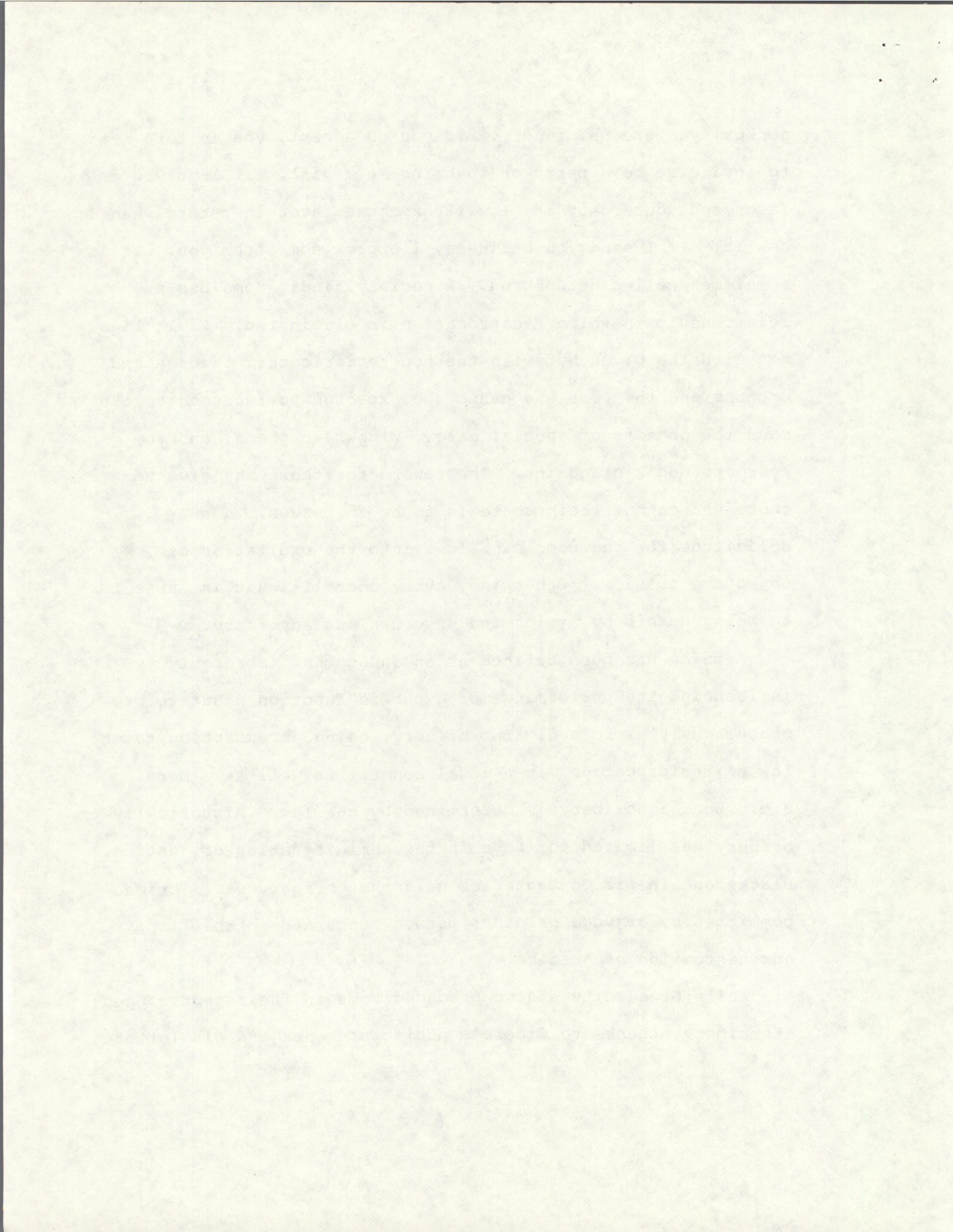
Reciprocity in any society is a way of life. Relations with others are established by an exchange whose essential function is to oblige the offeree. The recipient is bound by receiving. If he does not accept what is offered, he is unfriendly. If he does not respond after accepting, he is unfriendly. Offerings are a necessary way of creating relationships. If I invite you to a party and you do not



accept, you are unfriendly. If you do accept, you in turn are to invite me to a party or to bring me a gift. If I do you a favor and you accept it, I will expect a favor in return when I ask it. If I send you business, I expect some from you. It is sometimes called networking. A society finds anomalous a relationship in which reciprocation is eliminated. Fault lies not with the giver but with the non-recipricator. Widows and orphans and the poor who cannot be expected to reciprocate are made the objects of special care. Widows, orphans, and the poor are God's stand-ins. The reward for those who give to those who cannot reciprocate is to be in Heaven. The solicitude for the poor man flows into the exultation of objective justice. Otherwise, every poor litigant is subject to being outbid by a rich and unscrupulous adversary.

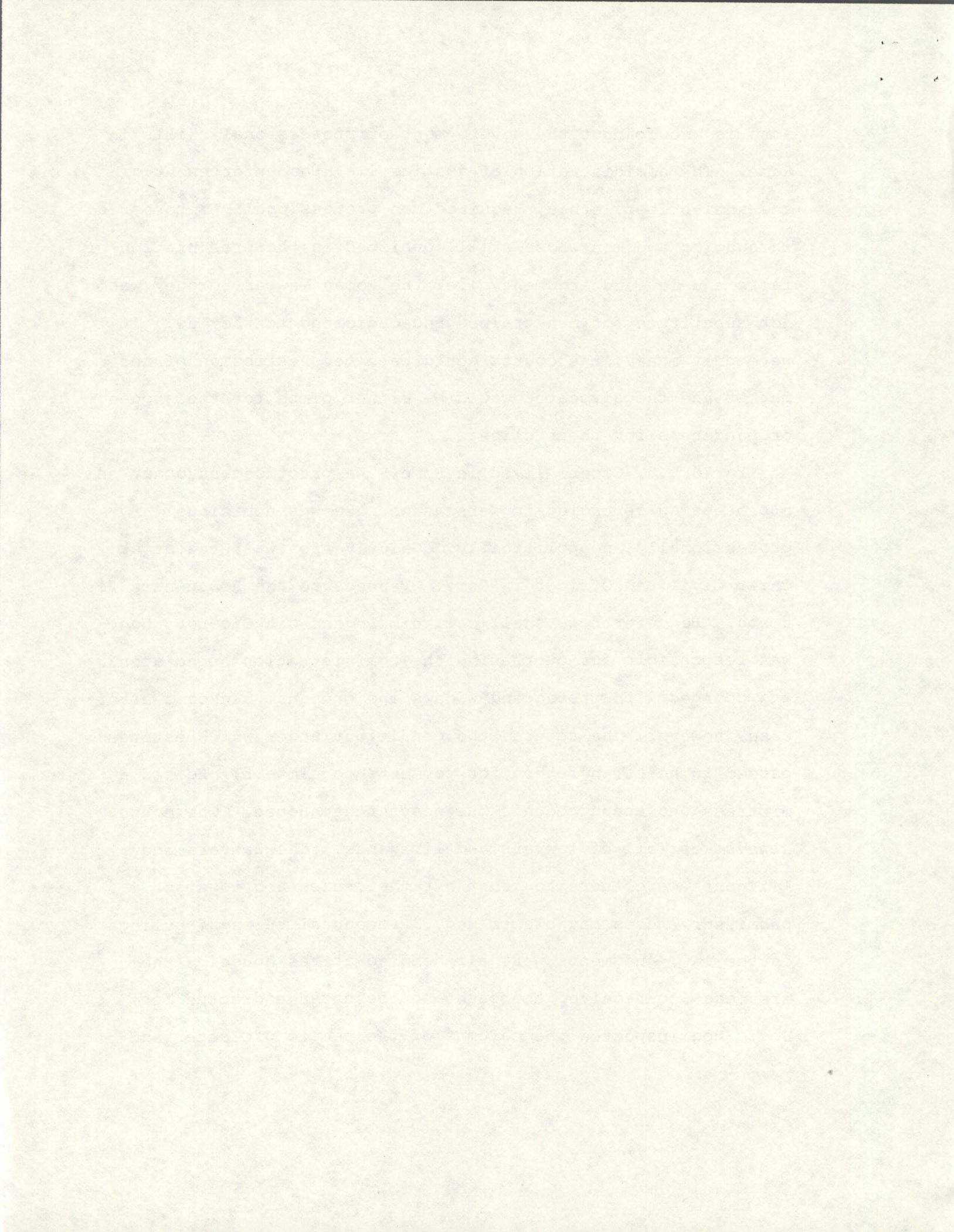
A bribe has been defined as an inducement improperly influencing the performance of a public function meant to be gratuitously exercised. But bribery, being an exception to the law of reciprocation, is a legal concept as well as a moral one. What is bribery is determined by the law. Historically bribery was limited to those in the administration of justice. Blackstone in his Commentaries said that bribery was a crime committed by a judge or other person concerned in the administration of justice.

