

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY KUTLER,)
AMERICAN HISTORICAL ASSOCIATION,)
AMERICAN SOCIETY FOR LEGAL HISTORY,)
ORGANIZATION OF AMERICAN HISTORIANS,)
and SOCIETY OF AMERICAN ARCHIVISTS.)
_____)

Miscellaneous Action No.

**DECLARATIONS IN SUPPORT OF PETITION FOR
ORDER DIRECTING RELEASE OF TRANSCRIPT OF
RICHARD M. NIXON'S GRAND JURY TESTIMONY OF
JUNE 23-24, 1975, AND ASSOCIATED MATERIALS OF
THE WATERGATE SPECIAL PROSECUTION FORCE**

Allison M. Zieve (D.C. Bar No. 424786)
Michael T. Kirkpatrick (D.C. Bar No. 486293)
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Counsel for Petitioners

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TAB A

**UNITED STATES DISTRICT COURT
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IN RE PETITION OF STANLEY)	
KUTLER, AMERICAN HISTORICAL)	
ASSOCIATION, AMERICAN SOCIETY)	Miscellaneous Action
FOR LEGAL HISTORY,)	
ORGANIZATION OF AMERICAN)	
HISTORIANS, AND SOCIETY OF)	
AMERICAN ARCHIVISTS)	
_____)	

Declaration of Stanley Kutler

I, Stanley Kutler, hereby declare as follows:

1. I am a professor and historian with a particular interest in American legal and political institutions. I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon's testimony before a federal grand jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force. On those dates, in San Clemente, California, Nixon testified for a total of approximately eleven hours on a range of issues in connection with the special prosecutor's investigation of the Watergate break-in and its aftermath. A transcript of that testimony has never been made public.

2. I am the author of a number of books about President Nixon and Watergate, including *Abuse of Power: The New Nixon Tapes* (1997), *Watergate: The Fall of Richard M. Nixon* (1996), and *The Wars of Watergate: The Last Crisis of Richard Nixon* (1990). I have also authored or edited a number of textbooks in various other fields of American history. My scholarly articles have appeared in leading history and legal periodicals, and I am a frequent contributor to the *New York Times*, *Wall Street Journal*, and *Washington Post*. I am Professor Emeritus at the University of Wisconsin where I taught history and law school courses.

3. As discussed below, *see infra* ¶ 69, in 1992, I sued the National Archives and Records Administration (“NARA”) seeking release of Watergate-related tapes. My successful lawsuit led to the release of numerous presidential tapes, although others have yet to be processed and released.

4. I have studied President Nixon and Watergate for more than thirty-five years. This declaration is based on my research of publicly available information, including the papers of the Senate Select Committee on Presidential Campaign Activities, the papers of the Watergate Special Prosecution Force, and the Hearings and Report of the House Judiciary Committee on its resolution to impeach President Nixon (which compiles court papers, grand jury testimony, memoranda, correspondence, White House tape recording transcripts, and other documentary evidence). I have reviewed FBI papers, White House Central Files, Personal Papers of the President of the United States: Richard M. Nixon, Staff Secretary Files, House Banking and Currency Committee Papers, documents made public under the Presidential Recordings and Materials Preservation Act of 1974, and press accounts. In addition, I have conducted interviews with many of the principals associated with the Nixon presidency and Watergate: White House Counsel John Dean, Attorneys General John Mitchell, Elliot Richardson, and Richard Kleindienst, Solicitor General Robert Bork, Counsel to the Senate Watergate Committee Samuel Dash, White House “Plumber” Egil Krogh, prosecutors Henry Petersen and Earl Silbert, Acting FBI Director and Deputy Attorney General William Ruckelshaus, Nixon lawyer James St. Clair, CIA Director Richard Helms, Special Counsel to the President Leonard Garment, and Watergate grand jury foreman Vladimir Pregelj, among others.

5. This Declaration has several objectives. *First*, it recounts the key events surrounding the Watergate scandal. *Second*, it describes efforts to preserve and make public the

Nixon tapes. *Third*, it describes the extensive publicity that the Watergate scandal received at the time it occurred and in the decades since the events transpired, including evidence of continuing historical and public interest in and debate about Watergate.

KEY EVENTS SURROUNDING THE WATERGATE SCANDAL

6. Richard Nixon became president in January 1969 after defeating Hubert Humphrey and George Wallace in a closely contested election. Against the backdrop of the Vietnam War, rising domestic poverty and crime, and the assassinations of Robert Kennedy and Martin Luther King, Jr., Nixon's campaign had centered on the restoration of national unity and law and order.

7. Nixon's presidency was marked by distrust and conflict. He battled a Congress controlled by Democrats on impoundment of appropriations and Supreme Court nominees; he battled the press, which for years he believed had treated him unfairly; he battled anti-war demonstrators, the courts, and the FBI. And Nixon kept close tabs on his "enemies," whom he fought by staffing his White House and executive agencies with staunch loyalists who helped the President control the flow of information and shape his political image.

8. One of Nixon's battles involved the publication of leaked information concerning United States strategy and policy in Vietnam. On June 13, 1971, the *New York Times* published the first installment of a classified study entitled "History of U.S. Decision-Making Process on Viet Nam Policy," which became known as the Pentagon Papers. *See* Neil Sheehan, *Vietnam Archive: Pentagon Study Traces 3 Decades of Growing U.S. Involvement*, N.Y. Times, June 13, 1971, at 1. The study, commissioned by former Defense Secretary Robert McNamara, was a 7,000-page document that traced the origins of American involvement in Vietnam and offered significant insight into decision-making processes in the foreign-policy and military

establishments. On June 18, 1971, the *Washington Post* began publishing its own installment series based on the Pentagon Papers. See Chalmers M. Roberts, *Documents Reveal U.S. Effort in '54 to Delay Viet Election*, Wash. Post, June 18, 1971, at 1. Shortly thereafter, Daniel Ellsberg, a former National Security Council operative with links to the CIA, was revealed as the source of the leak to the *New York Times*. See Daniel Ellsberg, *Secrets: A Memoir of Vietnam and the Pentagon Papers* 408 (2002).

9. The Government sought to enjoin publication of the Pentagon Papers. On June 30, 1971, the Supreme Court held that the Government had failed to show adequate justification for restraining publication of the document; thus, the newspapers could continue publishing it. See *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (per curiam).

10. The Ellsberg leak, the decision by the *New York Times* and *Washington Post* to publish the Pentagon Papers, and the Supreme Court's refusal to enjoin publication deeply troubled the President. That leak, in combination with his knowledge of how leaks concerning Vietnam policy and other national security matters had damaged President Lyndon Johnson's final years in office, motivated Nixon to take the fight to his "enemies." Indeed, from early in his presidency, Nixon was vexed by national security leaks, and he later recalled at least 21 major news stories apparently derived from National Security Council leaks during his first five months in office. Kutler, *Wars*, *supra*, at 108. Nixon's Chief of Staff, H.R. "Bob" Haldeman, tasked John Caulfield with finding the source of the leaks. Caulfield had been hired in early 1969 by John Ehrlichman, Counsel to the President, to coordinate with the Secret Service and local police, and to investigate political opponents. See Hearings and Report of the House Judiciary Committee on Resolution to Impeach President Nixon (H. Res. 803), Statement of Information ("SI") VII:1 18. But it was the Ellsberg leak that led Nixon to create a "Special Investigations Unit" run directly

out of the White House to stop unauthorized executive department leaks. That group came to be known as the “Plumbers.” *See* The Watergate Investigation, May 22, 1973, Public Papers of the Presidents of the United States: Richard Nixon [hereinafter “Public Papers”] 1973, at 547-55.

11. Nixon wanted the FBI to pursue Ellsberg vigorously. But given then-FBI Director J. Edgar Hoover’s close relationship with Ellsberg’s father-in-law, Louis Marx, Nixon believed that the FBI would not act. *See* April 29, 1973: The President and Kissinger, 10:19-10:25 A.M., Camp David Telephone, in Kutler, *Abuse of Power, supra*, at 373-74. Therefore, the Plumbers—including Ehrlichman, Egil “Bud” Krogh, a lawyer who had previously worked in the White House on antidrug measures, former FBI operative G. Gordon Liddy, and former CIA operative E. Howard Hunt, Jr.—were tasked with investigating Ellsberg. *See* The Watergate Investigation, May 22, 1973, Public Papers 1973, at 547-55.

12. The Plumbers learned that the FBI had interviewed Ellsberg’s former psychiatrist, Dr. Lewis Fielding. The group devised a scheme to raid Dr. Fielding’s office to secure information about Ellsberg. In consultation with Ehrlichman and Special Counsel to the President Charles Colson, Liddy, Hunt, and several others carried out the burglary but found nothing of value. SI VII:1 63, 70, 75.

13. The Plumbers was but one part of a multifaceted design for Nixon’s White House to surveil political opponents. The White House pressured the IRS to pursue liberal political organizations that had failed to file tax returns. The IRS established the Special Services Staff, a group whose mission was to “collect relevant information on organizations predominantly dissident or extremist in nature and on people prominently identified with these organizations.” Shelley L. Davis, *Unbridled Power: Inside the Secret Culture of the IRS* 89 (1997). The White House had been embarrassed by revelations that the IRS had not “gone after” groups like the

Black Panther Party, which had raised significant sums of money and paid no taxes. *See id.* at 83-84. And so the Special Services Staff, with the help of the FBI, compiled information on more than 1,000 institutions, including the National Urban League, ACLU, and National Education Association, and 4,000 individuals. *Id.* at 90.

14. White House Counsel John Dean and Colson kept a file entitled “Opponents List and Political Enemies Project,” which came to be known informally as the “enemies list.” *See* SI VIII 7. Nixon’s “enemies” were those who opposed the President or his administration’s goals. The White House used federal agencies to gather information about Nixon’s political opponents and to harass them.

15. For example, Nixon wanted the IRS to audit individuals on the enemies list, such as *Washington Post* lawyer Edward Bennett Williams. *See* Jan. 1, 1973: The President and Colson, 9:40-10:40 A.M., Oval Office, in Kutler, *Abuse of Power, supra*, at 191-92. And at the behest of the White House, the IRS investigated Howard Hughes’s Hughes Tool Company and discovered that it had made payments to Democratic National Committee (“DNC”) Chairman Lawrence O’Brien, whom the White House also asked the IRS to audit. SI VIII 23-24, 28. The IRS also audited Robert Maheu, Hughes’s chief aide and a former FBI agent. Maheu retaliated by leaking information to journalist Jack Anderson concerning a \$100,000 Hughes payment made to Nixon through Nixon’s close friend Charles G. “Bebe” Rebozo. *See* Kutler, *Wars, supra*, at 204. (*See* discussion *infra* at ¶¶ 24-30.) The IRS also investigated Anderson. *See* Jack Anderson, *Peace, War, and Politics: An Eyewitness Account* 231 (1999).

16. Nixon’s White House also gathered information about perceived enemies by using the FBI and the military to wiretap telephone conversations of National Security Council aides, journalists, and antiwar and civil rights activists. *See* SI VII:1 3-17.

17. As the November 1972 presidential election drew near, Nixon's White House turned its sights on the Democrats. On June 17, 1972, District of Columbia Metropolitan Police caught former CIA operative and then-security chief for President Nixon's campaign committee James W. McCord and four other men—Bernard Barker, Virgilio Gonzalez, Eugenio Martinez, and Frank Sturgis—breaking into the DNC headquarters at the Watergate Hotel and Office Building in Washington, DC. *See* SI I 27. The burglars were carrying electronic surveillance and photographic equipment, and thousands of dollars in cash (mostly in sequentially numbered \$100 bills). SI II 4. Ostensibly, the burglars had been trying to fix faulty electronic surveillance devices that had been unlawfully planted previously at the DNC headquarters.

18. As was later uncovered, the money that funded the burglary had been siphoned to the burglars from campaign contributions to the Committee to Re-elect the President ("CREEP"). *See* SI II 4. Nixon had established CREEP in an effort to keep control of his 1972 campaign out of the hands of the Republican National Committee, and simultaneously to insulate Nixon from his own campaign. Attorney General John Mitchell served as Committee Chairman. Joining him on the Committee were Deputy Director Jeb Magruder, Finance Chair Maurice Stans, Treasurer Hugh Sloan, and Liddy, as counsel. Fred LaRue served as an aide to Mitchell. The Watergate break-in had its origins in a CREEP plot called "Gemstone." Liddy's brainchild, "Gemstone" involved electronic surveillance of political opponents, the use of call girls to compromise Democratic candidates, and the kidnapping of radical leaders. *See* SI I 9. Finding the plan unrealistic, Mitchell rejected it. *See* John Mitchell testimony, July 11, 1973, 5 Senate

Watergate Committee 1843. But breaking-in to the DNC headquarters was apparently deemed feasible.¹

19. The burglars had booked a room at the Watergate hotel as part of the break-in plan, and following the burglars' arrest, FBI agents discovered a check in the burglars' hotel room with Hunt's name on it. *See* Washington, DC Police Dep't Evidence Report, June 20, 1972, reproduced in SI II 92. Hunt was a former White House employee, and thus a link was established between the burglars and Hunt, and possibly between the burglars and the White House. Soon thereafter, investigators unearthed telephone records indicating that Barker had made at least fifteen phone calls to Liddy, counsel for CREEP. *See* Walter Rugaber, *Calls to G.O.P. Unit Linked to Raid on the Democrats*, N.Y. Times, July 25, 1972, at 1. A link thus was established between the burglars and Liddy, and possibly between the burglars and CREEP.

20. The bills found on Barker had been received from a Florida bank account into which Nixon campaign funds had been deposited. SI II 4. Also in Barker's account was evidence of a deposited \$25,000 cashier's check that had been given to Kenneth Dahlberg, CREEP's Midwest Finance Chair. *Id.* The money trail led investigators to arrest Hunt and Liddy in connection with the break-in.

¹ The precise goal of the Watergate break-in remains a point of speculation among historians. Some suspect that the aim was to plant additional surveillance devices to obtain information that could be used to discredit DNC Chair O'Brien, or to learn what, if any, potentially damaging information O'Brien had about Nixon, administration officials, and other Republicans. Others theorize that the June 17 break-in was perpetrated to *remove*—not add or fix—surveillance devices that had been planted previously, in response to a recent Supreme Court decision, *United States v. United States District Court*, 407 U.S. 297 (1972), which held that the Fourth Amendment requires prior judicial approval before Executive branch officials may engage in certain types of domestic surveillance.

21. As a result of the Watergate break-in and attempted bugging of the DNC headquarters, DNC Chairman O'Brien filed a civil lawsuit against CREEP seeking \$1 million in damages. *See Democratic Nat'l Comm. v. McCord*, Civ. No. 1233-72 (D.D.C. 1972).

22. Less than one week after the break-in, FBI Acting Director L. Patrick Gray ordered the "highest priority investigative attention" for the Watergate case. In addition, the Department of Justice ("DOJ") began an investigation, headed by U.S. Attorney Earl Silbert. Investigations were also initiated by the General Accounting Office and the House Banking and Currency Committee under the leadership of Representative Wright Patman (D-TX).

23. Despite Nixon's insistence that "no one in the White House Staff, no one in [Nixon's] Administration, presently employed, was involved" with the break-in, O'Brien pushed Nixon to appoint a special prosecutor to investigate the matter. *See* The President's News Conference of August 29, 1972, Public Papers 1972, at 827-38; Letter from Lawrence O'Brien to President Richard Nixon, June 24, 1972, in Lawrence F. O'Brien, *No Final Victories: A Life in Politics—from John F. Kennedy to Watergate* 372-73 (1974). Noting the other pending investigations, the President rejected the call for a special prosecutor. *See* The President's News Conference of August 29, 1972, Public Papers 1972, at 827-38; Impeachment of Richard M. Nixon, President of the United States: The Final Report of the House Judiciary Committee ("HJC Final Report") at 85.

24. Another incident that was subsumed within the broader Watergate scandal involved a \$100,000 payment from Howard Hughes to Charles "Bebe" Rebozo that ultimately went to Nixon for his personal use. By the late 1960s, Hughes's powerful commercial empire included industries ranging from aeronautics to casinos. Wealthy and powerful enough that he is claimed to have bragged, "there is no person in the world that I can't either buy or destroy,"

Robert Maheu, *60 Minutes: Watergate: 'Aviator' Connection?* (CBS television broadcast Feb. 27, 2005), Hughes planned to make a \$100,000 contribution to President Nixon's 1972 reelection campaign, presumably in exchange for access and influence. *See* Final Report of the Senate Watergate Committee ("SWC Final Report") at 933. The payment was made not to Nixon directly, but rather to an intermediary—Nixon's close friend, Rebozo. In addition to being Nixon's friend, Rebozo had a number of responsibilities on behalf of the White House and President Nixon. Rebozo engaged in fundraising for the administration and for the President's reelection campaign; he was responsible for disbursing funds for various administration-connected projects; and he acted as agent for President Nixon in the purchase, improvement, and maintenance of Nixon's vacation home in Key Biscayne, Florida. *See id.* at 940.

25. Specifically, in September 1969, Hughes's top aides, Maheu and Robert Danner, delivered \$50,000 to Rebozo at Nixon's presidential compound in Key Biscayne. Danner, like Maheu, was a former FBI agent. The following summer, Danner delivered another \$50,000 to Rebozo at the so-called "Western White House," in San Clemente, California.² *Id.* at 944-48. Rebozo claimed that the \$100,000 was for Nixon's 1972 reelection campaign. He claimed that he simply had not disbursed the money and, having failed to do so, returned the \$100,000 to Hughes. The Senate Watergate Committee received information from the Federal Reserve Bank indicating that the cash that Rebozo gave to Hughes were not the same bills that he had received from him. *See id.* at 975.

26. The \$100,000 was spent on behalf of Nixon to furnish and improve Nixon's home in Key Biscayne. (The property was upgraded with a swimming pool, a putting green, a

² The Final Report of the Senate Watergate Committee indicates that the Committee received conflicting testimony regarding the source of the money, the delivery dates, and the locations of delivery. *See* SWC Final Report at 976.

fireplace, and a pool table, among other things.) Some of the money was used to buy jewelry for Nixon's wife. Nixon may have given some of the money to his brothers, Donald and Edward, and his secretary Rose Mary Woods. *Id.* at 1030-53.

27. Hughes almost certainly benefitted from the transaction. In 1969, the Civil Aeronautics Board allowed Hughes to buy Air West, a small passenger airline. *See* Donald L. Barlett and James B. Steele, *Empire: The Life, Legend, and Madness of Howard Hughes* 392-97 (1979). In 1970, DOJ—then under Mitchell's leadership—halted an antitrust action that would have sought to prevent Hughes from purchasing additional Las Vegas casinos. *Id.* at 449; SWC Final Report at 981-98.

28. According to some accounts, Nixon feared that DNC Chair O'Brien—who had been retained by Hughes as a lobbyist—knew about the \$100,000 payment.

29. Revelations about the Hughes-Rebozo payment came to light several years later, in the midst of the Watergate scandal. Maheu filed a defamation suit against the Hughes Tool Company after Hughes fired him. *See Maheu v. Hughes Tool Co.*, Civ. No. 72-305-HP (C.D. Cal. 1973). Maheu mentioned the \$100,000 in a deposition he gave in the course of that litigation. *See* Don Fulsom, *What Watergate Was All About*, *Crime Magazine* (Apr. 2007).³ Maheu also leaked the information to journalist Jack Anderson.

30. In its summary of the Hughes-Rebozo incident, the Senate Watergate Committee noted that questions remained after its intensive investigation: (1) Why were cash funds furnished to a close friend of the President rather than to any campaign official or organization? (2) Why were the funds contributed several years prior to the 1972 campaign for which they were allegedly intended, especially since Howard Hughes ultimately contributed \$150,000 in

³ <http://www.crimemagazine.com/what-watergate-was-all-about>.

1972 to the Finance Committee to Re-Elect the President? (3) Did Howard Hughes profit in any way by his contribution to Rebozo on behalf of the President? *See* SWC Final Report at 1068.

31. As it happened, Rebozo was with President Nixon on the day of the Watergate burglary. They were vacationing in the Bahamas, along with several aides. On June 20, 1972, Nixon returned to Washington, DC, and, in the days that followed, he began to think of ways to distance the White House from the break-in. Fearing that the FBI would trace the money found on the Watergate burglars to CREEP, Nixon instructed Haldeman to tell the FBI to stop investigating the break-in. *See* June 23, 1972: The President and Haldeman, 10:04 to 11:39 A.M., Oval Office, in Kutler, *Abuse of Power, supra*, at 67-69. The White House's pitch to the FBI would be that the FBI's investigation was interfering with CIA operations and national security interests. *See* SWC Final Report at 37. So began the Nixon White House's efforts to cover-up or contain the Watergate break-in story—a story that Nixon Press Secretary Ron Ziegler had initially dismissed as a “third-rate burglary.” Bob Woodward and E.J. Bachinski, *White House Consultant Tied to Bugging Figure*, Wash. Post, June 20, 1972, at 1.

32. The cover-up took several forms. Following the break-in, Mitchell and Liddy tried to have then-Attorney General Richard Kleindienst release some of the burglars. *See* SWC Final Report at 32. Haldeman aide Gordon Strachan and Magruder secreted and destroyed documents. *Id.* at 32-34. Colson and Ehrlichman had Dean take possession of the contents of Hunt's safe in the Executive Office Building. *See id.* at 34. There was talk of asking the CIA to provide covert funds to the burglars. White House officials paid the burglars for their silence and worked to sabotage the House Banking and Currency Committee investigation led by Representative Patman. *See* HJC Final Report at 96-97, 253.

33. The House Banking and Currency Committee's Watergate investigation examined foreign money transactions involving the burglars. Convinced that the various campaign contributions funded one of the most serious episodes of political espionage in American history, Representative Patman unsuccessfully tried to obtain subpoena power for the committee. *See* Kutler, *Wars, supra*, at 229-32. Later, in its draft Articles of Impeachment, the House Judiciary Committee would charge Nixon and members of Nixon's White House with obstruction of justice for their role in short-circuiting the House Banking and Currency Committee's investigation. *See* HJC Final Report at 91-94, 253. Although the Committee's efforts stalled, Representative Patman later turned Committee materials over to the Senate Watergate Committee. *See* discussion *infra* ¶ 39.

34. In the months and years following the Watergate break-in, a number of entities investigated the burglary and cover-up, often simultaneously. DOJ's Criminal Division, the United States Attorney's Office, the FBI, the House Banking and Currency Committee, the Office of the Special Prosecutor, the Senate Watergate Committee, the House Judiciary Committee, and the White House all investigated (or purported to investigate) the matter.

35. In November 1972, Nixon defeated Democratic presidential challenger George McGovern in a landslide. Shortly after the election, however, things began to fall apart for Nixon and his aides. The Watergate burglars, along with Hunt and Liddy, had been arrested in June. In late 1972, with his criminal trial for the break-in set to begin within months, Hunt contacted Colson and asked to be paid for his continued silence regarding the participation of higher-ups in the Watergate break-in. Hunt urged Colson to honor "commitments," in effect blackmailing the White House. *See* Conversation Between Charles Colson and E. Howard Hunt, November 1972,

in James Reston, Jr., *The Conviction of Richard Nixon: The Untold Story of the Frost/Nixon Interviews* 186-90 (2007).

36. Hunt, Liddy, and the five other burglars had been indicted on multiple counts of burglary, conspiracy, and interception of wire and oral communications. *See* Indictment of Liddy, et al., Crim. No. 1827-72. Their trial began on January 10, 1973, in the District Court for the District of Columbia, with Judge John Sirica presiding.

37. The following day, January 11, 1973, Hunt pleaded guilty to the charges against him. *See* Watergate Special Prosecution Force (“WSPF”) Final Report at 164. On January 15, four others pleaded guilty. *Id.* at 164-65. On January 30, the jury convicted both McCord and Liddy on all counts. *Id.*

38. On March 20, 1973, three days before sentencing was scheduled, McCord, hoping for leniency, sent Judge Sirica a letter in which he explained that he and other defendants had been pressured to keep silent about the involvement of any higher-ups, that perjury had occurred during trial, and that the Watergate break-in was not a CIA operation. *See* Letter from James McCord to Judge John J. Sirica, dated March 1973. On the date of sentencing, Judge Sirica read McCord’s letter aloud in court. The judge imposed the maximum sentences with the qualification that if the offenders spoke out freely, Judge Sirica would weigh that fact in finalizing their sentences. *See* SI IV:1 5; Transcript of Proceedings, *United States v. Liddy*, Mar. 23, 1973.

39. While the break-in trial was pending, Senator Mike Mansfield—who was discouraged by the inability of Representative Patman’s Committee to gain traction—called for a full investigation by a special committee with proper funds, staff, and subpoena power. Senator Mansfield suggested that respected constitutional law expert and North Carolina Senator Sam Ervin head the committee. *See* Sam J. Ervin, Jr., *The Whole Truth: The Watergate Conspiracy* 18

(1980). Together, Senators Ervin and Mansfield passed Senate Resolution 60 (by a vote of 77-0), which created the Senate Select Committee to “conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting individually or in combination with others, in the presidential election of 1972, or any campaign, canvass, or other activity related to it.” S. Res. 60, 93d Cong. (1973). That committee came to be known as the Senate Watergate Committee.

40. Shortly after news of McCord’s letter to Judge Sirica became public, McCord met with Senate Watergate Committee counsel Samuel Dash. Dash told reporters in late March 1973 that McCord had implicated Dean and Magruder in the Watergate operation. *See* Robert L. Jackson and Ronald J. Ostrow, *M’Cord Says Dean, Magruder Knew in Advance of Bugging*, L.A. Times, Mar. 26, 1973, at 1. When McCord testified before the Committee in a closed-door session on March 28, 1973, he supposedly stated that Liddy had told him that the Watergate break-in had been approved by Mitchell and that Colson had had knowledge of the operation. *See* Bob Woodward and Carl Bernstein, *Mitchell Is Linked to Bugging Plans*, Wash. Post, Mar. 29, 1973, at 1. Pressure intensified to have Dean, Magruder, and others testify.

41. At about the same time, Gray, whom Nixon had nominated to be FBI Director, was testifying before the Senate in his confirmation hearings. When asked about the limited scope of the FBI’s Watergate investigation, Gray admitted that he had regularly submitted FBI investigative reports to Dean. *See* L. Patrick Gray III and Ed Gray, *In Nixon’s Web: A Year in the Crosshairs Of Watergate* 191-92 (2008). Sensing that Gray’s position was untenable, Nixon withdrew Gray’s name from consideration on April 5, 1973. *See* Statement About Intention to Withdraw the Nomination of L. Patrick Gray III to be Director of the Federal Bureau of Investigation, Apr. 5, 1973, Public Papers 1973, at 257. Gray resigned shortly thereafter and was

succeeded by William Ruckelshaus. Ruckelshaus began serving as FBI Interim Director, while also serving as Deputy Attorney General.

42. On April 14, 1973, Magruder told investigators privately that Mitchell had masterminded the Watergate break-in and that Dean had covered it up. The next day, Attorney General Kleindienst and Henry Petersen, head of DOJ's Criminal Division, met with President Nixon to inform him that they believed that White House and CREEP officials were involved in the Watergate cover-up. *See* SI IV:1 60-61.

43. In a televised address on April 30, 1973, Nixon announced the resignations of Haldeman, Ehrlichman, Dean, and Kleindienst. *See* Address to the Nation About the Watergate Investigations, Apr. 30, 1973, Public Papers 1973, at 328-33. Elliot Richardson succeeded Kleindienst as Attorney General. *See* Senate Confirmation of Elliot Richardson Nomination, May 23, 1973, Cong. Rec. S9715.

44. With the White House staff shaken up, the time had come to appoint a special prosecutor. As the Senate Watergate Committee was beginning its investigation, and despite the ongoing work of the U.S. Attorney's Office, on May 18, 1973, Attorney General Richardson selected Harvard Law Professor Archibald Cox as the Watergate Special Prosecutor. SI IX:1 7. Cox was confirmed by the Senate and sworn in on May 24, 1973. Cox was to investigate all possible offenses of the Nixon administration, not only those relating to the Watergate break-in. *See* Att'y Gen. Order No. 517-73, Appendix on Duties and Responsibilities of the Special Prosecutor, 38 Fed. Reg. 14,688 (June 4, 1973).

45. Cox's office took over the Watergate case from the U.S. Attorney's office in late May 1973. When turning over his files and reports to Cox's office and the newly established Watergate Special Prosecution Force, Assistant U.S. Attorney Silbert noted that were Nixon not

President, he would “have to be questioned about a number of matters.” Kutler, *Wars, supra*, at 337 (quoting memo from Earl Silbert to Archibald Cox). Silbert added that an interview with the President “could be vital in determining the truth.” *Id.*

46. Cox had decided that he would not pursue Nixon. He believed that, as a constitutional matter, if anyone were to investigate the President, it should be Congress. *See* WSPF Final Report at 121-24. As he began his work, Cox worried that the Senate Watergate Committee’s inquiry would compromise his team’s ability to prosecute the case against Nixon administration officials. On June 4, 1973, Cox asked Senator Ervin to suspend the Watergate Committee’s hearings until trials had been completed, so as not to make jury selection effectively impossible. *See id.* at 207-08. But Ervin pushed ahead, and the Senate Watergate Committee hearings began on May 17, 1973.

47. President Nixon refused to appear before the Senate Watergate Committee, and he likewise refused to furnish private papers, claiming that to do so would undermine the separation of powers. *See* President Nixon Letter, July 6, 1973. The Committee respected Nixon’s decision and did not subpoena his testimony or his papers. However, when presidential aide Alexander Butterfield revealed the existence of a White House tape recording system and that Nixon had tape recordings of his conversations and telephone calls in the Oval Office and elsewhere, *see* Alexander Butterfield Testimony, July 16, 1973, 5 Senate Watergate Committee 2074-77, the Committee became intent on obtaining the tapes.

48. On July 23, 1973, the Senate Watergate Committee issued a subpoena ordering Nixon to deliver the tapes to the Committee. It was the first time in history that a congressional committee had subpoenaed a sitting President, and the first time since 1807 that a sitting

President received a subpoena from any source. On July 25, 1973, Nixon rejected the subpoena, invoking executive privilege.

49. Cox, too, issued a grand jury subpoena for White House tapes of nine conversations, notes, memoranda, and associated documents. *See* Subpoena, *In re Grand Jury*, Misc. 47-73, July 23, 1973. Nixon informed Judge Sirica that he refused to comply with the grand jury subpoena, again citing executive privilege. President Nixon Letter, July 25, 1973. On August 29, 1973, Judge Sirica enforced the grand jury subpoena to the President, ordering Nixon to comply. Order, *In re Grand Jury Subpoena Duces Tecum Issued to Richard M. Nixon*, Misc. 47-73, July 23, 1973. Nixon appealed. On October 12, the United States Court of Appeals for the District of Columbia Circuit affirmed Judge Sirica's order, as clarified and modified in part, that Nixon comply with the subpoena. *Nixon v. Sirica*, 487 F.2d 700, 704 (D.C. Cir. 1973). The Court of Appeals ordered Nixon to deliver the tapes to Judge Sirica, who would review them in camera. *Id.* at 721-22.

50. Rather than complying with the subpoena, Nixon offered Cox a compromise: Nixon would prepare transcripts of the tapes, have Democratic Senator John Stennis of Mississippi authenticate them, and then turn over the transcripts to Judge Sirica, and, the proposal went, Cox would agree not to subpoena any other tapes. Cox rejected Nixon's proposal, the so-called "Stennis compromise."

51. After Cox rejected the President's proposal, Nixon asked Attorney General Richardson to fire him. Richardson refused and resigned. Deputy Attorney General Ruckelshaus similarly refused to fire Cox, and he too resigned. Solicitor General Robert Bork, third in command at DOJ and the Acting Attorney General following the resignations of Richardson and

Ruckelshaus, fired Cox. SI IX:1 67. These resignations and Cox's firing on October 20, 1973, came to be known as the "Saturday Night Massacre."

52. By order dated October 23, 1973, Bork abolished the Office of the Special Prosecutor. *See* Att'y Gen. Order No. 546-73, Abolishment of Office of Watergate Special Prosecution Force, 38 Fed. Reg. 29,466 (Oct. 25, 1973). The Watergate prosecution temporarily reverted back to Assistant Attorney General Petersen at DOJ, and that office continued the work of the WSPF. *See* WSPF Final Report at 11.

53. Several weeks after firing Cox and abolishing the Office of the Special Prosecutor, Bork reestablished the special prosecutor's office, likely in response to the public outcry that followed the "Saturday Night Massacre." Bork named Leon Jaworski the new special prosecutor. *See* Att'y Gen. Order No. 551-73, Establishing the Office of Watergate Special Prosecution Force, 38 Fed. Reg. 30,738 (Nov. 7, 1973). The special prosecutor's new charter made the office completely independent from the White House. Bork informed Jaworski that he could pursue his investigation as he saw fit.

54. In early November 1973, in the wake of Cox's firing and the abolition (and reestablishment) of the Office of the Special Prosecutor, Representative Peter Rodino (D-NJ), Chair of the House Judiciary Committee, began to organize an inquiry into possible impeachment proceedings against President Nixon. Rodino named John Doar as Chief Counsel for the Judiciary Committee's majority. At about the same time, on November 12, 1973, Time Magazine published its first editorial; in it, the news magazine called upon President Nixon to resign. *An Editorial: The President Should Resign*, Time, Nov. 12, 1973.