While Greek city-states preceded Rome in their cognizance of bribery, thanks to Cicero's public speeches and his letters,



more is known about the development of professional skills in Rome. The administration of justice i.e. the enforcement of the anti-bribery ethic, required men professionally interested in judging and men whose skill consisted in the presentation of facts and law and argument, i.e. the Roman lawyer. Money was not substitute for men trained and dedicated to the law. If it were only money, the courts would be a mere extension of the market and the advocates would be either pimps for the judges or panderers for their clients.

In 70 B.C. Cicero lived in Rome. He practiced advocacy as a profession depending on persuasion. He was ambitious professionally and politically. Gaius Verres was Praetor or Chief Civil Law Officer in Rome. Verres was the Roman name for a hog. Henceforth we shall call him Hog as did Cicero. Hog was responsible for overseeing the administration of estates and charged with protecting widows and orphans. In case after case, however, he altered the conditions under which estates passed to heirs in return for payments to himself. He had a mistress who conducted his business at her house. The house always was full of lawyers and litigants. The lawyers and litigants were there to count out their cash and to sign promissory notes payable to Hog. Procedural rulings, rulings on the law, judgments were all handled at the house by the mistress who received the cash and the notes and acted for Hog. Hog inspected the columns of the temple of Caster and





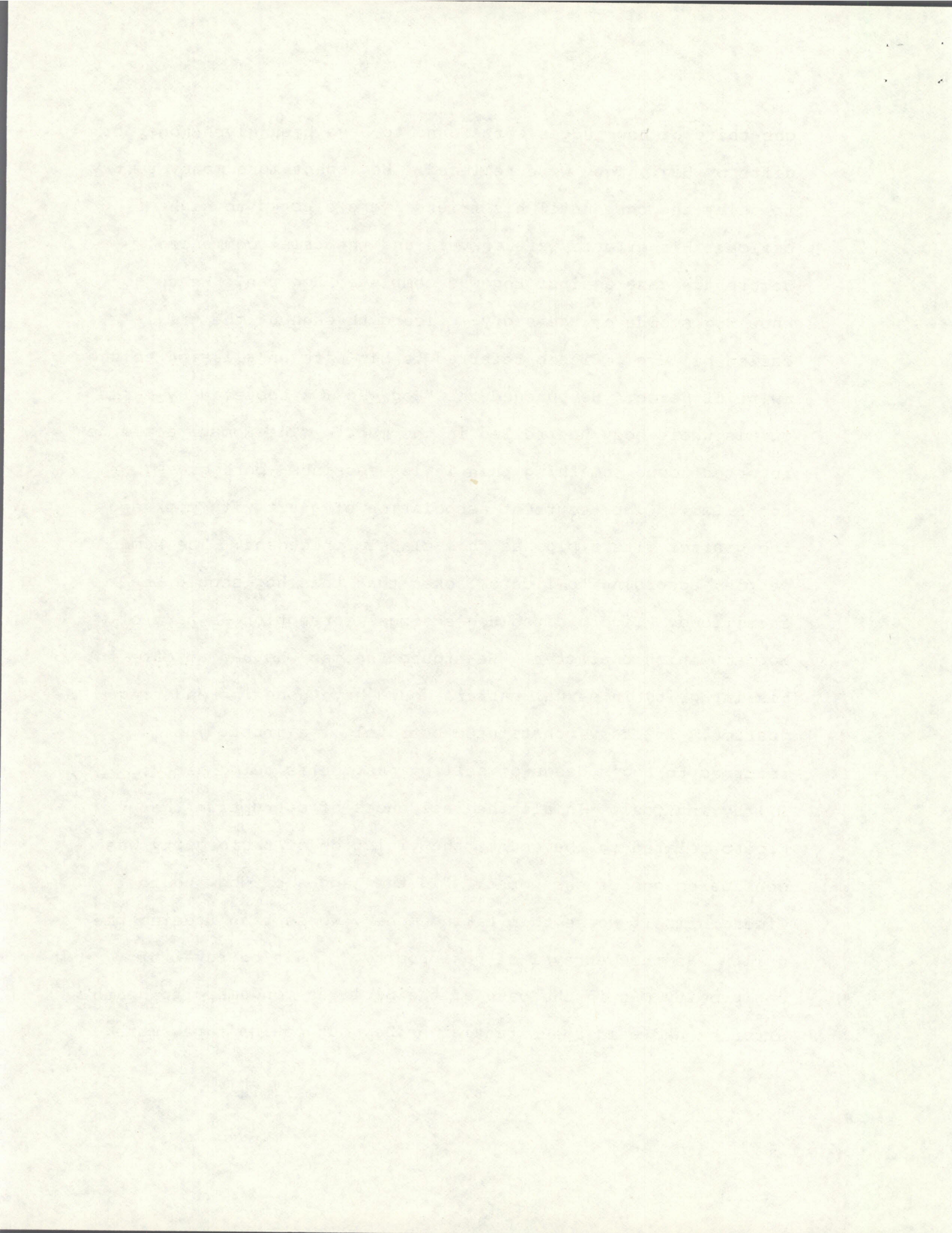
Pollux. He found that they were not quite straight. The liability for this was on them who were supposed to keep the columns in repair. The contract was held by a young man still a ward. Hog arranged for the ward's guardian to pay Hog personally a large sum of money for which he waived the ward's liability. Hog then hired a contractor to do the straightening and took a second pay off from him. After his term as Praetor Hog was sent to Sicily as the Supreme Governor. He took money from all who came before him. On one occasion a Sicilian was on trial for a capital offense. Hog's servant contacted the defendant stating that Hog would set the defendant free for a payment of eighty thousand. The defendant paid the eighty thousand. The next day the servant returned and asked for more. The defendant couldn't give any more Whereupon Hog found the defendant guilty and sentenced him to death. Hog did not return to the defendant's family the eighty thousand.

When Hog returned to Rome, Sicilians followed demanding his prosecution. They retained as their advocate, Cicero.

At the time Hog's trial began, Cicero himself was a candidate for public office. Hog spent large sums of money to defeat him and failed. He spent large sums of money to buy the favor of the judges who were to serve on the panel to try him, Cicero's friend was president of the panel of judges. Under the friend's supervision Cicero challenged the members of the court that he thought that Hog had reached. On Cicero's motion



one-third of the judges were found to have been given money or gifts by Hog. They were replaced. Hog spent more money to try to delay the case until his friends were elected to high office. His efforts were in vain and the trial commenced. Before the case against Hog was completed Hog ran. We do not know Hog's side of the story. Cicero throughout the trial called him Hog. Cicero referred to him with an allusion to the Swine of Cerce. He pursued the "Hog who I discovered by marks on his whole body had rolled in the mud." "The Roman people he reported found something thin in ius verrinum--pork gravy, or Hog's Law." The recurrent association of graft with pork and the grafter with a pig has this classic precedent. The Roman people, according to Cicero, joked that this hog should be sacrificed. Cicero cited Hog's sexual corruption as part of Hog's swinish character. He argued the man who had no care for his integrity in sexual matters would have none in rendering justice. Adultery constituted betrayal of a trust. He referred to Hog's deeds of selling justice as being dirty, filthy and foul. In all the incidences of corruption that Cicero related to the court, the violation of reciprocity was considered one of the worst. "To the judges of Hog and to Cicero himself worse than taking money, worse than freeing the guilty was the betrayal of reciprocity." This betrayal of reciprocity was in the case of the Sicilian condemned to death after he had paid a substantial bribe, but couldn't pay more.



The foulest, however, of all acts were the blatant acts of selling criminal justice. The corrupted judge had violated faith, honor and fidelity. The fidelity of a judge is reciprocation for the fidelity of the prosecutor. The fidelity of Roman judges was ordained by the Roman gods.

Bribery has been a problem long before Hog. The Old Testament and the Proverbs refer to bribery. "You shall appoint judges and they shall judge the people with righteous judgment." Deut. 16.18. "And you shall take no bribe for a bribe blinds the officials and subverts the cause of those who are in the right." Exodus 23.8. "Now then, let the fear of the Lord be upon you. Take heed what you do for there is no perversion of justice with the Lord our God or partiality or taking of bribes." II Chronicles 19.7. "He who is greedy for unjust gain makes trouble for his household, but he who hates bribes will live." Proverbs 15.27.

The judges of old answered to God for they exercised the power of God. The judges of Rome exercised the powers of their Gods. So the judges of England at the time of King James acted with the power of divine right.

Chapter 29 of Magna Charta, the keystone of the English Common Law stated: "To no one will we sell, to no one will we deny or delay right or justice." In 1617 Francis Bacon, lawyer, counselor to the king, scholar and scientist, was named Lord Chancellor of England with the title of Lord Keeper.



In 1621 at the time of his sixtieth birthday Bacon was created Viscount St. Alban. Shortly thereafter Parliament was called into session by the King, a decision urged upon the King by Bacon. Parliament had not met for seven years. King James had no funds to pay the officers of the government. Taxes came in slowly and piecemeal. There were no banks from which to borrow. The government paid minimal wages. No chancellor or chief justice could exist on his yearly stipend. Catherine Drinker Bowen in Francis Bacon, The Temper of a Man describes how, soon after Parliament convened, petitions were filed with the Parliament alleging bribery and corruption on the part of the Lord Chancellor. One petitioner complained he had given Bacon one hundred pounds in gold. A second complaint alleged that he had given Bacon four hundred pounds in gold. Other witnesses followed. Bacon was accused of receiving a dozen gold buttons worth fifty pounds, a cabinet worth eight hundred pounds, two thousand pounds, seven hundred pounds borrowed and more promised at the end, a diamond ring, and on behalf of the French wine merchants fifteen hundred tuns of wine. It was further charged that the Lord Chancellor's servants had made many exactions in respect of private seals and injunctions. The full indictment brought by the House of Commons contained twenty-eight separate charges as delivered by the Commons to the Lords. Bacon knew that he could not deny the charges. Bacon was subject to physical breakdowns in moments of crisis.



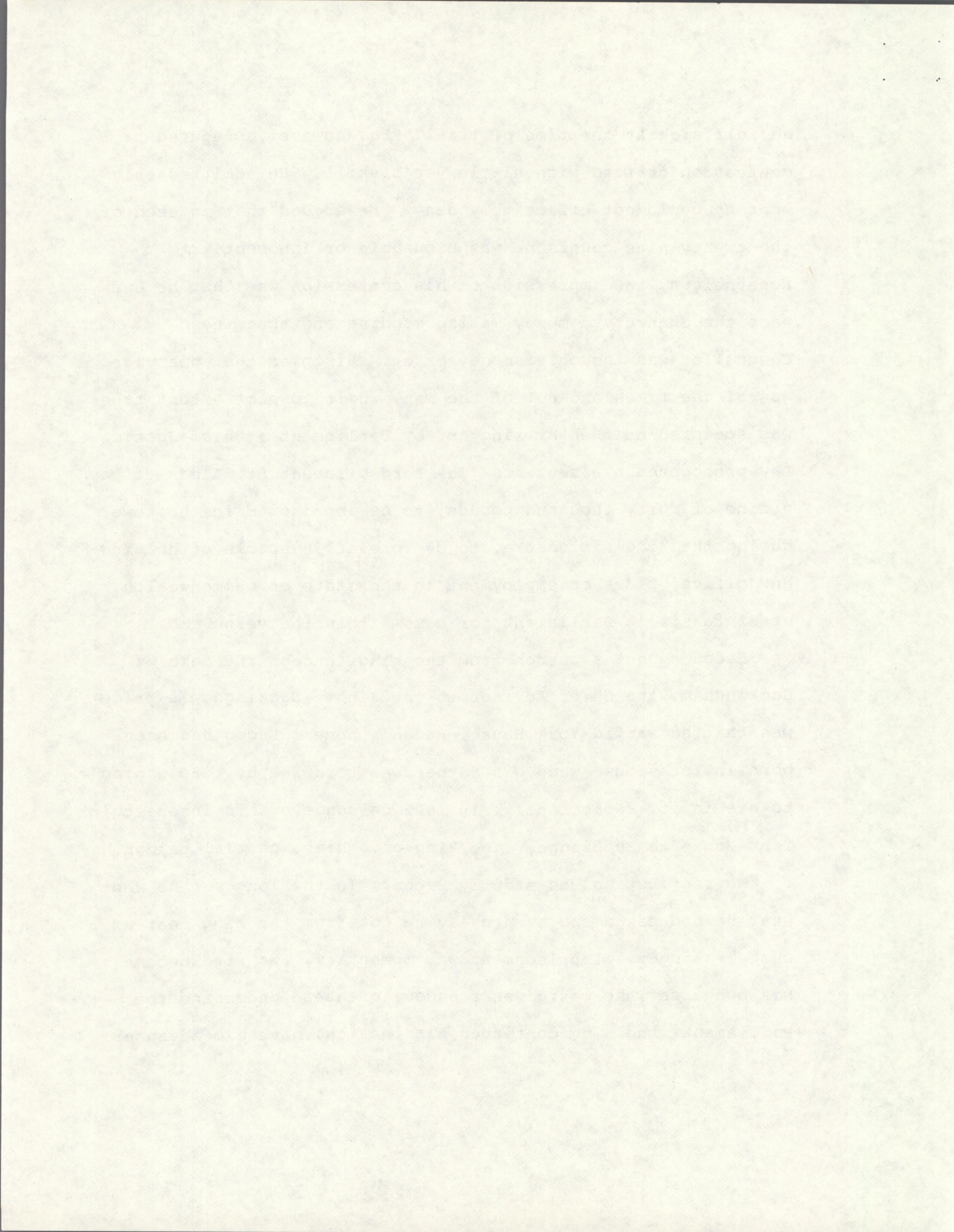


He fell sick at the time of trial. He, however, prepared a confession drafted with his lawyer's skill. He admitted only what he could not effectively deny. He argued that in each of the twenty-nine counts he was excusable or innocent.