55. Meanwhile, on October 23, 1973, the White House had informed Judge Sirica that President Nixon would comply with the grand jury subpoena for the nine tape-recorded

conversations. On October 30, the White House informed Judge Sirica that two of the nine requested conversations had never been recorded. *See* Statement of Judge Sirica, Oct. 31, 1973, *In re Grand Jury*, Misc. 47-73, at 2. He also informed the judge that the tape containing a June 20, 1972, conversation between Nixon and Haldeman in the Executive Office Building had an 18½-minute gap. *See* J. Fred Buzhardt Testimony, Jan. 18, 1974, *In re Grand Jury*, Misc. 47-73, at 2490. On November 26, the White House delivered to Judge Sirica seven tapes, including the one containing the 18½-minute gap. Judge Sirica would later turn the tapes over to the special prosecutor.

56. Judge Sirica held an evidentiary hearing on the matter of the 18½-minute gap and the missing tapes. Nixon's secretary, Woods, testified that she might have accidentally erased four or five minutes of the subpoenaed tape on October 1, 1973, while transcribing the conversation. *See* WSPF Final Report at 53.

57. To gather further evidence, the court appointed a panel of six experts in acoustic and sound engineering approved by the White House and WSPF. *See* Letter of Transmittal, Report of Advisory Panel on White House Tapes, May 31, 1974. The expert panel was asked "to determine the method by which the gap had been created, the kind of machine that has been used to create it, and the existence of any possibility of recovering the conversation." In its report, the panel noted that the 18½-minute portion of tape contained "buzz sounds but no discernible speech." Summary and Preface, Report of Advisory Panel on White House Tapes, May 31, 1974. The report indicated that the experts had analyzed the tape thoroughly and concluded that "the buzzing sounds were put on the tape in the process of erasing and re-recording at least five, and perhaps as many as nine, contiguous segments." Advisory Panel Report, Jan. 15, 1974, Ex. 145, *In re Grand Jury*, Misc. 47-73. The experts explained that the erasure could not have been

produced by any single, continuous operation. *Id.* Without offering an opinion about whether the erasures were made accidentally or intentionally, the report stated that “[t]he erasure is so strong as to make recovery of the original conversation virtually impossible.” Summary and Preface, Report of Advisory Panel on White House Tapes, May 31, 1974.

58. Because the panel concluded that the erasures had occurred after the tape had been subpoenaed, Judge Sirica referred the matter to the grand jury for further investigation of the possibility of obstruction of justice. WSPF Final Report at 53. The grand jury reviewed evidence in the tape erasure matter and concluded that only a small number of individuals could have caused the erasures. The grand jury, however, was “unable to fix criminal responsibility on any particular individual or individuals.” *Id.* at 12.

59. By January 1974, the Watergate grand jury that had been sitting since June 1972 requested testimony from President Nixon. Foreman Vladimir Pregelj, with the help of prosecutors, wrote to Nixon requesting that he appear before the grand jury. *See* Richard Benveniste and George Frampton, Jr., *Stonewall: The Legal Case Against the Watergate Conspirators* 220 (1977). Nixon’s newly appointed special counsel and White House lawyer, James St. Clair, rejected the request; instead, St. Clair suggested that the grand jurors submit written questions to which Nixon would respond. The grand jurors rejected that suggestion. *See* Don Fulsom, *Nixon’s Greatest Trick: Orchestrating His Own Pardon*, *Crime Magazine* (Jan. 2007).⁴

60. In January 1974, prosecutors requested twenty-five additional tapes from Nixon’s White House. *See* WSPF Final Report at 103. The following month, the House Judiciary Committee, as part of its impeachment inquiry, requested forty-two taped conversations. When

⁴ <http://www.crimemagazine.com/nixons-greatest-trick-orchestrating-his-own-pardon?page=49>.

the White House refused to comply, the Committee voted to subpoena the tapes. In the meantime, the grand jury indicted Mitchell, Haldeman, Ehrlichman, Colson, Strachan, and two others on charges of conspiracy, obstruction of justice, and perjury in connection with their roles in covering-up the Watergate break-in. The grand jury also authorized Jaworski to name eighteen individuals, including President Nixon, as unindicted co-conspirators. WSPF Final Report at 51. In connection with the pending trial of those indicted on March 1, Jaworski sought to obtain additional taped conversations. The district court issued a subpoena for those tapes on April 18, 1974. *United States v. Mitchell*, Crim. No. 74-110, Order, Apr. 18, 1974.

61. On April 29, 1974, Nixon announced in a television appearance that he would release tape transcripts rather than the tapes themselves. *See* Address to the Nation Announcing Answer to the House Judiciary Committee Subpoena for Additional Presidential Tape Recordings, Apr. 29, 1974, Public Papers 1974, at 389-97.

62. Upon reviewing the transcripts, the House Judiciary Committee concluded that the documents contained inaccuracies.⁵ HJC Final Report at 292-96. The Committee had previously “obtained some of the tapes of conversations included in the transcripts, and comparison of the WSPF transcripts with White House transcripts showed that the latter contained several omissions of portions of conversations.” WSPF Final Report at 54. According to the House Judiciary Committee’s Final Report,

Statements were omitted that were on the tape recordings; statements were added that were not on the recordings; statements were attributed to one speaker when they were made by another; statements were denominated as unintelligible when

⁵ The House Judiciary Committee published a comparison of White House and Judiciary Committee transcripts. *See* Hearings and Report of the House Judiciary Committee on Resolution to Impeach President Nixon (H. Res. 803), Comparison of White House and Judiciary Committee Transcripts of Eight Recorded Presidential Conversations, *available at* <http://www.maryferrell.org/mffweb/archive/viewer/showDoc.do?docId=144946>.

they were not; and statements were inaccurately transcribed, some in a manner that seriously misrepresented the substance and tone of the actual conversation.

HJC Final Report at 292-93. Further, the White House failed to explain the meaning of its oft-used notation, “Material Unrelated to Presidential Activities Deleted.” *Id.* at 294. A year later, the WSPF would conclude from its “full-scale investigation to determine whether various materials were deleted from the transcripts for the purpose of obstructing the Judiciary Committee’s inquiry,” that, despite “strong circumstantial evidence that at least some of the lengthy deletions were deliberate,” it lacked evidence of criminal intent to bring charges in connection with the altered tape transcripts. WSPF Final Report at 54-55.

63. In the spring of 1974, a constitutional battle was brewing over access to President Nixon’s tapes. On May 20, 1974, Judge Sirica ordered Nixon to comply with the April 18 subpoena for White House tapes. *United States v. Mitchell*, Crim. No. 74-110, Order and Opinion, May 20, 1974. Both parties petitioned the Supreme Court for certiorari, which the Court granted on May 31, 1974. *See United States v. Nixon*, No. 73-1766.

64. While the tapes case was before the Supreme Court, the House Judiciary Committee was contemplating impeachment. Doar’s staff investigated allegations concerning the Plumbers, the Watergate break-in and cover-up, the President’s personal finances, and the White House’s use of executive agencies for improper political purposes, among other things. *See generally* HJC Final Report. The Committee took testimony throughout the summer and began to draw up Articles of Impeachment.

65. On July 8, 1974, the Supreme Court heard oral argument in *United States v. Nixon*. The question at issue was whether the President could invoke executive privilege to keep his tapes from the Office of the Special Prosecutor. On July 24, 1974, a unanimous Supreme Court held that President Nixon must surrender the tapes. *United States v. Nixon*, 418 U.S. 683

(1974). The case was the first to explore the limits of presidential power since 1952, when the Court decided *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952), the Steel Seizure case.

66. As the House Judiciary Committee voted on articles of impeachment, the White House complied with the Supreme Court's decision requiring Nixon to turn over various tapes. One tape, of an Oval Office conversation on June 23, 1972, became known as "the smoking gun." The tape made clear that Nixon had wanted the CIA to pressure the FBI not to continue its investigation of the Watergate break-in. On the tape, Nixon asked Haldeman whether Mitchell knew about the break-in, and the President expressed his relief that Colson had not ordered the break-in. *See* June 23, 1972: The President and Haldeman, 10:04 to 11:39 A.M., Oval Office, in Kutler, *Abuse of Power*, *supra*, at 67-69.

67. On August 9, 1974, facing the prospect of removal by impeachment, Nixon resigned from office. Vice President Gerald Ford was sworn in as president.

PRESERVATION OF THE HISTORICAL RECORD

68. After resigning the presidency, Nixon had expected to retain ownership of the tapes. On September 7, 1974, Nixon signed a depository agreement with Arthur Sampson, Administrator of the General Services Administration ("GSA"), which contemplated that the tapes would be transferred to Nixon's home in California. *See Nixon v. Sampson*, 389 F. Supp. 107 (D.D.C. 1975). In December 1974, Congress passed and President Ford signed into law the Presidential Recordings and Materials Preservation Act, 44 U.S.C. § 2111, which directed the GSA administrator to take custody of Nixon's presidential papers and tape recordings and promulgate regulations that "(1) provide for the orderly processing and screening by Executive Branch archivists of such materials for the purpose of returning to [President Nixon] those that

are personal and private in nature, and (2) determine the terms and conditions upon which public access may eventually be had to those materials that are retained.” *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425 (1977). Pursuant to the statutory mandate, the GSA promulgated regulations. See 36 C.F.R. part 1275. Nixon challenged the constitutionality of the GSA’s public access regulations, and in 1979, the parties reached a negotiated agreement which allowed the National Archives to begin processing the Nixon presidential materials.

69. In 1992 because NARA was dragging its feet on processing the tapes, I sued NARA, *Kutler v. Carlin* (originally *Kutler v. Peterson*), seeking release of Watergate-related tapes. A 1996 settlement resulted in a tape release schedule. See 36 C.F.R. § 1275 app. A (“Settlement Agreement”). Since the settlement, although NARA has released tapes—the most recent release was in June 2009, when 154 hours of conversations recorded in January 1973 were made public—it has failed to meet the deadlines set forth in the settlement agreement. Tapes that ought to have been released no later than 2007 are currently under NARA review. See Maarja Krusten, *Why Aren’t All the Nixon Tapes Now Available?*, History News Network (Feb. 16, 2009)⁶; White House Tapes Release Schedule, Nixon Presidential Library and Museum.⁷

70. In 2001, NARA undertook efforts to recover speech from the 18½-minute gap in the tape recoding of Nixon’s June 20, 1972 meeting with Haldeman. The recording, known as Tape 342, has been played only six times since 1974, and only then to make copies. Today, the tape resides in a climate-controlled vault at NARA in College Park, Maryland. Tom McNichol, *Richard Nixon’s Last Secret*, *Wired* (July 2002).⁸ In August 2001, NARA sought assistance from

⁶ <http://hnn.us/articles/62329.html>.

⁷ <http://www.nixonlibrary.gov/forresearchers/find/tapes/releases.php>.

⁸ http://www.wired.com/wired/archive/10.07/nixon_pr.html.

the public. It published a solicitation in the Commerce Business Daily requesting proposals from contractors to participate in a project attempting to recover “intelligible speech” from the erased portion of the tape. NARA, *Feasibility of Recovering Erased Material from the 18½ Minute Gap in the Nixon Tapes*, Commerce Business Daily, Aug. 10, 2001.⁹ NARA allowed audio experts to work with test tapes to prove that they could examine the tapes without causing damage. Two years of audio reconstruction efforts were unsuccessful, and no experts were permitted to work with the original.

71. Nonetheless, efforts to discern the content of the 18½-minute gap continue. In November 2009, NARA announced that it would convene “a forensic document examination team to study two pages of the handwritten notes of H.R. Haldeman” taken during that meeting. Press Release, National Archives and Records Administration, *National Archives Announces Plans to Test Haldeman White House Notes* (Nov. 18, 2009);¹⁰ see also Sam Roberts, *High Tech Tries to Lift Veil on 18½ Tantalizing Minutes in Watergate*, N.Y. Times, Nov. 19, 2009, at 18. Phil Mellinger, a former systems analyst at the National Security Agency, inspected the Haldeman notes at NARA and discovered that “the first page tracked with the first four minutes of the meeting, when Nixon and Haldeman didn’t discuss Watergate.” David Corn, *CSI: Watergate*, Mother Jones (Sept./Oct. 2009). Haldeman’s notes tracked the entire conversation—except for a gap that, Mellinger wondered, might correspond to the 18½ minutes of erasures. At Mellinger’s urging, NARA began the process of reconstructing Haldeman’s notes using electrostatic detection and other forensic techniques. *Id.* It is too soon to know whether this latest effort to ascertain the contents of the erased 18½ minutes will be successful.

⁹ Available at [http://www.fbodaily.com/cbd/archive/2001/08\(August\)/10-Aug-2001/bsol002.htm](http://www.fbodaily.com/cbd/archive/2001/08(August)/10-Aug-2001/bsol002.htm).

¹⁰ Available at <http://www.archives.gov/press/press-releases/2010/nr10-24.html>.

WATERGATE PUBLICITY AND CONTINUING INTEREST

72. The Watergate scandal received widespread publicity as it unfolded from 1972-74. Following the break-in at the DNC headquarters, news reports linking the burglars to CREEP and the White House ran on a regular basis. In particular, the *Washington Post* covered the story extensively. In short order, Watergate-related coverage became a regular fixture of national dailies, news magazines, and television news broadcasts. See Joan H. Schilling, *The Watergate Index: An Index to "Watergate" Material as Reported in the Washington Post between June 16, 1972 and June 30, 1973* (1975) (listing more than 1,000 Watergate-related articles, editorials, and political cartoons appearing in the *Washington Post* from June 16, 1972, to June 30, 1973).

73. During the summer of 1973, the Senate Watergate Committee hearings were televised. See Gladys Engel Lang and Kurt Lang, *The Battle for Public Opinion: The President, the Press, and the Polls During Watergate* 62-93 (1983). Public television aired the hearings in their entirety (the daytime sessions were taped and aired in the evenings), and the commercial networks rotated live coverage. *Id.* at 62-63. From May 17, 1973, when the hearings began, until August 7, 1973, when they concluded, 237 hours of coverage were broadcast. *Id.* at 62. The House Judiciary Committee's hearings on impeachment were also televised. *Id.* at 137-38.

74. Watergate continued to receive significant attention in the decades following the scandal. Many of the principal Watergate actors have published books, including as recently as 2008.¹¹ Historians have written about it and continue to write about it extensively.¹² Hollywood

¹¹ E.g., Richard Ben-Veniste and George Frampton, Jr., *Stonewall: The Legal Case Against the Watergate Conspirators* (1977); Charles W. Colson, *Born Again* (1976); John Connally and Mickey Herskowitz, *In History's Shadow: An American Odyssey* (1993); Samuel Dash, *Chief Counsel: Inside the Ervin Committee—The Untold Story of Watergate* (1976); John Dean, *Blind Ambition* (1976); Harry S. Dent, *Cover-Up: The Watergate in All of Us* (1986); James Doyle, *Not Above the Law: The Battles of Watergate Prosecutors Cox and Jaworski—A Behind-the-Scenes Account* (1977); John Ehrlichman, *Witness to Power: The Nixon Years*

films, theatrical plays, and television programs about Watergate were produced, including the recently highly successful film *Frost/Nixon*.¹³

75. Watergate also generated and continues to generate a wealth of writing on separation of powers, executive authority, campaign finance law, legal ethics, and the role of impeachment and the pardon power in the American constitutional scheme.¹⁴

(1982); Sam J. Ervin, Jr., *The Whole Truth: The Watergate Conspiracy* (1980); Mark Felt and John O'Connor, *A G-Man's Life: The FBI, 'Deep Throat' and the Struggle for Honor in Washington* (2006); Leonard Garment, *Crazy Rhythm: My Journey from Brooklyn, Jazz, and Wall Street to Nixon's White House, Watergate, and Beyond . . .* (1997); L. Patrick Gray III and Ed Gray, *In Nixon's Web: A Year in the Crosshairs of Watergate* (2008); H.R. Haldeman and Joseph DiMona, *The Ends of Power* (1978); H.R. Haldeman, *The Haldeman Diaries: Inside the Nixon White House* (1994); E. Howard Hunt and Greg Aunapu, *American Spy: My Secret History in the CIA, Watergate and Beyond* (2007); Leon Jaworski, *The Right and the Power: The Prosecution of Watergate* (1976); Richard Kleindienst, *Justice: The Memoirs of Attorney General Richard Kleindienst* (1985); Egil "Bud" Krogh and Matthew Krogh, *Integrity: Good People, Bad Choices, and Life Lessons from the White House* (2007); G. Gordon Liddy, *Will: The Autobiography of G. Gordon Liddy* (1996); James W. McCord, *A Piece of Tape: The Watergate Story: Fact and Fiction* (1974); Jeb Stuart Magruder, *An American Life: One Man's Road to Watergate* (1974); William H. Merrill, *Watergate Prosecutor* (2008); Richard Nixon, *The Memoirs of Richard Nixon* (1978); Lawrence F. O'Brien, *No Final Victories: A Life in Politics—from John F. Kennedy to Watergate* (1974); Raymond Price, *With Nixon* (1977); William Safire, *Before the Fall: An Inside View of the Pre-Watergate White House* (2005); John J. Sirica, *To Set the Record Straight: The Break-in, the Tapes, the Conspirators, the Pardon* (1979); Maurice H. Stans, *The Terrors of Justice: The Untold Side of Watergate* (1978).