Nonetheless, the impression of his confession was that he had made the Chancery a money making machine and that the Chancellor was the chief money maker. His plea that his vice was of the times and not of the man, while to some extent true, was accepted neither by king nor by Parliament. Chief Justice Ley pronounced his sentence "The Lord Viscount St. Alban to pay a fine of forty thousand pounds, to be imprisoned in the tower during the king's pleasure, to be forever incapable of holding any office, place or employment in the state or commonwealth, never to sit in Parliament nor come within the verge."

Bacon sought a pardon from the king through the Duke of Buckingham, the Chief Advisor to the King. Buckingham's price was that he wanted York House, Bacon's home. Bacon had been born in York House when his father was Lord Keeper. He wanted to die in it. Reluctantly, in 1622 he conveyed his interest in York House to Buckingham. The king gave him a partial pardon.

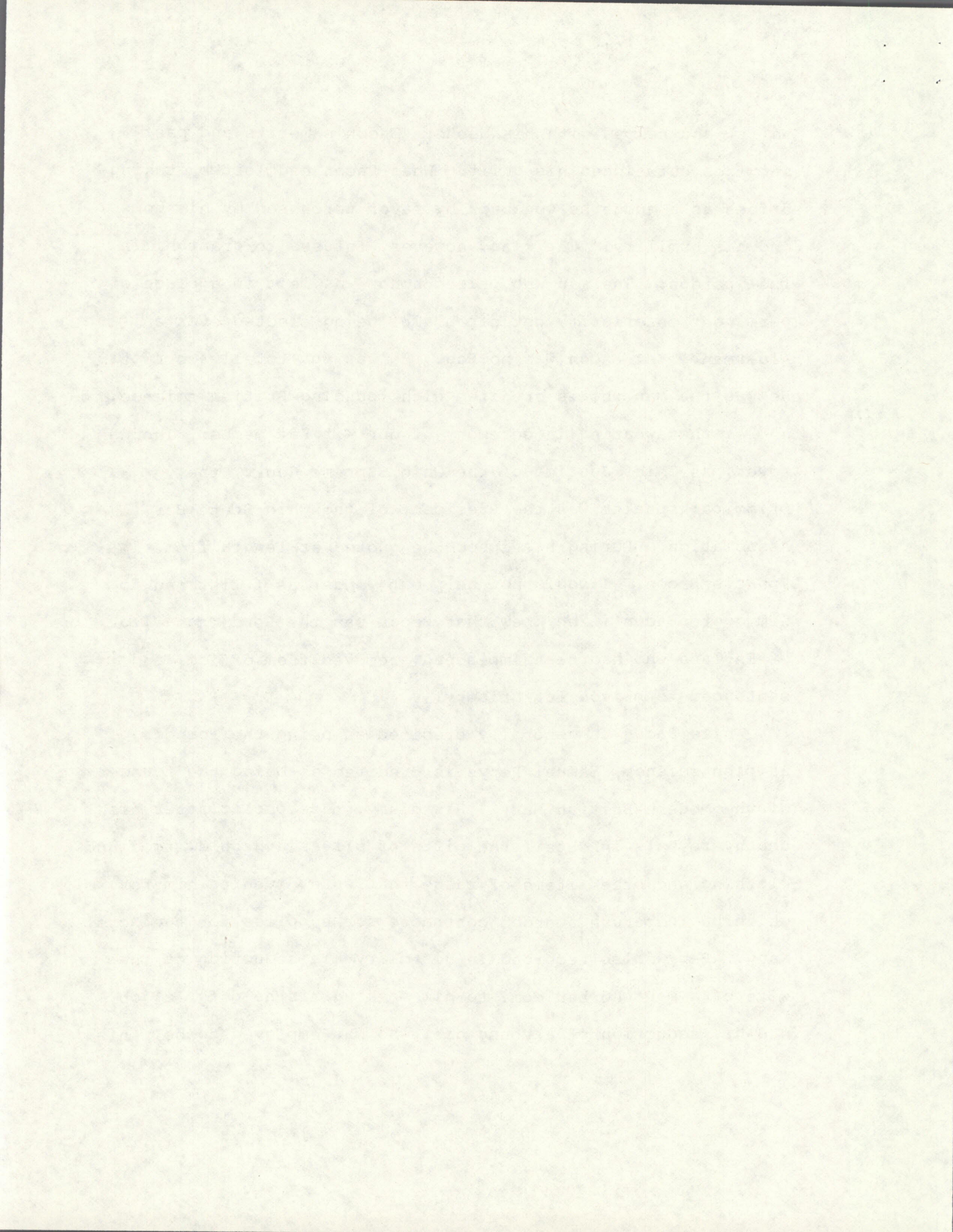
No restitution was made by Bacon. In the long run he kept what he had taken and eventually he got from the king most of what he sought. Imprisonment was momentary, the fine became his own asset, he was given freedom to enter London and the Parliament, the King continued his pension, gave him advances



on it, and helped with his debts. Bacon's merits and past services outweighed his guilt. What Bacon had lost by taking bribes as a judge he won back by favor purchased by his home and his humility. The king, however, refused to grant him a full pardon. The man who prized honor was left in a place of permanent inferiority not capable of being elected even an alderman. Yet Bacon was no Hog. He was not totally corrupt. He was the man who is credited with founding British science.

At the swearing in ceremony of our Kit Kat member, Thomas Moyer, as Chief Justice of the Ohio Supreme Court, the principal speaker was the President of the Ohio State Bar Association. During his speech he quoted at length from Francis Bacon. I could not help but wonder as I listened to him quote Bacon if he knew that Bacon was the Lord Chancellor of England who had been impeached, removed from office, and sentenced to prison for bribery.