¹² E.g., Fred Emery, *Watergate: The Corruption of American Politics and the Fall of Richard Nixon* (1994); Stanley I. Kutler, *The Wars of Watergate: The Last Crisis of Richard Nixon* (1990); J. Anthony Lukas, *Nightmare: The Underside of the Nixon Years* (1973); Frank Mankiewicz, *U.S. v. Richard M. Nixon: The Final Crisis* (1975); Keith W. Olson, *Watergate: The Presidential Scandal That Shook America* (2003); Melvin Small, *The Presidency of Richard Nixon* (1999); Anthony Summers and Robbyn Swan, *The Arrogance of Power: The Secret World of Richard Nixon* (2000).

¹³ E.g., *All the President's Men* (Warner Bros. Pictures 1976); *The American Experience: Nixon* (PBS 1998); *Blind Ambition* (Talent Assocs. 1979); *Dick* (Canal+ D.A. 1999); *An Evening with Richard Nixon and . . .* (Lieberman 1972); *Dirty Tricks* (Public Theater 2004); *Frost/Nixon* (Universal Pictures 2008); *Frost/Nixon* (Madover, et al., 2007); *I, Nixon* (Prop Theater forthcoming 2010); *Martha Mitchell Calling* (Shakespeare & Co. 2006); *Nixon* (Cinergi Pictures Entm't 1995); *Nixon's Nixon* (MCC 1996); *Watergate* (Discovery Commc'ns 1994); *Watergate: Behind Closed Doors* (Paramount Television 1977); *Watergate Classics* (Yale Repertory Theatre 1973); *Watergate Plus 30: Shadow of History* (Carlton Prods. 2003).

76. Events over the years have kept alive interest in Watergate's unresolved questions. For example, in 1994, President Nixon's death sparked increased discussion of the scandal and Nixon's role in it.¹⁵ In 2002, on the thirtieth anniversary of the Watergate break-in, CNN/USA Today/Gallup polled Americans asking about their familiarity with and impressions of Watergate. At the time, the poll indicated that two-thirds of all Americans were at least somewhat familiar with the Watergate affair, with nearly twenty percent indicating that they were "very familiar" with it. See Lydia Saad, *Thirty Years Later, Americans Still Believe Watergate Was Serious Matter*, Gallup News Service, June 17, 2002.¹⁶ And in 2005, W. Mark Felt, the FBI's Associate Director at the time of the Watergate scandal, revealed himself as "Deep Throat," Woodward and Bernstein's anonymous government source of information throughout their reporting on Watergate. See John D. O'Connor, *I'm the Guy They Called Deep*

¹⁴ E.g., Howard Ball, *We Have a Duty: The Supreme Court and the Watergate Tapes Litigation* (1990); H. Lowell Brown, *High Crimes and Misdemeanors in Presidential Impeachment* (2009); Harry P. Jeffrey and Thomas Maxwell-Long, eds., *Watergate and the Resignation of Richard Nixon: Impact of a Constitutional Crisis* (2004); David E. Kyvig, *The Age of Impeachment: American Constitutional Culture Since 1960* (2008); Bill Moyers, *The Secret Government: The Constitution in Crisis* (1988); Mark J. Rozell, *Executive Privilege: Presidential Power, Secrecy, and Accountability* (2010); Kathleen Clark, *Legacy of Watergate for Legal Ethics Instruction*, 51 *Hastings L.J.* 673 (2000); Donald J. Simon, *Beyond Post-Watergate Reform: Putting an End to the Soft Money System*, 24 *J. Legis.* 167 (1998); Mark Tushnet, *The Ambiguous Legacy of Watergate for Separation of Powers Theory: Why Separation of Powers Law is not "Richard Nixon" Law*, 18 *Nova L. Rev.* 1765 (1994); Note, *From Watergate to Whitewater: Congressional Use Immunity and Its Impact on the Independent Counsel*, 83 *Geo. L.J.* 2385 (1995).

¹⁵ Scholar Russ Witcher's book, *After Watergate: Nixon and the Newsweeklies* (2000) is a content analysis of coverage of Richard Nixon in *Newsweek*, *Time*, and *U.S. News & World Report* from Nixon's resignation in August 1974 until Nixon's funeral in 1994. The book traces the public's shifting attitudes toward Nixon in the decades following his presidency.

¹⁶ <http://www.gallup.com/poll/6208/thirty-years-later-americans-still-believe-watergate-serious-matter.aspx>.

Throat, Vanity Fair, July 2005.¹⁷ Reflecting the significant public interest in Watergate more than thirty years after the events, that revelation was front-page news.¹⁸

77. In the years since Watergate, a few individuals have related a “counter-narrative” to the one presented in the first part of this declaration and in most accepted historical scholarship about Watergate. These so-called “revisionist” theories of Watergate generated new rounds of publicity and debate. For example, in describing his 2008 biography of John Mitchell,¹⁹ James Rosen said, “It’s going to be a controversial book because I will come to a different conclusion on who ordered the break-in, why, what it’s purpose was and who was the real mastermind of the coverup.” Felix Gillette, *Watergate Revisionism: Fox Journalist Expiates John Mitchell*, N.Y. Observer Media Mob, Apr. 22, 2008.²⁰ Rosen added, “What is there new to be said about Watergate? The answer is plenty. There are whole archives of evidence that have been unexamined.” *Id.* In other revisionist efforts, Len Colodny and Robert Gettlin’s book, *Silent Coup: The Removal of a President* (1992), places the blame for the Watergate cover-up squarely on the shoulders of Dean. Geoff Shepard’s book, *The Secret Plot to Make Ted Kennedy President: Inside the Real Watergate Conspiracy* (2008), accuses Congressional Democrats of bringing down President Nixon in an effort to place Senator Ted Kennedy in the White House.

¹⁷ Available at <http://www.vanityfair.com/politics/features/2005/07/deepthroat200507>.

¹⁸ See, e.g., Mark Jurkowitz, ‘*Deep Throat*’ Ends 3-Decade Mystery: Ex-FBI Official W. Mark Felt Was Watergate Source, Bos. Globe, June 1, 2005; Todd S. Purdum, ‘*Deep Throat*’ Unmasks Himself: Ex-No. 2 at F.B.I., N.Y. Times, June 1, 2005; Richard B. Schmitt and T. Christian Miller, *Watergate’s ‘Deep Throat’ Is Revealed*, L.A. Times, June 1, 2005; David Von Drehle, *FBI’s No. 2 Was ‘Deep Throat,’* Wash. Post, June 1, 2005.

¹⁹ James Rosen, *The Strong Man: John Mitchell and the Secrets of Watergate* (2008).

²⁰ Available at <http://www.observer.com/2008/watergate-revisionism-fox-journalist-expiates-john-mitchell>.

And Jim Hougan's book, *Secret Agenda: Watergate, Deep Throat and the CIA* (1984), accuses the CIA of masterminding the Watergate burglary.

78. In June 2010, the Historical Society of the District of Columbia presented a program called "Who Solved Watergate"? at the D.C. Circuit Judicial Conference. The program was designed to "probe the conflicts, tensions, and personalities of the people and institutions that played a role in the unique legal drama of our lifetime." Historical Society of the District of Columbia Circuit, News, <http://www.dcchs.org/news/news.html>.

79. Books continue to be published about Nixon, Watergate, and many of the scandal's component parts.²¹ The success of the 2008 film adaptation of the stage play *Frost/Nixon* also both demonstrates and furthered public interest in Richard Nixon and the Watergate scandal. See Roger Simon, *Richard Nixon Back in the Spotlight*, Creators.com, Dec. 5, 2008.²²

80. Further demonstrating the continuing historical interest and public importance of learning about President Nixon's use and abuse of office, in the first week of August alone, the *Washington Post* and the *New York Times* each published stories related to different aspects of Nixon's presidency and legacy. See Adam Nagourney, *Watergate Becomes Sore Point at Nixon Library*, N.Y. Times, Aug. 6, 2010; Craig Whitlock, *Honor Restored for General Blamed After Nixon Denied Authorizing Vietnam Bombing*, Wash. Post, Aug. 5, 2010, at A1.

²¹ E.g., Donald Farinacci, *When One Stood Alone: John J. Sirica's Battle Against the Watergate Conspiracy: A Tale of Moral Courage* (2009); Mark Avrom Feldstein, *Poisoning the Press: Richard Nixon, Jack Anderson, and the Rise of Washington's Scandal Culture* (forthcoming 2010); Robert H. Ferrell, *Inside the Nixon Administration: The Secret Diary of Arthur Burns 1969-1974* (forthcoming 2010); Jerry Gallagher, *Letters to a Lost Nation: A Watergate Chronicle* (2010); Jon Marshall and Bob Woodward, *Watergate's Legacy and the Press: The Investigative Impulse* (forthcoming 2011).

²² <http://www.creators.com/opinion/roger-simon/richard-nixon-back-in-the-spotlight.html>.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 17, 2010.

/s/ Stanley Kutler
Stanley Kutler

TAB B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of Julian Helisek

I, Julian Helisek, hereby declare as follows:

1. I am a fellow at Public Citizen Litigation Group. I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon’s testimony before a federal grand jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force (WSPF).

2. This declaration is based on my review of the Watergate Special Prosecution Force Final Report (“WSPF Final Report”), the Hearings and Report of the House Judiciary Committee on its resolution to impeach President Nixon (which compiles court papers, grand jury testimony, memoranda, correspondence, and other documentary evidence), contemporaneous newspaper and magazine accounts, books, and Internet sources.

3. This declaration has two objectives. *First*, it sets forth what is publicly known about President Nixon’s June 1975 grand jury testimony. *Second*, it reviews the investigations of the three Watergate grand juries and identifies Watergate-related grand jury testimony previously made public.

President Nixon’s Grand Jury Testimony: June 23-24, 1975

4. Approximately one month after Mr. Nixon resigned, President Ford issued Nixon a full, free, and absolute pardon. *See* Proclamation No. 4311, 39 Fed. Reg. 32,601 (Sept. 10, 1974).

5. The Watergate cover-up trial in *United States v. Mitchell, et al.*, Crim. No. 74-110, was scheduled to begin in Washington, DC, in early October 1974. Shortly after Nixon resigned,

lawyers of former Nixon aide John Ehrlichman caused a subpoena to be served on Nixon at his home in San Clemente, California. Ehrlichman sought to have Nixon testify in the cover-up the trial. *See The Ex-President: A New Counsel for Nixon's Defense*, Time, Sept. 9, 1974, at 13 (Exh. 1). Nixon, however, did not appear pursuant to the subpoena.

6. Speculation swirled that the former president's health was deteriorating. In fact, Nixon was admitted to Long Beach Memorial Hospital in southern California with life-threatening blood clots. He underwent surgery in late October 1974. Despite complications following the surgery, Nixon's condition stabilized. *See* John C. Lungren and John C. Lungren, Jr., *Healing Richard Nixon: A Doctor's Memoir* 84-89 (2003). When Herbert Miller, Nixon's attorney, contacted Dr. John Lungren, Nixon's physician, to ask whether Nixon was healthy and alert such that he could comply with the subpoena in connection with the cover-up trial, Dr. Lungren informed Miller that "Nixon would not be able to engage in any substantial mental or physical activity for two to three months and that it would be an indeterminate time before he had recovered sufficiently to travel long distances." *Id.* at 93.

7. Nixon's health improved in the months that followed. By the spring of 1975, the special prosecutor's office sought to have Nixon testify before the grand jury. Dr. Lungren informed the special prosecutor's office that traveling to Washington, DC, would pose health risks for Nixon and that "alternatives for obtaining Mr. Nixon's testimony not involving travel to Washington would pose a lesser degree of risk and therefore would be clearly preferable." *Id.* at 141. The special prosecutor's office agreed to take Nixon's testimony at the United States Coast Guard Station in San Clemente, California, next door to Nixon's home. *See The Ex-President: Nixon on Watergate*, Time, July 7, 1975, at 10 (Exh. 2). On June 23-24, 1975, Nixon testified for eleven hours before two

members of a federal grand jury and several WSPF attorneys. Timothy S. Robinson, *Nixon Testifies 11 Hours on Watergate: Talks to 2 Grand Jurors in California*, Wash. Post, June 28, 1975, at A1 (Exh. 3); *see also* David M. Alpern et al., *At Last, Nixon Under Oath*, Newsweek, July 7, 1975, at 12 (Exh. 4); William Greider, *Nixon's Two-Year Cloak of Silence Finally Is Pierced*, Wash. Post, June 28, 1975, at A4 (Exh. 5); George Lardner, Jr., *Prosecutors Get Data for Last Chore*, Wash. Post, June 28, 1975, at A1 (Exh. 6); *The Truth at Last?*, Economist, July 5, 1975, at 79 (Exh. 7).¹

8. Attending Nixon's grand jury testimony in California were two members of the grand jury, a stenographer, and, according to archivist David Paynter, Special Prosecutor Henry Ruth, Jr., and WSPF attorneys Thomas McBride, Richard Davis, Judith Ann Denny, Paul Michel, Jay Horowitz, Frank Martin, and Henry Hecht. *See* Mem. of David G. Paynter, Nat'l Archives & Records Admin., Apr. 2, 2010 (Exh. 8). United States District Judge Edward J. Schwartz placed Nixon under oath. *See* Robinson, *Nixon Testifies 11 Hours on Watergate: Talks to 2 Grand Jurors in California*, *supra*. Miller probably was not in the room during the grand jury's questioning. *See* David M. Alpern et al., *At Last, Nixon Under Oath*, *supra*. Publicly available information does not indicate that any other individuals attended.

9. A 297-page transcript of President Nixon's grand jury testimony was made available to the grand jurors who did not travel from Washington, DC, to San Clemente, California. *See* Mem. of David G. Paynter, *supra*; Robinson, *Nixon Testifies 11 Hours on Watergate: Talks to 2 Grand Jurors in California*, *supra*.

¹ An online search of the Vanderbilt Television News Archive, <http://tvnews.vanderbilt.edu>, reveals that ABC, CBS, and NBC all aired stories about President Nixon's grand jury testimony on their evening news programs on June 27, 1975.

10. Nixon's lawyers and Ruth filed a stipulation in U.S. District Court on June 26, 1975, that explained that Mr. Nixon desired that the fact of his grand jury testimony be made public. *See* David M. Alpern et al., *At Last, Nixon Under Oath, supra*.

11. Press accounts indicate that Nixon was questioned on at least four topics: (1) the 18½-minute gap on a White House tape recording of a June 20, 1972 conversation between Nixon and Chief of Staff H.R. Haldeman; (2) the alteration of White House tape transcripts that were submitted to the House Judiciary Committee during its impeachment inquiry; (3) the extent to which the Nixon administration used the IRS to harass Nixon's political enemies; and (4) the \$100,000 payment from billionaire Howard Hughes to Richard Nixon's close friend, Charles G. "Bebe" Rebozo? *See The Ex-President: Nixon on Watergate, supra*.

12. The Watergate grand jury's term expired on July 3, 1975. *See* WSPF Final Report at 264. Following Mr. Nixon's testimony, the grand jury handed up no further indictments. To the best of my knowledge, based on substantial research, nothing that Nixon said to the grand jury was introduced in any subsequent Watergate-related trial, civil or criminal.

13. Little is known about the content of Mr. Nixon's grand jury testimony, but a few pieces of information have been reported.

a. According to press accounts, in September 1975, Nixon lawyer Herbert Miller stated during oral argument in federal court in Washington, DC, that Nixon "denied under oath 'responsibility' for the 18½-minute gap" when Nixon "gave 11 hours of grand jury testimony in California [in] June under questioning by lawyers from the office of the special Watergate

prosecutor.” See Lesley Oelsner, *Tape Gap Denial by Nixon Is Cited*, N.Y. Times, Sept. 23, 1975, at 1 (Exh. 9).²

b. In a 1977 interview with British television personality David Frost, Nixon stated that he testified to the grand jury that he did not erase the 18½-minute segment of the June 20, 1972, taped conversation between Nixon and Haldeman, and that his secretary, Rose Mary Woods, had erased the tape accidentally. Nixon said, “A pardon does not cover anything you do after the pardon. I testified under oath, and I swore both to my own noninvolvement and my belief in [Woods’] nonresponsibility.... No charges have been brought against me, and they could do it, if they felt they had any proof.” See James Reston, Jr., *The Conviction of Richard Nixon: The Untold Story of the Frost/Nixon Interviews* 121-22 (2007) (quoting David Frost’s interview with Richard Nixon).

c. In his book, *The Price of Power*, investigative journalist Seymour Hersh explained that one of the attorneys who attended Nixon’s grand jury testimony told Hersh that Nixon had testified before the grand jury that the United States had “threatened to go to nuclear war with the Russians” during the 1971 crisis involving India and Pakistan. Seymour M. Hersh, *The Price of Power: Kissinger in the Nixon White House* 457 (1983). Hersh also noted that prosecutors asked Nixon about Charles Radford, a former White House staffer who had stolen classified documents for the Pentagon:

The prosecutors, trying to conclude their grand jury inquiries into presidential misconduct, had asked a series of questions about Yeoman Charles Radford. ... Nixon became extremely agitated when asked about Radford, one of the Watergate prosecutors recalls, and testified that “Radford knew everything. He was in all the sensitive meetings.” Nixon went on, “We had these tough negotiations with China

² Based on information contained in Lesley Oelsner, *Tape Gap Denial by Nixon Is Cited*, N.Y. Times, Sept. 23, 1975, at 1, Miller most likely made the statement during argument before a three-judge district court in *Nixon v. Adm’r of Gen. Servs.*, Civ. A. No. 74-1852 (D.D.C. 1976).

over the Mutual Defense Treaty [of 1961] with Japan. You have to be tough. And we told them that if they tried to jump Japan then we'll jump them." The Watergate prosecutor further remembers Nixon as testifying that "We told them that if you try to keep us from protecting the Japanese, we would let them go nuclear. And the Chinese said, 'We don't want that.'"

Id. at 380.

The Watergate Grand Juries: Investigations, Indictments, and Testimony That Was Made Public

14. From June 1972 to July 1975, three grand juries investigated various aspects of the Watergate scandal, at times simultaneously. The grand juries took testimony from hundreds of individuals and handed up numerous indictments in what the *New York Times* called "the most momentous criminal investigation in American political history." Editorial, *Mr. Nixon's Testimony*, N.Y. Times, June 29, 1975, at 14 (Exh. 10).

15. The first grand jury, comprised of 23 members, was empaneled on June 5, 1972, "to hear evidence of crimes in the District of Columbia." *The Trials of the Grand Jury*, Time, Mar. 11, 1974, at 22 (Exh. 11). As it turned out, after the burglary at the Democratic National Committee (DNC) headquarters on June 17, the grand jury was presented with the Watergate break-in case.

16. On September 15, 1972, the grand jury indicted the five Watergate burglars as well as E. Howard Hunt, a former CIA operative with links to the White House, and G. Gordon Liddy, counsel for the Committee to Reelect the President (CREEP), in connection with the break-in. *See United States v. Liddy, et al.*, Crim. No. 1827-72. The men were indicted on counts of conspiracy, burglary, wiretapping, and unlawful possession of intercepting devices. Hunt and Watergate burglars Bernard Barker, Virgilio Gonzalez, Eugenio Martinez, and Frank Sturgis pleaded guilty in January 1973. A jury convicted James McCord – Watergate burglar and then-security chief for Nixon's

campaign committee – and Liddy in late January. All were sentenced to prison terms. WSPF Final Report at 164-65.

17. In May 1973, the Office of the Special Prosecutor was created, and along with it, the WSPF. The WSPF was divided into five task forces: (1) Watergate Task Force, (2) “Dirty Tricks” Investigation, (3) Investigations Relating to International Telephone and Telegraph Corporation, (4) “Plumbers” Investigation, and (5) Campaign Contributions. *Id.* at 50-71. The five task forces investigated “several hundred separate matters” and presented evidence to the grand juries. *Id.* at 50. The WSPF Final Report contains a comprehensive list of indictments, informations, plea agreements, convictions, sentences, fines, acquittals, and appeals, in Watergate-related matters through October 1975. *Id.* at 155-70.

18. On August 13, 1973, a second grand jury was empaneled to investigate campaign contributions, political espionage, International Telephone and Telegraph, and the Plumbers. *Id.* at 256. A third grand jury was empaneled on January 7, 1974, to investigate similar matters. *Id.* at 257.

19. In late February 1974, Special Prosecutor Leon Jaworski appeared before the grand jury for the first time. Unsure of his authority to indict a sitting President, Jaworski recommended to the grand jurors that they not indict Nixon. *See id.* at 121-22. Jaworski told the grand jurors that they could, however, send a report to Judge John Sirica, presiding in the Watergate case, who could then pass the report to the Judiciary Committee if it contained information or evidence as “having a material bearing on matters within the primary jurisdiction” of that committee’s impeachment inquiry. *Id.* at 123.

20. On March 1, 1974, the grand jury indicted Nixon aides Ehrlichman, Haldeman, Charles Colson, Gordon Strachan, former Attorney General John Mitchell, and two others in connec-

tion with covering up the Watergate break-in. *See* United States v. Mitchell, *et al.*, Crim. No. 74-110. The men were indicted on counts of obstruction of justice and conspiracy to obstruct justice. Several of the conspirators were also charged with making a false statement to a Grand Jury, making a false statement to FBI agents, and perjury. WSPF Final Report at 155-56. The grand jury named Nixon as an unindicted co-conspirator. *Id.* at 123.

21. That same day, the grand jury presented Judge Sirica with a sealed report and a cover letter recommending transmittal of the report to the House Judiciary Committee. *See In re Report & Recommendation of June 5, 1972 Grand Jury*, 370 F. Supp. 1219, 1221 (D.D.C. 1974). Judge Sirica invited “all counsel who might conceivably have an interest in the matter, without regard to standing, to state their positions concerning disposition.” *Id.* at 1221. The President took no position. The House Judiciary Committee and Office of the Special Prosecutor each recommended delivery of the report to the Judiciary Committee. Attorneys for Colson, Ehrlichman, Haldeman, Mitchell, and Strachan “generally objected to any disclosure of the Report, and in one instance recommended that the Report be expunged or returned to the Jury.” *Id.*

22. On March 18, Judge Sirica ordered that the grand jury’s report be delivered to the Judiciary Committee. *Id.* at 1231. Three days later, the court of appeals affirmed. *Haldeman v. Sirica*, 501 F.2d 714 (D.C. Cir. 1974). The grand jury report was delivered to the House Judiciary Committee shortly thereafter.

23. The grand jury’s report was a fifty-five page “roadmap” containing “only a sentence or two on each of the pages. Each page was a reference to a piece of evidence—sentences from one of the tape recordings, quotations from grand jury testimony.” James Doyle, *Not Above the Law: The Battles of Watergate Prosecutors Cox and Jaworski—A Behind-the-Scenes Account* 290 (1977).

WSPF Staff Member James S. Doyle stated that the roadmap was “a simple and unimpressive document, for it [was] narrow, declaratory, without conclusions.” *Id.*

One page might say, “On March 16, 1973, E. Howard Hunt demanded \$120,000.” Then it would list page references to grand jury testimony from witnesses who saw Hunt’s blackmail note and references to the tapes where Hunt’s demand was discussed. The grand jury transcripts and the tape transcripts would be included. The next page might say, “On March 21, 1973, John Dean told President Nixon that Hunt had demanded \$120,000, and that he estimated Hunt and the other Watergate defendants would ‘cost’ a million dollars in the next two years.” More grand jury and tape transcript page references. The next page might say, “President Nixon responded, ‘For Christ’s sake, get it’”; and there would be further references to the tapes.

Id. at 290-91. The grand jury report – the so-called “roadmap” – has not been made public.

24. In response to the March 1 indictments, Ehrlichman, Haldeman, and Mitchell all pleaded not guilty. WSPF Final Report at 155-56. Each was later convicted and sentenced to a prison term. *Id.* Strachan pleaded not guilty, and the special prosecutor dropped the charges against him. *Id.* at 156. Colson pleaded not guilty, and the government dismissed the indictment against him after he pleaded guilty in a related criminal matter. *See id.* at 155.³

25. On March 7, 1974, the grand jury indicted Ehrlichman, Liddy, Colson, Barker, Martinez, and Felipe De Diego in connection with the break-in at the office of Dr. Lewis Fielding, the psychiatrist who had treated Daniel Ellsberg, the former National Security Council operative who

³Others involved in covering up the Watergate break-in had previously pleaded guilty to informations filed against them. Mitchell aide Fred LaRue pleaded guilty on June 28, 1973, to an information charging conspiracy to obstruct justice. WSPF Final Report at 156. CREEP Deputy Director Jeb Magruder pleaded guilty on August 16, 1973, to an information charging conspiracy to unlawfully intercept wire and oral communications, to obstruct justice, and to defraud the United States. *Id.* White House Counsel John Dean pleaded guilty on October 19, 1973, to an information charging conspiracy to obstruct justice. *Id.* at 155.

leaked the “Pentagon Papers.” *See* United States v. Ehrlichman, *et al.*, Crim. No. 74-116.⁴ The men were indicted on charges of conspiracy to violate civil rights. WSPF Final Report at 157-58. Ehrlichman was also charged with making a false statement to a Grand Jury and making a false statement to FBI agents. *Id.* at 157. Barker and Martinez each pleaded not guilty, were convicted, and received three years probation. *Id.* at 157-58. The indictment against Colson was dismissed after he pleaded guilty to an information charging obstruction of justice. *Id.* at 157. De Diego pleaded not guilty; the special prosecutor subsequently dismissed the charges against him. *Id.* Ehrlichman pleaded not guilty and was convicted on all but one count of the indictment. *Id.* Liddy pleaded not guilty and was convicted. *Id.*

26. On December 4, 1974, the first Watergate grand jury, whose life had been extended by Congress on several occasions, was dismissed. *See* H.R. 10937, 93d Cong. (1973) (extending life of June 5, 1972, grand jury of the United States District Court for the District of Columbia, but in no event beyond December 4, 1974). The jurors had served since June 1972.

27. On February 12, 1975, the second grand jury was dismissed. *See* WSPF Final Report at 263. The jurors had served since August 1973.

28. Nixon testified before two members of the third grand jury on June 23-24, 1975. *See id.* at 264.

⁴The grand jury indicted Egil “Bud” Krogh, a member of the White House Plumbers, in connection with the Fielding break-in on October 11, 1973. *See* United States v. Krogh, Crim. No. 857-73. Krogh was charged with making a false statement to a Grand Jury. He pleaded guilty on November 30, 1973, to an information charging him with conspiracy to violate civil rights. He was sentenced to a term of imprisonment. WSPF Final Report at 157.

29. On July 3, 1975, the third grand jury was dismissed. *Id.* The jurors had served since January 1974.⁵

30. Some Watergate grand jury testimony has been made public.

a. On or about March 26, 1973, three days after he had been sentenced to a prison term of not less than six years and eight months, Liddy was summoned to appear before the Watergate grand jury. Liddy was given compulsory immunity by the court so that he could testify regarding his involvement with the electronic surveillance of and burglary at the DNC headquarters, his meetings with others before and after the break-in, his knowledge of the involvement of others, and political surveillance more generally. But Liddy invoked the privilege against self-incrimination and was held in civil contempt. His appeal of the contempt order was unsuccessful. *In re Grand Jury Proceedings, George Gordon Liddy*, 506 F.2d 1293, 1296-97 (D.C. Cir. 1974) (en banc). In the course of litigating the contempt, specific questions that had been asked of Liddy during his grand jury appearance were revealed. *See id.*

b. In April 1973, in his *Washington Post* column, “The Washington Merry-Go-Round,” Jack Anderson published a series of articles that excerpted grand jury testimony given by McCord, Hunt, Strachan, and Liddy’s former secretaries Silvia Panarites and Sally Harmony. Jack Anderson, ‘*Gemstone*’ *Drew Watergate Noose*, Wash. Post, Apr. 23, 1973, at D13; Jack Anderson, *McCord Tells of Watergate Payments*, Wash. Post, Apr. 17, 1973, at B15; Jack Anderson, *Secret*

⁵The third grand jury indicted Frank DeMarco, Jr., Nixon’s Los Angeles tax attorney, on February 19, 1975, charging DeMarco with conspiracy to defraud the United States and an agency thereof, making a false statement to IRS agents, and obstruction of an inquiry before a congressional committee. *See WSPF Final Report* at 163. The third grand jury also indicted Ralph G. Newman, a Chicago documents appraiser who placed a value on Nixon’s vice presidential papers. Newman was charged with conspiracy to defraud the United States and an agency thereof, and aiding and assisting in the preparation of a false document filed with a federal income tax return. *See id.*

Testimony on Delivery of Cash, Wash. Post, Apr. 19, 1973, at G11; Jack Anderson, *Testimony on Segretti Hiring Differs*, Wash. Post, Apr. 21, 1973, at C11; Jack Anderson, *Watergate Called Part of Vast Plan*, Wash. Post, Apr. 18, 1973, at D19; Jack Anderson, *Watergate Team Hit Democrats Twice*, Wash. Post, Apr. 16, 1973, at D13; Jack Anderson, *Web Tightens Around Nixon Advisers*, Wash. Post, Apr. 20, 1973, at D19 (Exh. 12).

c. In May 1973, prosecutors informed Judge Matthew Byrne, Jr., the Los Angeles-based trial judge presiding in the criminal case against Ellsberg for leaking classified national security information, that Hunt and Liddy had participated in the burglary of Dr. Lewis Fielding's office. The judge then ordered that Hunt's testimony before the Watergate grand jury be turned over to him. *See* Martin Arnold, *Ellsberg Judge Orders Hunt Data*, N.Y. Times, May 4, 1973, at 1 (Exh. 13). Judge Byrne released Hunt's testimony, and the press published portions of it. *See* Martin Arnold, *Haig Assuming Haldeman Duties; Hunt Links White House and C.I.A. to Burglary in Ellsberg Inquiry: Grand Jury Data: 2 Nixon Men Named—Krogh Said to Admit Role in Break-In*, N.Y. Times, May 5, 1973, at 1 (Exh. 14); *Excerpts from Hunt's Grand Jury Testimony About Ellsberg Raid*, N.Y. Times, May 5, 1973, at 15 (Exh. 15).

d. Watergate indictments charging the making of false statements before a grand jury contained excerpted grand jury testimony:

Indictment of Ehrlichman, et al., pertaining to the break-in at the office of Dr. Lewis Fielding: Count 3, ¶ 4; Count 4, ¶ 4; Count 5, ¶ 4 (Ehrlichman's grand jury testimony). *See* United States v. Ehrlichman, et al., Crim. No. 74-116, as reproduced in Hearings and Report of the House Judiciary Committee on Resolution to Impeach President Nixon (H. Res. 803), Statement of Information Appendix 2 ("SIAPP2") 13, 15, 16-17 (Exh. 16).

Indictment of Krogh pertaining to the break-in at the office of Dr. Lewis Fielding: Count 1, ¶ 4; Count 2, ¶ 3 (Krogh's grand jury testimony). *See* United States v. Krogh, Crim. No. 857-73, *as reproduced in* SIAPP2 31, 32-33 (Exh. 17).

Indictment of Mitchell, et al., pertaining to the cover-up of the break-in at DNC headquarters: Count 4, ¶ 4; Count 5, ¶ 4 (Mitchell's grand jury testimony); Count 11, ¶ 4; Count 12, ¶ 4 (Ehrlichman's grand jury testimony); Count 13, ¶ 4 (Strachan's grand jury testimony). *See* United States v. Mitchell, et al., Crim. No. 74-110, *as reproduced in* SIAPP2 121, 123, 138-141, 143-44, 147-152 (Exh. 18).

e. Grand jury testimony was also made public via the Judiciary Committee's impeachment hearings. Individuals whose excerpted grand jury testimony appears in Judiciary Committee documents pertaining to Watergate include Dean, LaRue, Magruder, FBI Acting Director L. Patrick Gray, Ehrlichman, Haldeman, Attorney General Richard Kleindienst, Hunt, Krogh, White House Press Secretary Ronald Ziegler, Henry Petersen, head of the Criminal Division at the Department of Justice, and Colson, among others.⁶

⁶*See* Hearings and Report of the House Judiciary Committee on Resolution to Impeach President Nixon (H. Res. 803), Statement of Information ("SI") I 69-75, SI II 147-49, 590-92, SI III:1 149-51, 382 (Dean's grand jury testimony of Nov. 19, 1973); SI III:1 430-32 (Dean's grand jury testimony of Nov. 20, 1973); SI III:1 576, 610-11, SI III:2 947-48, 957-59, 1133-35, 1142, 1235, 1255-56, SI IV:2 1025-27, 1041-43 (Dean's grand jury testimony of Feb. 14, 1974); SI I 130-35 (LaRue's grand jury testimony of Apr. 18, 1973); SI III:2 1188-97 (LaRue's grand jury testimony of Feb. 13, 1974); SI I 136-39 (Magruder's grand jury testimony of May 2, 1973); SI II 551-54 (Gray's grand jury testimony of July 19, 1973); SI IV:2 1072-76 (Gray's grand jury testimony of July 20, 1973); SI III:1 182-88, SI III:2 952-56, 1260-66, SI IV:2 834-36 (Ehrlichman's grand jury testimony of Sept. 13, 1973); SI IV:2 1069-71 (Ehrlichman's grand jury testimony of May 3, 1973); SI VII:2 819-20, 989-98, 1166, SI VII:3 1254-55, 1326-30, 1334 (Ehrlichman's grand jury testimony of June 8, 1973); SI III:1 433-35, SI III:2 1120-32, 1257-59, SI IV:3 1568-74 (Haldeman's grand jury testimony of Jan. 30, 1974); SI III:1 595-97, SI IV:2 837-39 (Kleindienst's grand jury testimony of Aug. 9, 1973); SI III:2 906-14, 1232-34 (Hunt's grand jury testimony of July 17, 1973); SI III:2 915-
(continued...)