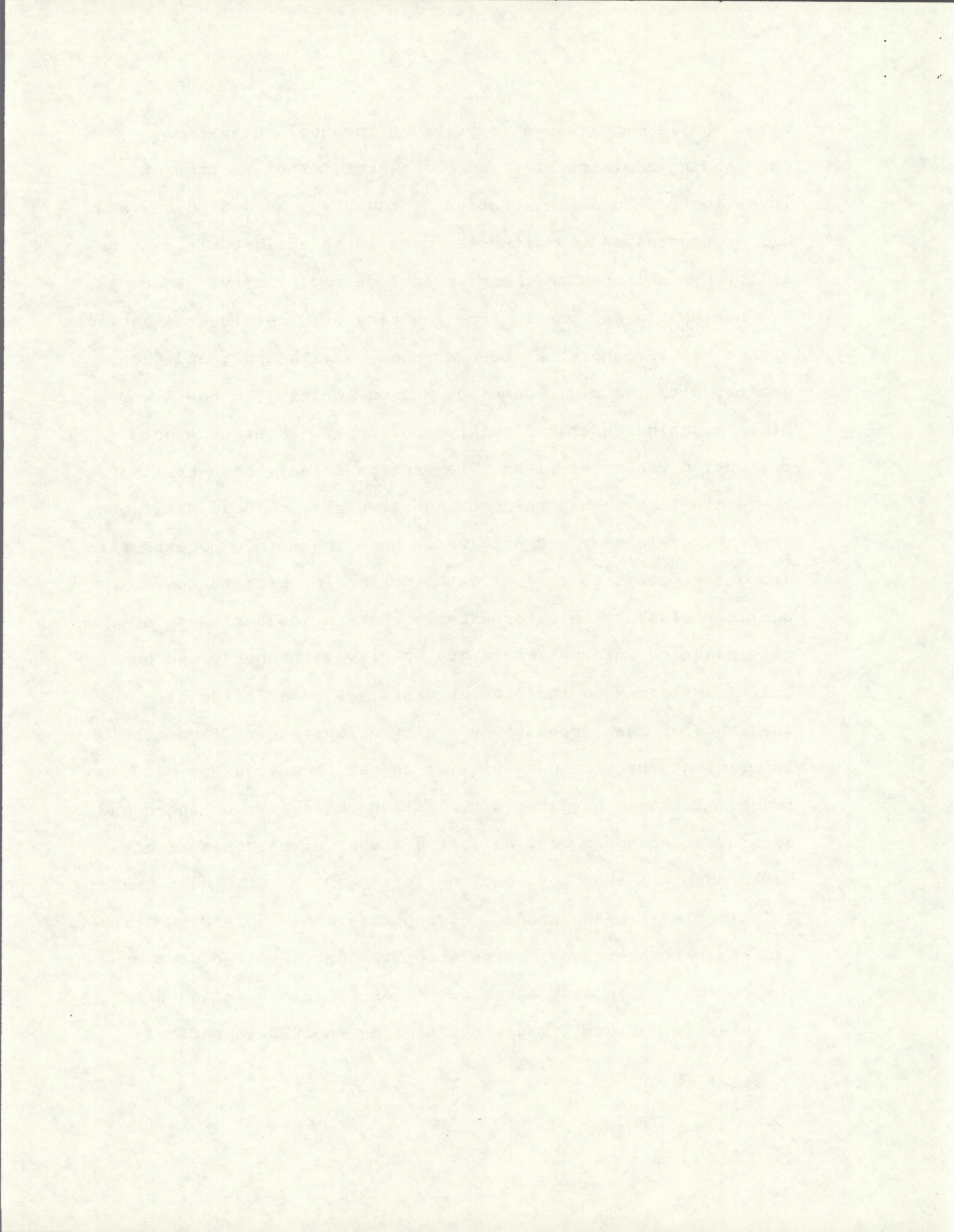
While Bacon is generally credited as being the founder of British science, Samuel Pepys is credited as being the founder of the Modern British Navy. His diary, made public after his death, reveals in detail the gifts of silver and gold, food and clothing and other items of value that were given to him for which he in return awarded contracts for supplies for the Royal Navy. Pepys also recorded in his diary his seduction of the wife of a man who had come to him seeking his help for a job and his seduction of a young girl who was employed to help his



wife. While Pepys was corrupt he was no Hog. He was an outstanding administrator and bureaucrat. When Parliament investigated the administration of the Navy, he denied any and all wrongdoing and no witnesses came forth against him. Above all, Pepys believed in the principal of reciprocity!

But what about pork? From the time of Cicero's prosecution of Hog the term pork has been synonymous with graft and the grafter with the pig. James Q. Wilson, writing in the New York Times magazine described one type of pork. He stated that corruption was never right. He went on to say, however, that there might be such a thing as honest graft. George Washington Plunkett of Tammany had originally used the term. Honest graft brought a profit to the office holder and no harm to the public. Plunkett said for example that an insider's use of city planning information to buy up private property was honest graft. Wilson said that honest graft was the placing of insurance or bank deposits by a city or a state to favor the insurance company or bank willing to pay the necessary campaign funds. This was honest graft. Wilson observed that there had been a rather sharp decline in the amount of dishonest graft but probably a much less decline in the amount of honest graft.

Lincoln Steffans studied corruption in New York City at the time that Plunkett was active with Tammany. Steffans reported the corruption in many other cities as well in a series of articles in McClure's magazine starting in 1902. Steffan's



achievement was to describe a national pattern existing in municipal government. He found that corruption in St. Louis came from the leading citizens of the city, in Pittsburgh from the railroads, in Minneapolis the prohibition of vices, in Philadelphia the big corporations. In New York corruption came from prohibited vice, from the docks, and from contractors, and, everywhere, the owners of street railways. Big Business was not the only corrupter of public officials for there were also the saloons, the gambling houses, and the bawdy houses. Something could be done about the gambling houses and the bawdy houses, but big business only got bigger.

Tom Johnson was the mayor of Cleveland shortly after the turn of the century. Early in life he learned "to play Monopoly." While others talked of going to work in a competitive line, Johnson wanted to start a monopoly and he did. He went into the street railway business and applied the Monopoly Principle to it. He became a wealthy man. He subsequently sold his monopoly business and went into politics. After serving in Congress he was elected Mayor of Cleveland. Johnson gave to Steffans his insight into what caused the corruption in the cities. Steffans in his Autobiography quotes Johnson as follows:

"Oh, I could see, that you did not know what it was that corrupted politics. First, you thought it was bad politicians who turned out





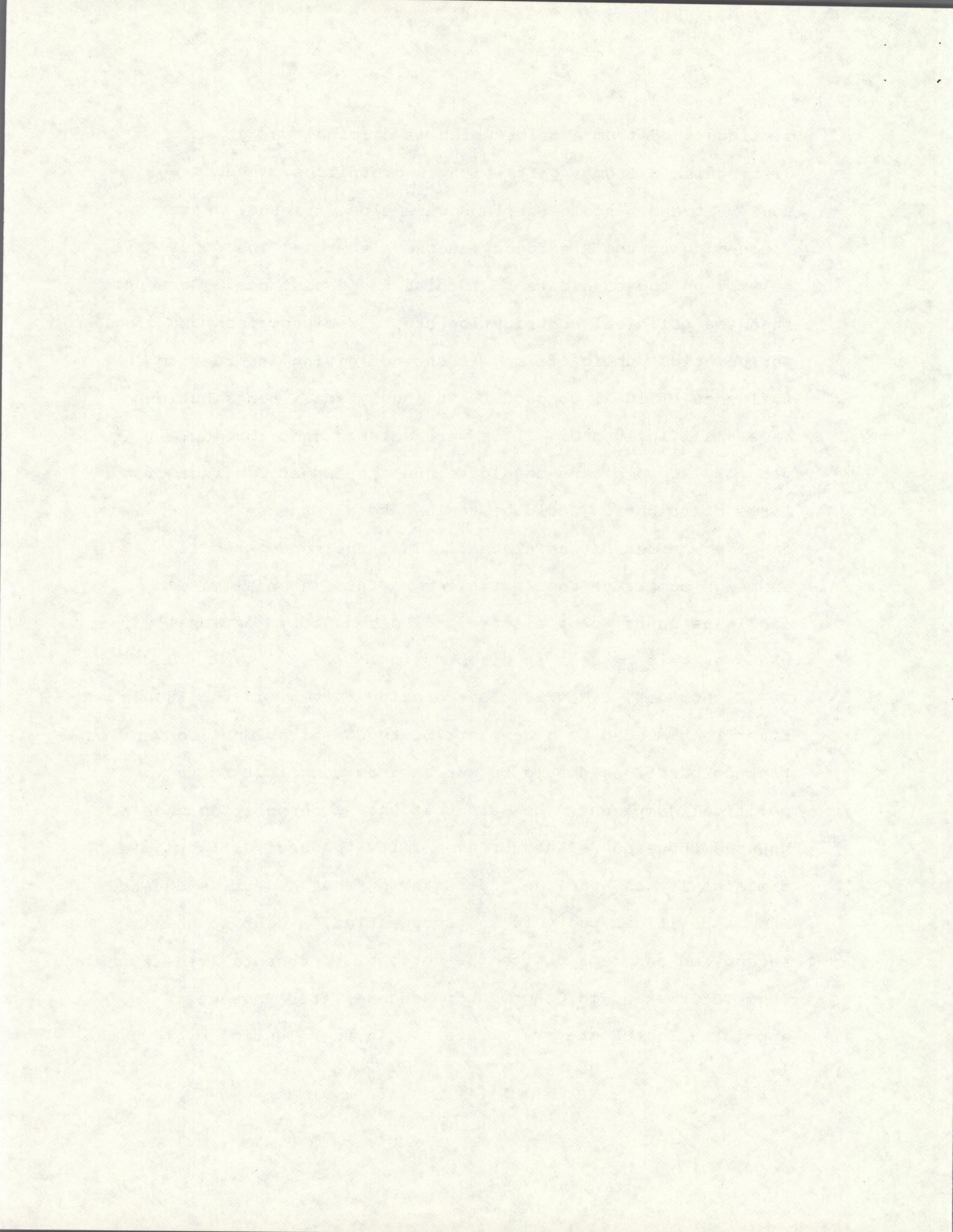
to be pretty good fellows: Then you blamed the bad businessmen who bribed the good fellows until you discovered that not all businessmen bribe and that those who did were pretty good businessmen. The little businessmen didn't bribe so you settled upon, you invented the phrase "big business" and that's as far as you and your kind have gotten, that it is big business that does all the harm. Hell, can't you see that it's privileged business that does it whether it's a big steam railroad that wants a franchise or a little gambling house that wants not to be raided, A temperance society that wants a law passed, a poor little prostitute, or a big merchant occupying an alley for storage. It's those who seek privileges who corrupt. It's those who possess privileges that defend our corrupt politics. Can't you see that! It is privilege that causes evil in the world, not wickedness and not men."