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 2, 2010.

/s/ Julian Helisek

Julian Helisek

(...continued)

23 (Hunt's grand jury testimony of Jan. 29, 1974); SI VII:2 718-20, 821-23, 979-80, 1103-07, 1153-55, SI VII:3 1277-82, 1302-09 (Hunt's grand jury testimony of June 6, 1973); SI III:2 960-62, 1278-79, SI VII:4 1822-26, 1833-36, 1838-39 (Krogh's grand jury testimony of Jan. 29, 1974); SI VII:2 968-71, 982-84, 1167-69, SI VII:3 1240-41, 1256-59, 1310-17 (Krogh's grand jury testimony of Jan. 30, 1974); SI IV:1 320-23, 480-83 (Ziegler's grand jury testimony of Feb. 12, 1974); SI IV:2 978-88, 1018-22, SI IV:3 1227-28, 1338-39, 1477-81, 1535-47 (Petersen's grand jury testimony of Feb. 5, 1974); SI IV:2 1006-10, SI IV:3 1474-76, SI VII:4 1938-39, 1964-66 (Petersen's grand jury testimony of Aug. 23, 1973); SI VI:1 211, SI VII:2 915-16, SI VII:3 1222-23, 1248-53, 1331-32 (Colson's grand jury testimony of June 8, 1973).

Exhibits

Exhibit No.

<i>The Ex-President: A New Counsel for Nixon's Defense</i> , Time, Sept. 9, 1974, at 13	1
<i>The Ex-President: Nixon on Watergate</i> , Time, July 7, 1975, at 10	2
Timothy S. Robinson, <i>Nixon Testifies 11 Hours on Watergate: Talks to 2 Grand Jurors in California</i> , Wash. Post, June 28, 1975, at A1	3
David M. Alpern et al., <i>At Last, Nixon Under Oath</i> , Newsweek, July 7, 1975, at 12	4
William Greider, <i>Nixon's Two-Year Cloak of Silence Finally Is Pierced</i> , Wash. Post, June 28, 1975, at A4	5
George Lardner, Jr., <i>Prosecutors Get Data for Last Chore</i> , Wash. Post, June 28, 1975, at A1	6
<i>The Truth at Last?</i> , Economist, July 5, 1975, at 79	7
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Testimony on Segretti Hiring Differs, Wash. Post, Apr. 21, 1973, at C11	
Watergate Called Part of Vast Plan, Wash. Post, Apr. 18, 1973, at D19	
Watergate Team Hit Democrats Twice, Wash. Post, Apr. 16, 1973, at D13	
Web Tightens Around Nixon Advisers, Wash. Post, Apr. 20, 1973, at D19	
Martin Arnold, <i>Ellsberg Judge Orders Hunt Data</i> , N.Y. Times, May 4, 1973, at 1	13
Martin Arnold, <i>Haig Assuming Haldeman Duties; Hunt Links White House and C.I.A. to Burglary in Ellsberg Inquiry: Grand Jury Data: 2 Nixon Men Named—Krogh Said to Admit Role in Break-In</i> , N.Y. Times, May 5, 1973, at 1	14
<i>Excerpts from Hunt's Grand Jury Testimony About Ellsberg Raid</i> , N.Y. Times, May 5, 1973, at 15	15

United States v. Ehrlichman, <i>et al.</i> , Crim. No. 74-116 (indictment excerpts)	16
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United States v. Mitchell, <i>et al.</i> , Crim. No. 74-110 (indictment excerpts)	18

EXHIBIT 1

THE EX-PRESIDENT

A New Counsel for Nixon's Defense

"We've got problems with that fellow ... uh ... uh ..."
"Jaworski?"
"Yes."

Telephoning Martha Mitchell-style from seclusion in San Clemente, Richard Nixon could perhaps be excused a mental block in failing to remember the name of Watergate Special Prosecutor Leon Jaworski. As related by the recipient of the call, Republican Congressman Dan Kuykendall of Tennessee, Nixon thanked him for his longtime support and seemed concerned about his own future. "Do you think the people are going to want to pick the carcass?" asked the former President.

The metaphor was just as grisly but no more apt than Senate Minority Leader Hugh Scott's claim that Nixon had been "hung" and need not be "drawn and quartered." The plain fact is that the former President's own tapes provide prima-facie evidence that he was a participant in the Watergate cover-up conspiracy for which his aides have been charged with crimes. It is on that basis that Nixon does indeed have "problems" with Jaworski.

TIME has learned, however, that it is highly unlikely that Nixon will be charged with a crime until after the conspiracy trial of six of his former aides at least gets under way and its jury is sequestered. To indict Nixon before then and make him a defendant in the same trial would require a long delay while he prepared his defense. To indict him and seek a separate trial would gener-

ate new publicity that would make the selection of a jury for the trial of the others extremely difficult.

The way was apparently cleared last week for the conspiracy trial to begin on Sept. 30. The appeal of one of the defendants, John Ehrlichman, for a longer delay was turned down by Chief Justice Warren Burger of the Supreme Court. At the moment, Nixon is scheduled to be a witness at that trial, since a subpoena from Ehrlichman's lawyers was finally served privately on Nixon at San Clemente by a U.S. marshal. What action Nixon will take, if any, to avoid that appearance undoubtedly will be one of the first duties of Nixon's new personal Watergate defense lawyer, Herbert John (Jack) Miller Jr. The Washington firm Miller, Cassidy, Larroca & Lewin accepted the task after at least one, and possibly three law firms rejected overtures to defend Nixon.

Pun-Loving. Miller, 50, brings unique qualifications to his Nixon defense role. A Republican who campaigned for Robert Kennedy in his 1968 presidential primary drive, Miller had served as chief of the Justice Department's Criminal Division when Kennedy was Attorney General. There he became acquainted with many members of the present Jaworski staff, including James Neal, who will head the prosecution team in the conspiracy trial. A frequent guest at Kennedy's Hickory Hill estate, the gregarious, pun-loving Miller retained his Republican credentials by running, unsuccessfully, for Lieutenant Governor of Maryland in



WITH TAIWAN TEAM PITCHER
Steps to cement ties abroad.

sorts, he also spoke admiringly of the Communist Chinese. "The majority of Chinese on the mainland are young people, highly motivated and extremely well disciplined," Ford said. "As fellow human beings, we celebrate the rising capacities of the Chinese nation, a people with a firm belief in their own destiny. As Americans motivated by free competition, we see a distant challenge. And I believe all Americans welcome that challenge." The next day, the Fords went to Camp David for their first weekend at the presidential retreat in Maryland's Catoctin Mountains.

Domestic Council, a group set up but largely ignored by Nixon, which includes a number of leading Administration officials, including nine Cabinet members. The council lost out badly to the economists and efficiency experts of the White House's Office of Management and Budget, which Nixon created to help centralize control of his Administration. Interior Secretary Morton, himself a member of the Domestic Council, says that Cabinet members no longer want to be "cut off at the pass by the OMB." Morton and other Cabinet officials have long complained that the OMB has tried to impose its concepts of management and budgetary controls on their departments from the top on down.

The change in the powers of the Domestic Council and the OMB will most likely result in a change in the men who run their operations. Council Director Kenneth Cole Jr., 36, who also serves as the President's top domestic affairs adviser, is expected to leave soon. Cole, a former advertising man, simply lacks

the clout and political experience that Ford will demand in the new job. Cole will probably be replaced by what one presidential adviser calls "an alter-ego type of person"—a seasoned political figure who thinks very much like Ford. The director will also double as Secretary to the Cabinet, arbitrating disputes or making sure that differing viewpoints are called to the President's attention.

As for Roy L. Ash, the present head of the OMB, his future with Ford is limited by the fact that he made enemies by the way he accumulated and used power in Nixon's White House. Ash is expected to be replaced by someone who the President feels will work well with the new domestic adviser.

While these major changes lie in the future, Ford has already relaxed the mood of the White House and quietly put a number of his closest advisers on his staff. Jerry terHorst, 52, the former political reporter for the *Detroit News*, is performing capably as Press Secretary. Robert Hartmann, 57, Ford's long-

time close aide, is ensconced in Rose Mary Woods' old office. Philip Buchen, 58, the President's early law partner back home in Grand Rapids, is White House Counsel. John Marsh, 48, who was serving as a Democratic Congressman from Virginia when he was initially attracted to Ford, is now a Presidential Counsellor. All of these old friends can drop in to see the top man pretty much as they please.

The President is in no rush to make over the rest of the White House in his own image and style. Many of Nixon's aides may linger for a while on the payroll. "I don't see him pushing people away," says one presidential adviser. "I would think that you will see these emotionally drained, physically exhausted people drifting away one by one."

But from what Ford has already accomplished, the White House staff will be totally different in style and organization from the palace guard that Richard Nixon created to enable him to rule in splendid—and ultimately disastrous—isolation.

THE NATION

1970. He was among the personal advisers summoned by Senator Edward Kennedy to Hyannis Port after the Senator's 1969 accident at Chappaquiddick.

Miller is well respected in Washington as a talented lawyer, although some say that he does not possess the trial skills of either Neal or former Nixon Presidential Defense Lawyer James St. Clair. At the Justice Department, however, Miller effectively led the prosecution of former Teamster Boss James Hoffa and Lyndon Johnson's Senate aide Bobby Baker.

Miller left the Government to set up his own law firm in 1965. He became intimately acquainted with Watergate defense problems when he represented former Attorney General Richard Kleindienst and Lawyer William O. Bittman. Miller plea-bargained with Jaworski to get Kleindienst off with a misdemeanor charge. According to a list of overt acts cited in the conspiracy indictment, Bittman had handled some of the hush money for his client, Watergate Burglar E. Howard Hunt. But Bittman was named only as an unindicted co-conspirator in the cover-up case.

Three Courses. If Nixon is indicted, three possible courses now seem most likely: 1) Nixon could seek a one-count charge from Jaworski, plead guilty to it, and then possibly be pardoned by President Ford; 2) he could plead *nolo contendere* as Spiro Agnew did, but it seems improbable that a judge would accept such a plea without a full admission of wrongdoing by Nixon; or 3) he could stand trial and if convicted then perhaps be pardoned by Ford.

While preparing for these or other eventualities, Nixon may have considerable federal financial help. President Ford last week asked Congress to provide Nixon with \$850,000 as the initial payment on his pension and for transition expenses through next June 30. The total is in addition to Secret Service protection and the large sums of federal money already spent on Nixon's San Clemente property.

JUSTICE

The Amnesty Issue

Public debate continued last week over President Ford's plan for conditional amnesty for Viet Nam War resisters, which he had courageously proposed the week before at the convention of the Veterans of Foreign Wars (TIME, Sept. 2). The whole idea was quickly and predictably denounced as unfair by some conservatives, including the V.F.W., and berated as inadequate by some of the war resisters themselves, but Ford stuck to his guns. "I have made a decision," he declared in his press conference, "which I think is right and proper: no [unconditional] amnesty, no revenge, and . . . individuals who have violated the draft laws or have evaded Selective Service or deserted can earn their way or work their way back."

This week, after receiving a set of proposals from Justice Department and Defense Department officials who have been studying the problem, the White House expects to announce the details of the plan. Presumably it will require a war resister to make some sort of statement of contrition and serve for a period in an organization such as the Peace Corps or VISTA. Attorney General William Saxbe acknowledged last week that the plan will not be welcomed by all of the estimated 50,000 war resisters involved. But the President is determined to "open the door to them," said Saxbe, adding that the plan "will make it as easy as it can be for them to return—but they are not going to be welcomed back as heroes."

The arguments over how to deal with the war resisters have long ranged, in the President's words, from amnesty to revenge. Organizations like the V.F.W., the Marine Corps League and the Non-Commissioned Officers Association have insisted that any form of amnesty would dishonor the 2.5 million men who served in Viet Nam, and would mock the sacrifice of the 55,000 who died

there. Advocates of forgiveness have argued that on 34 occasions in U.S. history the Government has granted amnesty to some of its citizens, and should do so again in the case of a war that was regarded by many Americans as immoral. While few extremists on the amnesty issue were pleased with President Ford's proposal, many Americans regarded it as a constructive step. Stanford Professor Robert McAfee Brown, a Presbyterian pastor who served five days in jail after a 1971 demonstration, called Ford's plan "a very gutsy thing," especially since Brown had assumed "the issue was going to be on the back burner for a long time."

Forget the War. Ford's proposal for conditional forgiveness may be the best solution for a problem that has no perfect answer. It would offer those draft evaders and deserters who want to return a way back into American life without being treated as criminals. At the same time, the Government, which was guilty of widespread deception during the Viet Nam War, would foster much needed post-Watergate reconciliation by showing charity toward its dissenting young men. "The purpose of amnesty is to forget the war and heal the wounds," says John Kerry, former head of the Viet Nam Veterans Against the War, "and it may be that the way to do that is to demand a sacrifice on both sides. My heart and my morality say the resisters shouldn't have to do anything to come back, but a year of some kind of public service work is something that everyone should do anyway, as a continuation of citizenship."

Border Incident

The predicament of one American war resister became the center of an international incident last week. The scene was the tall, marble Peace Arch just north of Blaine, Wash., which marks the border between the U.S. and Canada. One afternoon a car drove past the arch and its surrounding gardens and

U.S. CUSTOMS OFFICERS ARRESTING ARMY DESERTER RONALD ANDERSON ON CANADIAN SIDE OF THE INTERNATIONAL BORDER



EXHIBIT 2

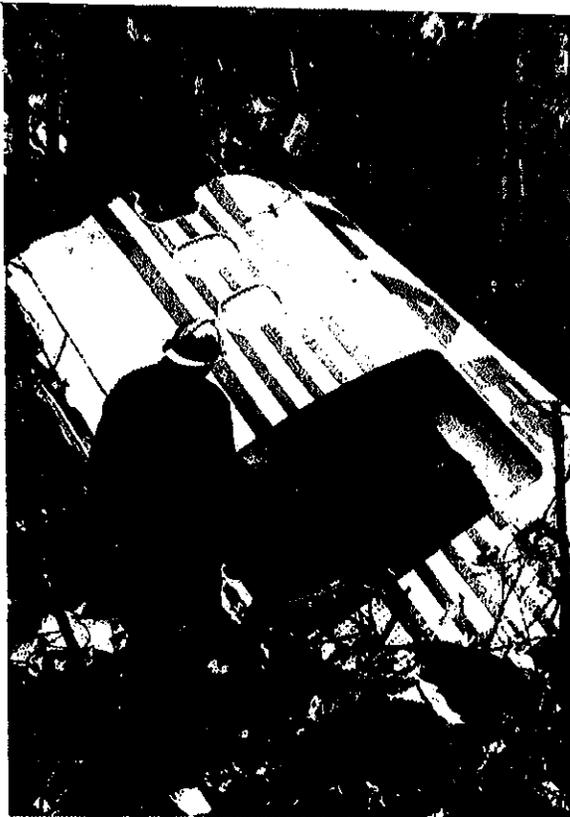
THE NATION

good reason. It is a highly unpredictable and violent weather phenomenon that results when opposing squall lines of high-velocity winds cross or collide. The result is a whirlwind, microburst, or effect in which wildly thrashing air currents can throw even huge aircraft out of control when they are flying at relatively low landing speeds, generally around 180 knots. During the critical moments of landing, there is little time for a pilot to recover from such unexpected buffeting, and ground obstacles are often perilously close.

"We began defining wind shear and identifying it as hazardous only in the past decade," explains Charles Miller, director of safety seminars for the Flight Safety Foundation. "It is treacherous. An aircraft may be stabilized flawlessly on an instrument approach, with thrust setting, airspeed, flaps and rate of descent all coordinated. Then comes a vertical gust. Or a gust from the rear. A head wind suddenly becomes a tail wind, and the aircraft's rate of sink suddenly accelerates. Only recently have we begun to appreciate the variations and magnitude of wind shear."

Although wind shear is invisible to the eye, the conditions that make it probable can be spotted by radar and detected by weather instruments. Any violent thunderstorm, of course, raises a possibility of such dangerous air currents. But the problem in combatting this hazard is that it is capricious, its intensity is unpredictable, and to close down airports every time the wind shear possibility remotely exists would seriously disrupt air travel. U.S. investigators have, in fact, cited wind shear as contributing to the probable cause of only one previous accident: the crash of an Iberia Airlines DC-10 at Boston's Logan Airport on Dec. 17, 1973. In that case, the plane was severely damaged but no one was killed.

Facing Backward. Last week's tragedy at Kennedy, however, raises serious questions about the reaction of airport authorities, pilots and air traffic controllers to the wind-shear menace. In this case, at least two pilots had detected the danger and alerted the tower. But no move was made to close the affected runway. Although the ill-fated Eastern pilot had acknowledged his awareness of the danger, he might have been lulled into a belief that it had passed by the successful landing of the two intervening flights. At issue is a longstanding and sensitive dispute over who must decide whether or not to land. With their own lives at stake, as well as those of their passengers, pilots have long insisted on final authority over such decisions. Current federal regulations accord them that right. At each



FRAGMENT OF 1974 TURKISH DC-10

airport the Federal Aviation Administration's tower chief has the responsibility for closing specific runways or the entire field. Controllers are required to advise pilots of adverse conditions but cannot order them to seek another airfield. The Kennedy crash makes plain the need for clearer standards for determining when wind shear presents grave dangers, as well as tougher guidelines on what course to take when it does.

THE EX-PRESIDENT

Nixon on Watergate

For two years Richard Nixon maintained almost total legal silence on his role in the Watergate scandal and a number of related matters. As President, he declined to testify under oath "on constitutional grounds." After he resigned, his phlebitis condition and a long convalescence made his testifying impossible. Last week Nixon's silence finally came to an end. Responding to a request from Watergate Special Prosecutor Henry S. Ruth, Nixon testified under oath before Ruth, several attorneys from Ruth's office, and two of the 20 members of the remaining Watergate grand jury, whose term ends this week. A total of eleven hours of questioning took place over a two-day period in a Coast Guard compound adjoining Nixon's San Clemente estate. It is the first time a President or former President has been known to testify in person under oath before a grand jury.

As the first session opened, an affable, jaunty Nixon, looking thin but fit, sat down confidently. When the final session ended the next day, Nixon rose,

pale and shaken. The ordeal "took a lot out of him," said one close associate. "It was very rough." Although grand jury testimony remains secret unless it is introduced in a trial or ordered released by a judge, it is known that Nixon was questioned closely about four matters still under investigation by the special prosecutor's office:

- ▶ The alteration of the White House transcripts of taped conversations that were turned over to the House Judiciary Committee during its impeachment inquiry.

- ▶ The 18½-minute gap in the tape of a Nixon conversation with H.R. Haldeman three days after the Watergate break-in.

- ▶ The \$100,000 campaign contribution from Billionaire Howard Hughes received by Nixon's close friend Charles G. (Bebe) Rebozo.

- ▶ The extent to which the Internal Revenue Service was used during Nixon's terms in office for harassment of his political "enemies."

Though it is not known what light Nixon shed on any of these matters, there was, said one Watergate source, "a fifty-fifty chance" that the grand jury would hand up indictments relative to some of them before it disbands this week. But that need not happen for Nixon's testimony to prove useful. The special prosecutor's office is prepared to present evidence to future Washington grand juries in Watergate cases.

Nixon arranged to testify—and to have news that he had done so announced publicly—by special agreement with the prosecutors and U.S. District Judge George L. Hart. It was Hart who gave approval for the two grand jurors and the prosecutors to fly to California to interrogate Nixon. Because of President Ford's pardon of him on Sept. 8, 1974, Nixon cannot be prosecuted for any crimes he may have committed as President. But he can be charged with perjury if any of his statements to the grand jury last week were false.

Ruth has been prepared to press the matter of Nixon's testifying ever since the former President's health improved to the point where he was seen publicly in recent days playing golf. A Nixon friend quotes the former President as once saying that he "would rather die" than return to Washington to testify before a grand jury or in a courtroom. For the moment that outcome has been avoided. But Nixon could be summoned as a witness should indictments be handed up in any of the four areas in which he was questioned. And he is still subject to being required to give depositions in some 20 civil suits currently pending in the courts.

EXHIBIT 3

The Weather
 Today—Cloudy, high in low to mild 80s, low near 70. Chance of rain is 30 per cent today and tonight. Sunday—Cloudy, high in the low to mid 80s. Yesterday's temperature range, 77-70. See Details on Page B4.

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Nixon Testifies 11 Hours or Watergate Talks to 2 Grand Jurors in California

Prosecutors Get Data for Last Chore

By Timothy S. Robinson
 Washington Post Staff Writer
 Former President Richard M. Nixon testified for 11 hours in California yesterday this week before Watergate prosecutors and two Watergate grand jurors, ending his refusal for nearly two years to submit to extended questioning under oath about his role in Watergate-related affairs.

The extraordinary grand jury session, which will be transcribed and presented to the 18 other grand jurors, comes less than a week before the last of three Watergate grand jurors is scheduled to disengage himself Thursday; the prosecutors could continue to present information to a new grand jury if they believe further investigation is warranted.

Nixon, who voluntarily submitted to the questioning, has been pardoned by President Ford for any criminal acts he may have committed while President. However, prosecutors said he could be charged with perjury or any other criminal violations committed after he resigned the presidency on Aug. 9, 1974, if such violations are found to exist.

Nixon's testimony will remain sealed because it is part of a grand jury proceeding, according to U.S. District Chief Judge George L. Hart Jr. Hart approved the minute arrangement of sending a small segment of a grand jury to another jurisdiction to take testimony from a witness, and legal observers said they saw of no precedent for such an act.

The sessions, conducted Monday and Tuesday, are believed to be the first time a former chief executive has given sworn testimony to a grand jury according to researchers at the Library of Congress.

Nixon's attorneys, Herbert J. Miller and Raymond G. Larrabee, said the examination "covered a wide range of subjects... relative to the grand jury's ongoing investigations."

Other persons familiar with the questioning said Nixon was asked specifically about his relationship with G. G. (Gabe) Rebozo and Rebozo's possible handling of campaign contributions, the deletions of portions of White House tape transcripts sent to Congress during the impeachment inquiry that led to Nixon's resignation, and the 18½-minute gap on a White House tape.

See TESTIFY, A4, Col. 1



2 Arrested by FBI On Spying Charges

By Stan Crook
 Washington Post Staff Writer
 FBI agents yesterday arrested a Rocky Mountain mathematician and a New York diamond setter on spying charges involving defense secrets passed to the Soviet Union, the Justice Department announced.

Three other men who have returned to Russia also were involved in the alleged conspiracy, according to FBI officials, but they were not arrested. The charges were filed with criminal complaints in New York and Bal-



when Justice Department sources first hinted that the testimony of the President himself was needed by a grand jury, Nixon had resisted.

"It would be constitutionally inappropriate," his press secretary, Ronald L. Ziegler, had argued. "It would do violence to the separation of powers."

From that point on, Nixon pleaded "executive privilege," political harass-

"I will do nothing to weaken the office of the President," Nixon told a presidential press conference last year, "and to submit to cross-examination under circumstances that would, in effect, put the President in the box if he went to the Senate. I think would be improper."

He declined to appear before the Watergate grand jury or the Senate

Nixon asked aloud, "Jefferson didn't do that to protect Jefferson. He did that to protect the presidency. And that is exactly what I will do in these cases."

The way things developed, his testimony was not needed to resolve the most crucial question: Whether he should continue as President. The more he denied complicity in his public statements, the more he stood re-

testimony. It did not provide money on one occasion though not in person. He answered a brief written in the Ellsberg breach Ehrlichman. He announced the "plumbers" unit, established the secret information leaks but commit a burglary.

Two Jurors Take Nixon's Testimony

TESTIFY. From A1

House tape subpoenaed as evidence in the Watergate cover-up investigation.

There was no immediate indication of the content of Nixon's testimony in any area.

Nixon's appearance before the two grand jurors and the prosecutors was announced yesterday morning in an agreement released by Hart and signed by Miller and Watergate Special Prosecutor Henry S. Ruth Jr.

Nixon asked for the fact that he testified to be made public "because inquiries have been made concerning this matter," the agreement said.

Nixon's attorneys said in a statement released in Washington that "it was the former President's desire to cooperate with the office of the special prosecutor in the areas which that office desired to interrogate him and it was Mr. Nixon's feelings in the view of the anticipated length of his testimony, the present state of his health, and the complications unavoidably attendant to extended travel, his examination would be most efficiently conducted in California."

Nixon's decision to testify "followed consultation with his medical advisers," the attorneys said.

Last October, when Nixon was subpoenaed to testify at the Watergate cover-up trial, court-appointed doctors said he was too ill to travel because of recent surgery for phlebitis and resultant pneumonia.

The interrogation of Nixon, conducted in the former presidential offices in San Clemente, is the second time he has ever commented under oath about a Watergate-related issue.

The only other sworn testimony came when he answered in written form six brief questions submitted to him by U.S. District Judge Gerhard A. Gesell during the trial of White House aide John D. Ehrlichman and others in connection with the break-in at the office of Daniel Ellsberg's psychiatrist.

The special prosecutor's office and the original Watergate grand jury had called for Nixon's appearance as a witness before the grand jury early in 1974, but Nixon had declined to appear "on constitutional grounds," he told a press conference on Feb. 25, 1974.

He said at the time that he had offered to respond to written questions or to answer questions directly to a prosecutor, but that the prosecutor indicated he did not want to proceed in that way.

The grand jury subsequently named Nixon as an unindicted co-conspirator in the Watergate cover-up by a 19-to-0 vote, after being told by Special Prosecutor Leon Jaworski that a sitting President could not be indicted for crimes.

The information gathered by the grand jury was submitted to the House Judiciary Committee, which based its vote to impeach the President on that evidence and other evidence it gathered.

Since resigning as President, Nixon also has been asked to give testimony in some of the approximately 20 civil suits filed against him for various acts while in office.

It is unclear what effect his testimony before the grand jury might have on future attempts to take depositions from the former President.

Discussions have been in progress for the past several months between the prosecutor's office and Nixon's attorneys concerning his possible grand jury appearance, according to informed sources.

The sources pointed out the prosecutor's desire to take Nixon's testimony before the special prosecutor's office was disbanded, probably by this fall.

Neither side wanted to enter a possibly protracted legal battle over the issuance of a subpoena for Nixon's testimony, the sources said.

Then, a little more than two weeks ago, the prosecutors came to Judge Hart and said the arrangement had been made for two grand jurors to accompany members of the prosecution staff to California for the sworn Nixon testimony.

Hart signed an order approving the session, and making it an official grand jury proceeding.

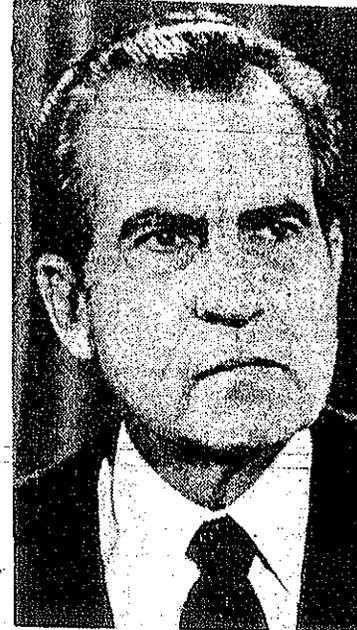
Hart asked U.S. District Chief Judge Edward J. Schwartz of San Diego to go to San Clemente to administer the oath to Nixon. He was reportedly selected for the rather routine chore in an attempt to keep the sessions as secret as possible before they occurred.

Schwartz said yesterday that he administered the oath about 9:45 a.m. (PDT) Monday. The testimony sessions, which were not attended by Schwartz, lasted about five hours on Monday and six hours on Tuesday.

Schwartz said yesterday that Nixon "was nicely dressed, looked in fine shape, and asked me how things were in San Diego." The former President was "friendly and affable," and shook hands with those present, Schwartz added.

The Watergate Special Prosecutor's Office would not comment yesterday on how the two specific jurors were selected, or why the prosecutors agreed to question Nixon in California instead of in the grand jury room of the federal courthouse here.

The agreement concerning the Nixon grand jury appearance was signed late Thursday, but was not released until the court clerk's office opened here yesterday morning.



RICHARD M. NIXON
... witness under oath



HENRY S. RUTH
... spec

Prosecutors (But Disclosure of I

PROSECUTOR, From A1

vowed to fight for access to the former president's secret testimony, which they sought in vain last fall and winter during the prolonged cover-up trial that led to their conviction.

"It seems very strange," protested one of the defense attorneys, "that now, at the end of the ball game, they bring in the principal player."

The counsel for former White House aides John D. Ehrlichman and H. R. (Bob) Haldeman both said they intended to seek access to Nixon's account in appealing the convictions Jan. 1 of the two men. Ehrlichman's lawyer, William S. Frates of Miami, said he thought it ought to be made public in any event.

"Irrespective of the litigation involved, I personally feel, as we contended at the trial, that he (Nixon) was the main participant in all those activities," Frates said of the tangled events collectively labeled Watergate. "I think the people have a right to know, not just John Ehrlichman."

The Nixon testimony was taken in ostensible pursuit of investigations still under way, such as the 18½-minute erasures in one of Nixon's key Watergate tapes, the deletions of incriminating remarks from the transcripts of other conversations that the Nixon White House provided the House impeachment inquiry, and the handling of various Nixon campaign con-

tributions and ca \$100,000 from Hughes, by the close friend, C. G.

The prosecutor flipped about what might result from investigations. Formerly guessing, a question of what were likely.

Some thought the risk and crossing Nixon's testimony last step before en

Others felt the problem to obtain g—as distinct from or statement that lie—unless there tions under way.

Indictments aside the final report v caused disagreement prosecutor's office, with that it is likely beyond what is a record.

Such a report, point of view, might public with enough judge whether a fully pursued an evidence brought

That was not what evidently had in a trial floor was set

Sen. Philip Hart point explicitly i

EXHIBIT 4



Nixon on the beach. Woods with recorder and Rebozo: A two-day session tying up the loose ends

At Last, Nixon Under Oath

He had tried every trick in the book—and a few new twists, as well—to avoid his day in court. As President, Richard Nixon refused to appear before the Watergate grand jury and the Senate Watergate committee and shunned the House Judiciary panel that was steadily building the case for his impeachment. He put out sanitized White House transcripts and cloaked himself in questionable claims of national security, Executive privilege and the constitutional separation of powers. Even after losing his Presidency and receiving a full pardon from his successor, Nixon held his tongue, protected now by a painful phlebitis condition that made any court appearance a threat to his life—or so his doctors said. But the long campaign of defiance and delay finally came to an end last week at Nixon's sunny San Clemente retreat. There, the former President formally took an oath and testified for eleven hours on the wide range of subjects still under investigation in the aftermath of Watergate.

In a conference room of the Coast Guard station that used to be the "Western White House" next door to Nixon's La Casa Pacific estate, the former President was put under oath early Monday morning. Then, for five hours on Monday and six hours on Tuesday, special prosecutor Henry Ruth and two members of the last remaining Watergate grand jury questioned him.

Details of the scene were scanty.

Ruth's office refused to disclose which of his aides accompanied him, or how the two jurors had been chosen. Since witnesses in grand-jury proceedings usually aren't allowed to have their lawyers with them, it is unlikely that Nixon's lawyer, Herbert F. Miller, was present. Later, however, Miller and Ruth filed a joint stipulation with the court that Nixon had "voluntarily submitted" to the interrogation and that he wanted the session made known because "inquiries have been made concerning this matter."

Perjury: As grand-jury testimony, the substance of Nixon's replies was secret and likely to remain so, barring a court order to make it public. But the news that he had talked at all was significant. While the pardon Nixon received from President Ford protects him from prosecution for any crimes committed during his Administration, he could be prosecuted for perjury committed after his resignation. And his willingness to testify for the grand jury also made Nixon more likely to be subpoenaed to testify again and again in the snarl of litigation that has grown up around Watergate.

What areas did Nixon's interrogators cover last week? According to one former member of the special prosecutor's staff, "you couldn't begin" to touch all of the facets of Nixon's unique perspective on the Watergate scandals in only eleven hours. In fact, sources close to the case hinted that the questioning aimed more to wrap up details than to uncover new

facts. The last Watergate grand jury is to expire this week and the prosecutors wanted to cover the final major witness before deciding whether to ask for an extension or close the case and write their final report. "It was really just a matter of doing our job," said one NEWSWEEK source.

Nevertheless, any such details would be fascinating if they shed any light on the major gaps remaining in the Watergate story. Among the key questions:

- Who produced the eighteen-and-a-half-minute gap in the tape of an early and presumably revealing conversation about Watergate between Nixon and White House aide H.R. (Bob) Halde-man? Rose Mary Woods, Nixon's secretary, said she might accidentally have erased part of the recording by pressing the wrong button during a telephone conversation. Even if that is true, the rest of the gap is still to be accounted for.

- Was there an orchestrated campaign to obstruct justice by preparing misleading transcripts of the White House tapes? If so, who directed it?

- Who ordered nearly a score of questionable "national security" wiretaps that were placed on the telephones of newsmen and government officials between 1969 and 1971? Secretary of State Henry Kissinger has said he merely supplied names of people to be tapped, but some high-level testimony has suggested that Kissinger's role was considerably more significant.

A Ford in High Gear

...as a \$100,000 contribution to Nixon from reclusive billionaire Howard Hughes simply squirreled away in a safe deposit box by Nixon's friend C.C. (Bebe) Rebozo and then returned to Hughes after three years? Or was it used by Nixon or Rebozo?