Reciprocation takes many forms other than graft and bribery. Principally, reciprocation may take the form of gifts, tips, and contributions. A contribution is



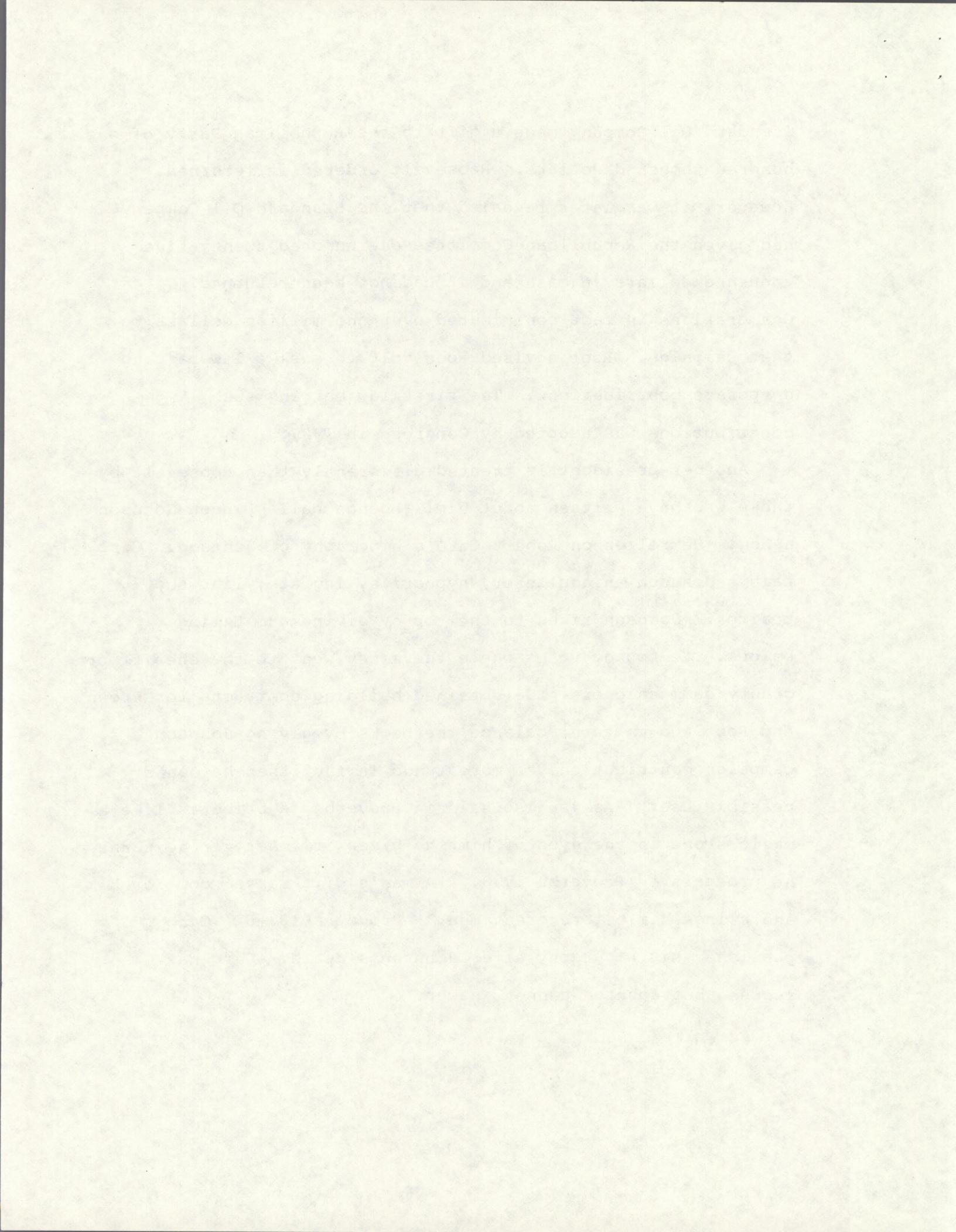
distinguished from a bribe which is criminal and is distinguished from a gift which is gratuitous. Theodore Roosevelt and Lincoln Steffans were close friends. After succeeding to the Presidency, Roosevelt wrote "The donor gave relying on the candidate to furnish the assistance. Does not then the political contribution create reciprocation and if the person holds public office, is one not giving in order to influence official conduct." Obviously small contributions have small influence. If it were a large contribution, it is probably known by the candidate and the expected effect of a large contribution would be to lead to a response by the candidate after he was elected. That the money goes to a campaign committee does not alter matters materially. A candidate wants to be elected and so benefitted personally from whatever help he gets in his campaign.

Elihu Root, a New York corporation lawyer, in the 1890's first recommended to a New York State Constitutional Convention that corporations should be barred from contributing to political campaigns. He said that when a corporation gave a hundred thousand dollars or even fifty thousand dollars to a campaign it was upon the understanding that a debt is created from a political party to the corporation, a debt to be recognized and repaid with the votes of representatives in legislatures and in Congress. A decade later Roosevelt appointed Root Secretary of State. In the election of 1904 the



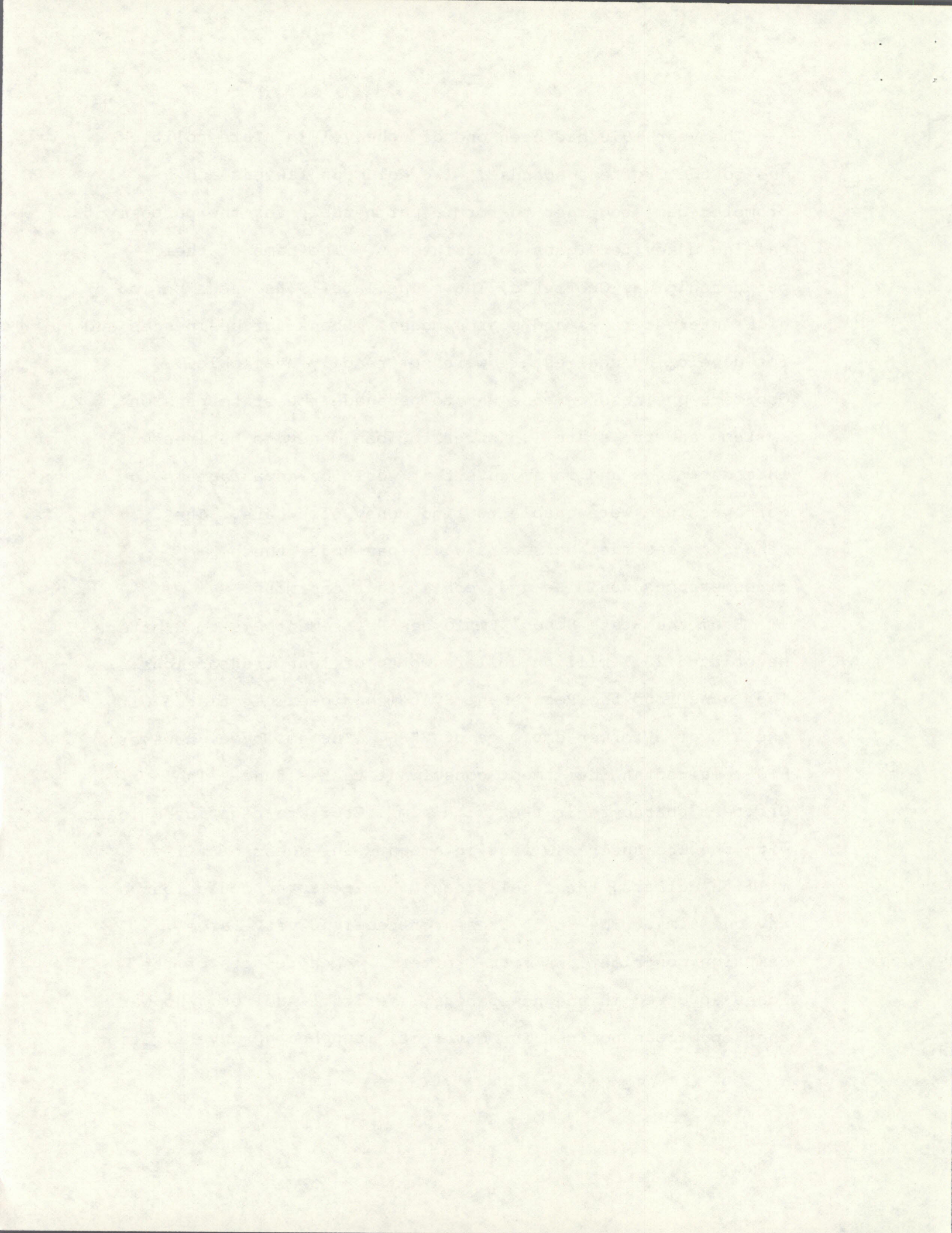
Standard Oil Company made a gift to the Republican Party of one hundred thousand dollars. Roosevelt ordered it returned. However, it was later revealed that the Standard Oil Company had given the Republican Committee one hundred twenty-five thousand dollars in cash and it had not been returned. Corporations in fact contributed over one million dollars to that campaign. Root advised Roosevelt to seek a law barring corporate contributions. The first law barring such contributions was adopted by Congress in 1907.

Another president is treated differently than Roosevelt by those who have written about him. Noonan calls Lyndon Johnson a Hog. He relies on Robert Caro's biography of Johnson. Caro paints Johnson an adulterer, hypocrite, ingrate, liar and traitor. Johnson rises to the top by giving and taking bribes. He bought votes where the money went to the sheriff or county commissioners. He obtained building contracts for Brown and Root who in turn "balance the books by giving Johnson campaign contributions," "more funds in fact than he could possibly use." As is also said in Proverbs "a bribe is like a magic stone in the eyes of him who gives it, wherever he turns he prospers." Proverbs 17.8. "A man's gift makes room for him and brings him before great men." Proverbs 18.16. Caro published his biography after Johnson's death. Caro has accused but Johnson cannot answer.



The year 1970 had been one of upheaval in state politics due to the Crofters scandal. Two Columbus lawyers and a promoter came together to form a partnership for the purpose of raising money for loans to businesses. The name of their partnership was Crofter's, Inc. The late 1960s was a period of high interest rates and scarce money. Loans for businesses and for developing real estate were not readily available. Crofters business purpose was to persuade the state pension systems and the state Treasurer to loan money to business at interest rates and in amounts that would be advantageous to borrowers who were unable to find money elsewhere. The finders' fees that borrowers would pay under these circumstances would be and were in fact enormous.

From the State School Employees Retirement System Crofters negotiated 28.7 million dollars worth of loan transactions. The loans from the Retirement System had been negotiated with the aid of a former employee of SERS. The employee, however, had remained an investment consultant to the fund. The Crofters shared their fees with him. Crofters negotiated loans with the Treasurer's Office in amounts in excess of fifty million dollars, the legal amount the Treasurer could loan at any one time. The State Treasurer received very large campaign contributions from Crofters. When reports of the loans appeared in the newspapers, the State Auditor, who was the Republican nominee for Governor, launched an investigation





into the loans that lasted through the summer of 1970, at the conclusion of which he called upon the State Treasurer, who was the Republican nominee for Attorney General, to resign from office. The State Treasurer refused to resign. In October the Crofters and the former SERS employee were indicted for nineteen counts of bribery. The Crofters were further indicted on six counts of making false or fraudulent statements in obtaining loans from the Treasurer's Office.

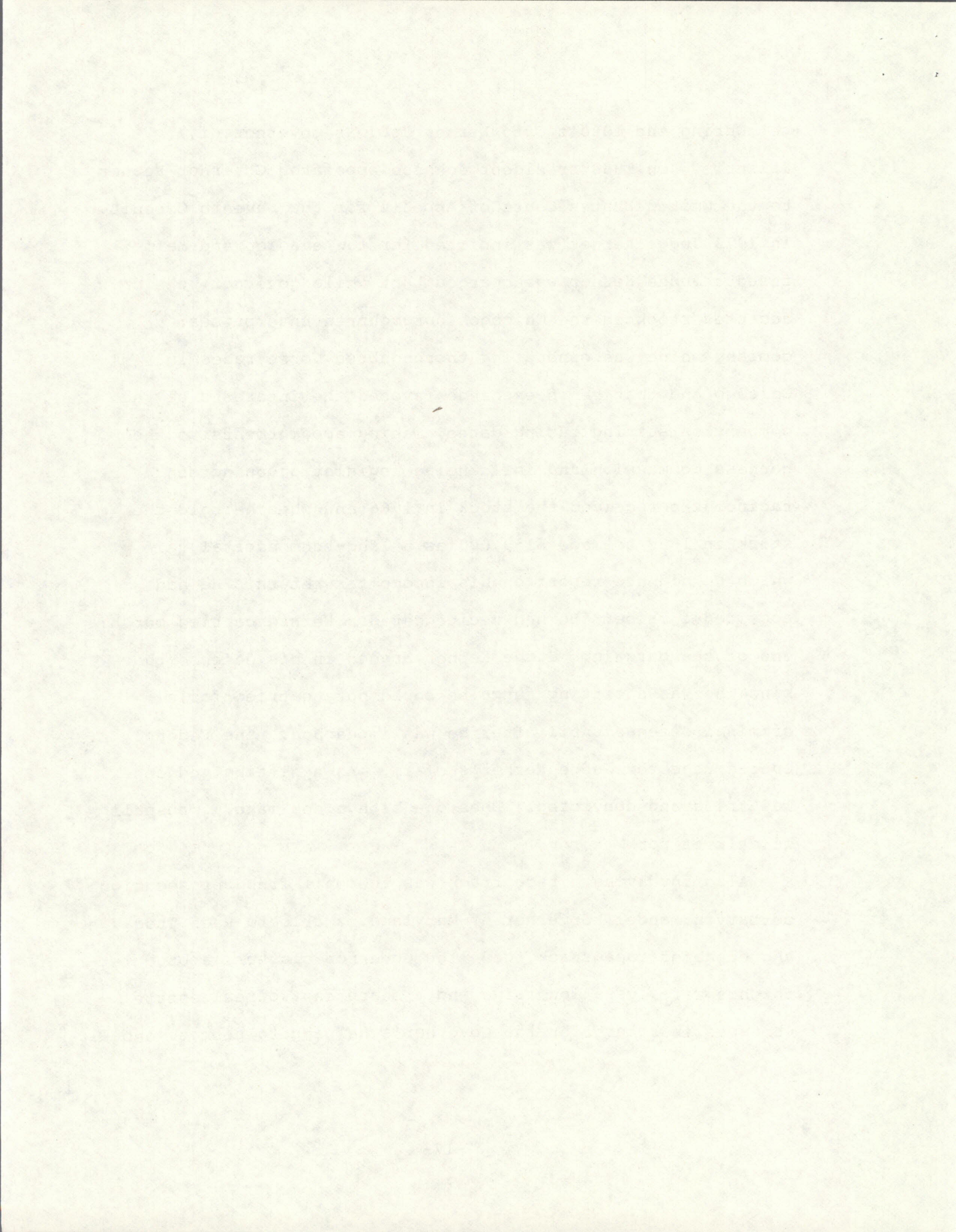
In the November election the Democrats made a clean sweep of the state offices excepting only for the Secretary of State. Defeated were the State Auditor and the State Treasurer. By the following fall neither the Retirement System nor the State Treasury had actually shown a loss as a result of the loans. The defendants were acquitted on all charges.

The Crofters had made enormous fees for negotiating the loans. They made large contributions to the Treasurer's campaign committee. Would they have been convicted if they had been indicted for bribing the State Treasurer? Would they have been indicted at all if they had they not been hogs? The reputations and the law practices of the two lawyers were, of course, ruined. Franklin County prosecutors, then and now Republicans, have ever since avoided seeking indictments for bribery arising out of state government. The Democrats have controlled the state apportionment board and the legislature ever since.



During the 1960's Otto Kerner Jr. was Governor of Illinois. In 1968 President Johnson appointed Governor Kerner to the United States Court of Appeals for the Seventh Circuit. In 1973 Judge Kerner was indicted for tax evasion and mail fraud. Judge Kerner was charged that while governor he accepted stock in the Chicago Thoroughbred Enterprises, a company which was conducting thoroughbred horse races in Chicago and that he in exchange favored the interests of the company in setting racing dates, making appointments to the Harness Commission and influencing legislation on horse racing. He received the stock in 1966 and when he sold the stock in 1967 he made \$159,000 as a long-term capital gain which he did not report on his income tax return. He had accepted a bribe. He had reciprocated. He had carried out his end of the bargain. Judge Kerner argued in his defense that since he was a sitting judge he could not be tried for a criminal offense until after he was impeached. The Federal Courts rejected Judge Kerner's claim. As a sitting judge he was tried and convicted. Does one bite a hog make? Or shall we call it pork?

Also involving a race track was the mail fraud prosecution of Marvin Mandel, Governor of Maryland. Marlboro Race Track, a thoroughbred race track, gave the Governor clothes, a bracelet for his wife, vacation trips and a share in two real estate ventures in return for the Governor's helping to promote a bill



permitting Marlboro to merge with Bowie race track. The underlying charge was bribery. The Governor said that the Federal Government was going beyond its proper limits by interfering in local government affairs. The Federal Judges disageed. Mandel was convicted and went to jail. He was only recently released as a result of a recent Supreme Court decision construing the mail fraud statute. Pork it certainly was.

Since 1907 additional federal laws have been passed pertaining to political contributions such as prohibiting contributions from government contractors and prohibiting solicitations of federal employees. Then taxpayers were permitted to contribute one tax deductible dollar to fund presidential campaigns through their tax returns. This made the government the collector of campaign funds. .

With the advent of television the cost of political campaigns escalated and has increased over the years at an ever-faster rate. When I first ran for the legislature in 1952, I spent approximately \$1,200. When Bill Saxbe made his first race for Attorney General, the total expenditures for Saxbe's primary campaign were \$6,000.00. In 1986 the two major party candidates for attorney general spent \$1,890,445.00. The spending for the office of Governor has been even more incredible. In 1986 the two major party candidates spent \$8,894,201.00. The present Governor, has reported that since



1981 he has received contributions in the amount of \$13,458,476.00 and that he has spent \$12,968,295.00.

The principal owner of Northfield Park Race Track is developer Carl Millstein. Millstein is chairman and half owner of Telecommunications, Inc. Telecommunications' Columbus lobbyist, Robert McEaney persuaded the Celeste Administration to buy from Telecommunications without bidding over eight million dollars for telephone equipment to be used throughout the various departments and agencies. According to The Columbus Dispatch competitors have estimated that the costs of the telephone system is ten to twenty per cent higher than competing types of equipment. Much of it appears not to be needed. Much of the existing system did not need replacement. Jeffrey Friedman, Millstein's son-in-law, has given Celeste nearly \$50,000 since 1982 and last year gave the Ohio Democrat Party donations totaling \$100,000. which sum reportedly was transferred to the Celeste Campaign Committee. Is Millstein a hog? Where do you draw the line between political contributions and bribery?

The Columbus Dispatch on Sunday, October 25th published an article sub-titled "The Price of Influence and Goodwill Is Spiraling". Excerpts from the Dispatch Article follow:

"The cost of doing political business in Ohio is soaring by unprecedented rates. From election to election politicians in many





cases are doubling their campaign expenditures.

And it's no secret that the lobbies that make the biggest contributions generally are those that wield the most clout around the statehouse.

The legislator's primary focus is winning elections. Obviously, a person who helps them win is going to get some benefit for having helped.

Last year two candidates spent \$729,000 as they competed for Akron's 27th District seat in the Ohio Senate. The total was nearly double the amount spent in the most costly senate race just four years early.

Many PACs have their favorite lawmakers. The legislators who consistently support a lobby and its objectives often are rewarded accordingly.



It's all a matter of lobbies knowing where to turn. We know who our friends are when the chips are down.

Today the Federal Government has taken over the prosecution of corruption and bribery in state and local government and hundreds of individuals including judges, senators, congressmen, governors as well as mayors and sheriffs are being sent to jail. Public officials are expected to uphold the trust of public office, to act on behalf of the people without fear or favor, to make decisions without regard to re-appointment or re-election, and to disregard the siren voices of power and money. The bribor may be condemned as a corruptor or seducer, if in fact he is, but it is the bribee who betrays his trust.

How can we strengthen the resistance to temptation?

Ohio state and local elections have no limits on the amount of political contributions by individuals. Contributions only have to be reported so that their source can be identified. Can the State of Ohio do less than follow the federal example of limiting political contributions by individuals to a certain amount for any one candidate?

Should the federal government provide for the expenditure of public funds for the election of members of Congress?



Should the State of Ohio provide for the expenditures of public funds for the elections of its officers in both the executive and legislative?

The judges and the Ohio State Bar Association by amending the Ohio Constitution sought to eliminate the necessity of political contributions for judges by having judges appointed to office. The electorate voted no to Issue 3. Is there an alternative way to appoint judges or otherwise eliminate the need for political contributions that would be acceptable to the electorate where Issue 3 was not?

I leave you to ponder these questions.