• To what extent were the Internal Revenue Service and other government agencies misused by the Nixon White House—and who was responsible?

The arrangements to secure Nixon's testimony began not too long ago. NEWSWEEK was told—and presumably interested within recent months when the former President began showing up hale and hearty after his long illness and seclusion. He has been receiving more of his old friends on visits, at least twice went to the Palm Beach estate of loyalist Walter Annenberg for parties in his honor, and recently has even appeared several times in public—playing golf, chatting with campers on local beaches and most recently walking with daughter Julie along the beach (barefoot, he stepped on a shell and winced visibly).

Nixon was not under subpoena, according to his lawyer's statement. But the special prosecutor's office refused to say whether the threat of such action had helped prompt what Miller described as his "voluntary and responsive" cooperation. After consulting with his doctors, Nixon asked to be deposed in California. The team of Washington grand jurors and attorneys accordingly flew out to San Clemente. Chief U.S. District Judge Edward Schwartz drove 60 miles from San Diego to administer the necessary oath, but did not stay for the deposition. Nixon "seemed all right," Schwartz said. He was very pleasant.

Access: Would Nixon's testimony ever become public? At first, it seemed unlikely. It would take a court order to release the transcript, and Ruth is known to feel that a good deal of testimony in the case shouldn't be disclosed without the formal safeguards of a courtroom proceeding. But lawyers for John Ehrlichman and H.R. Haldeman promptly said they would consider seeking access to the transcript for use in appealing their clients' Watergate convictions, a move that the courts might feel compelled to grant. "He was the main participant in all those activities," said Ehrlichman's lawyer, William S. Frates. "I think the people have a right to know, not just John Ehrlichman."

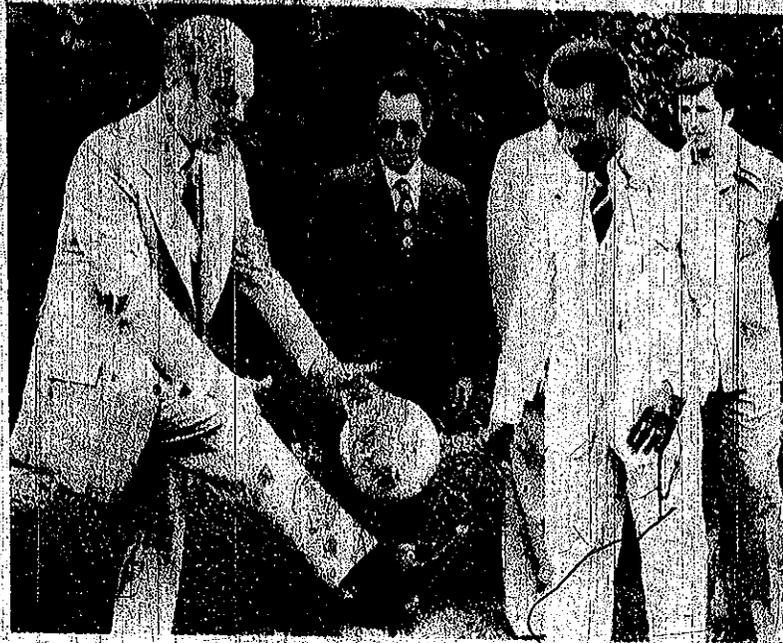
Nixon himself has been named a defendant in more than a score of civil suits rising from Watergate, and the fact that he has testified once will surely encourage a barrage of subpoenas in those cases; he may wind up testifying the story more times than one. But it remains to be seen whether any testimony Nixon can give would fulfill the larger obligations, finally, to explain himself and his actions to the American people.

—DAVID M. ALPERT, with ANTHONY MARRO and DIANE CRYSPEN in Washington and MARTIN KASINDOFF in Los Angeles

It was an oppressively hot and muggy afternoon in Washington, and reporters gathered outside the White House thought wistfully of their air-conditioned press room. The soggy South Lawn equalized their shoes and muddied the Presidential lawns as Gerald Ford stepped up to the podium. "I think this is a delightful place to have a press conference," he began.

For Ford, almost any speech last week would have been delightful. As one senior aide said exultantly, "The President has hit his stride. The Democratic-controlled Congress had failed to override his family's consecutive

Ford's strength than Congress' weakness. A veteran House Democrat complained that the President was "using the Congress to the best negative advantage"—and Congress, as the housing fiasco proved, was easily used. The bill had begun as a straightforward package of subsidies and loans to prevent mortgage foreclosures for the jobless and stimulate home-buying, but free-spending liberals salvaged it until it lost the crucial support of some moderate Democrats. "I do not understand," grumbled Ohio Rep. Thomas Ashley, "why we insist on serving up these veto pitches that come over the plate the size of a pumpkin."



Ford and soccer star Pelé in the Rose Garden: Getting a kick out of success

veto of an emergency housing bill—and was compromising on a version that was heavily Ford. He was besieged by more than 1,000 requests for meetings and appearances—from small-town barbecues to big-time fund raisers. And his petitioners included governors and congressmen who hadn't previously asked. "Everybody—and his brother suddenly wants to be the President's friend," said one aide. "I guess people who were waiting to see which way the wind was blowing have stopped waiting."

Turnabout: The wind could change, and Ford knew it. But his sudden success with the public and Congress was such a dramatic turnabout that it was hard not to be bullish. And Ford seemed to delight in a series of ceremonial occasions: greeting Soviet explorers, crowing to GOP contributors at an East Room reception and cavorting with visiting soccer star Pelé on the White House lawn.

In part, what was showing was less

After Ford vetoed the bill last week, the House leadership mustered for battle. Speaker Carl Albert, who has recently been criticized for weakness by his own rank and file, personally telephoned wavering Democrats to plead, "I'm tired of these defeats." In the House, he turned his gavel over to a colleague and took to the floor, shaking his fist and denouncing Ford as "the all-time record-breaking no-jobs President." His party gave Albert a standing ovation, but when the final vote was tallied, the Democrats had fallen sixteen votes short of overriding.

Ford was meeting with senior aides when word came that he had done it again. "That's four for four," crowed one aide. Said the President: "Not a bad record." He capitalized on the Democrats' disarray, showing up in the White House press room to preface a briefing on the Administration's substitute bill by HUD Secretary Carla Hills—who, Ford

EXHIBIT 5

Nixon's Two-Year Cloak of Silence Finally Is Pierced

By William Greider
Washington Post Staff Writer

The stone wall that Richard M. Nixon built finally has crumbled. A few days ago in California, the former President of the United States swore an oath to tell the truth and, in the privacy of a Coast Guard station next to his home, testified before federal authorities.

It took two years for them to get him to talk. From the spring of 1973, when Justice Department sources first hinted that the testimony of the President himself was required by a grand jury, Nixon had resisted.

He invoked Jefferson and John Marshall and Harry Truman to defend his position.

Reluctantly, he provided the tape recordings and documents that led to his downfall. He offered to answer written questions and, in one instance, actually did. But he wouldn't talk.

"I will do nothing to weaken the office of the President," Nixon told the presidential press conference last year, "and to submit to cross-examination under circumstances that would, in effect, put the President in the box if he went to the Senate. I think would be improper."

Watergate committee. He fought a losing battle to keep those investigations from getting the documentary evidence that would contradict his public denials of complicity in the Watergate cover-up.

Thomas Jefferson was summoned as his witness on one occasion, cited for refusing to turn over presidential papers to an investigation in the early days of the republic.

"Now why did Jefferson do that?" Nixon asked aloud. "Jefferson didn't do that to protect Jefferson. He did that to protect the presidency. And that is exactly what I will do in these cases."

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"Now why did Jefferson do that?" Nixon asked aloud. "Jefferson didn't do that to protect Jefferson. He did that to protect the presidency. And that is exactly what I will do in these cases."

Nixon might be well enough to lastly by January, but no sooner.

The judge wasn't interested in winning. He wanted a verdict for New Year's Day and he got one Jan. 1.

When Shira declared that the trial would proceed without Nixon's testimony, some defense lawyers complained, but the judge himself determined how much reliable information Nixon could give the jury about the Watergate affair.

EXHIBIT 6

EXHIBIT 7

undermined by the deteriorating situation in the city and the discovery of the hidden deficits. The MAC bonds carry relatively high rates of interest. It is essential that they are eagerly purchased if the corporation is to find a market for the further \$2 billion that it must raise for the city within the next three months. This money will be used to restructure the city's debts, stretching out repayment dates and paying off the hidden deficits now coming to light. It was the discovery this spring that New York city would have to borrow \$6 billion in short term money to cover this year's budget that suddenly frightened off the financial community and brought on the present crisis.

The new city budget approved by the city council last month calls for \$12.1 billion to be spent over the next year. This sum involves a retrenchment for the city in real terms (last year's budget was \$11.9 billion) and it was only arrived at on the understanding that the state would grant the city further tax raising powers. But these have been denied in a last minute change of heart by the Republican majority leader in the state senate, Mr Warren Anderson. He is trying to link the offer of allowing more funds to be raised for the city with a pet scheme of his own for school support grants—a scheme that Governor Carey says the state cannot afford. Nonetheless, in an attempt to break the deadlock, a \$450m tentative aid package was put together in Albany on Wednesday.

Some compromise is still likely to be worked out in Albany, but almost certainly not one generous enough to prevent widespread sackings among New York city's municipal employees. Although the city has just hiked its own property taxes by 11 per cent this is likely to be largely offset by a drop in the federal aid that will be given to the state, and shared by the city, this year. Federal funds to assist the 1.7m people receiving social services in the state will only amount to \$217m this year, a cut in real terms of nearly 10 per cent. The funds have been cut back because the population of New York has decreased, but New York city argues that its population, which would spend \$148m of the federal money, is more needy than ever.

Although New York city's crisis has been long predicted, little corrective action, apart from the setting up of MAC, has yet been taken. In the fiscal year just ended the city had intended to lay off 24,000 workers but it seems that, in fact, only 5,000 left the payroll. This goes some way to confirming suspicions that the mayor's office has as little control over the size of its work-

force as it does over its spending. Although there is no certain figure for the number of people employed by the city (the controller's office suggests around 335,000), Mayor Beame has been making highly detailed announcements for projected lay offs: 40,791 was one such recent figure.

Despite the city's problems, a survey in the New York Times last week showed that most New Yorkers were happy to live there. Although 79 per cent believed that the city was poorly run and crime ridden, 70 per cent said that it was still the world's most exciting city and that they would recommend it for a holiday. If the piles of garbage grow higher, despite an unheeded court order for the sanitation workers to return to work, a few might change their minds.

Nixon

The truth at last?

Washington, DC

The latest reports from La Casa Pacifica in California said that Mr Richard Nixon was doing well—recovering from his severe attack of phlebitis, beginning to play golf and relax with his friends, and learning to live with the ignominy of his near-impeachment and resignation as president last August. The calm and the pretence were shattered recently, however, when Mr Henry Ruth, the Watergate special prosecutor, and two members of the grand jury whose term is about to expire, paid a visit to San Clemente.

Having previously tried every possible means to avoid being called to account for the scandals of his Administration, Mr Nixon now "voluntarily submitted" to the questioning, according to his lawyer. For 11 hours, in the conference



The Nixon peepshow

room at a coast guard station that was once part of his grand "Western White House", the ex-president answered questions about the alteration of transcripts of his White House conversations, a \$100,000 campaign contribution from Mr Howard Hughes, and the use of the Internal Revenue Service to harass his Administration's "enemies" (see next article). Under the terms of the pardon granted to him by President Ford last September, Mr Nixon cannot be prosecuted for any of his misdeeds in office; but his testimony might be useful in cases against others. What Mr Nixon said remained a closely guarded secret. Those who retain sympathy for him said they hoped it was true this time, because the pardon, of course, would not cover perjury committed as a private citizen.

Tax

Sorry

Mr Donald Alexander, the commissioner of the Internal Revenue Service, was again apologising before a congressional hearing at the end of last month for the service's escapades into illegal political activity and promising that the agency would stick just to collecting taxes in the future. But it's not quite that simple. Trouble is brewing between the Justice Department and the IRS because Mr Alexander is also wanting to pull the service out of its more traditional law enforcement work. The Justice Department counts on tax auditors becoming seconded members of the Federal Bureau of Investigation's strike force teams to fight against organised crime syndicates and drug rings. The 17 strike force teams were instrumental in half of the 1,765 convictions of organised crime last year and were responsible for nearly all the arrests of big-time criminals. The expertise of the taxman is often indispensable in tripping up such smooth operators—after all it was the IRS that eventually sent Al Capone to gaol in the 1930s. So worried is Mr Edward Levi, the Attorney General, with Mr Alexander's retreat from these activities (50 per cent of the tax men, attached to the FBI, have already been called back to the IRS), that he has gone straight to Mr William Simon, the Treasury Secretary, to see if he can alter the commissioner's position.

Several congressional committees are now trying to find out just what the IRS has been up to. The agency is charged with handing over confidential tax information—some 8,210 returns in 1974—to other federal agencies, parti-

EXHIBIT 8



National Archives and Records Administration

8601 Adelphi Road
College Park, Maryland 20740-6001

April 2, 2010

Nixon GJ testimony

Dates: June 23 & 24, 1975

Page count: 297 pages

WSPF in attendance: Henry Ruth, Thomas McBride, Richard Davis, Judith Ann Denny, Paul Michel, Jay Horowitz, Frank Martin (deceased), Henry Hecht

From the desk of...

David G. Paynter
Archivist
Special Access & FOIA Staff
8601 Adelphi Road
College Park, MD 20740-6001
Telephone: 301-837-2041
Fax: 301-837-1864
Email: david.paynter@nara.gov

EXHIBIT 9

FORD ESCAPES HARM AS SHOT WOMAN SEIZED WITH GUN IN

Kissinger, at U.N., Asks Freer Forum on Mideast

By BERNARD GWERTZMAN
Special to The New York Times

UNITED NATIONS, N.Y., Sept. 22—Secretary of State Kissinger proposed today an informal meeting of key nations as a possible new approach for clearing the way to further diplomatic progress in the Middle East.

TAPE GAP DENIAL BY NIXON IS CITED

Lawyer Says Ex-President Disclaimed Under Oath Any 'Responsibility'

By LESLEY OELSNER
Special to The New York Times

WASHINGTON, Sept. 22—Former President Richard M. Nixon has denied under oath "responsibility" for the 18½-minute gap in a key White House tape recording, one of his attorneys said today.

Mr. Nixon made his denial, according to the attorney's statement, when he gave 11 hours of grand jury testimony in California last June under questioning—by lawyers from the office of the special Water-gate prosecutor. Until today, both Mr. Nixon's lawyers and the prosecutors have refused to disclose any of Mr. Nixon's testimony.

Mr. Nixon's attorney, Herbert J. Miller Jr., brought up the subject of the denial during oral arguments in Federal Court here over the constitutionality of a new statute that gives the Government control over Mr. Nixon's Presidential papers and tape recordings.

Mr. Nixon is challenging the statute as unconstitutional. He contends, among other things, that it violates the principle of separation of powers and that it provides for a "whole-sale, unreasonable seizure" in

This tentative new concept was described by American officials as an effort to spur peace moves either through direct Arab-Israeli talks or through a reconvened Geneva conference, not as a substitute. An "informal" meeting, the American officials said, might

Excerpts from Kissinger's speech are on Page 16.

give Israel and the Arabs a forum to discuss possible next steps without being bogged down by such issues as the seating of a Palestinian delegation.

'Every Feasible Step'

The suggestion was unveiled by Mr. Kissinger in a wide-ranging 50-minute speech to the 30th General Assembly. He lauded the interim Egyptian-Israeli accord on Sinai that he recently helped to conclude, and stressed that Washington was determined to press ahead with "every feasible step" to promote further progress.

In the interests of further progress, he said, the United States will support "any promising initiative." He cited the old approaches of direct Syrian-Israeli negotiations and a reconvened Geneva conference, and appended the new proposal for "a more informal multi-lateral meeting to assess conditions and to discuss the future."

In his address Mr. Kissinger also touched upon the following issues:

Following up an earlier American-South Korean proposal, Mr. Kissinger called for a new conference of the United



President Ford doubling over near his limousine as a shot was fired when he stepped out o

PRESIDENT SEEKS BIG ENERGY DRIVE

Backs \$100-Billion Program for U.S. Self-Sufficiency in a Decade or Less

Special to The New York Times

SAN FRANCISCO, Sept. 22—President Ford said today that next week he would ask Congress for authority to begin a \$100-billion program to give the United States "energy independence in 10 years or less."

Mr. Ford plans to create a new Government cooperation called the Energy Independence Authority, which would cooperate with private industry in providing the massive financing that he said was required to develop energy resources.

Mr. Ford said that the new energy authority would be a "dramatic crash program." He likened it to the Manhattan Project, which developed the atom bomb in World War II, and to the program to put an American on the moon.

An unlikely coalition of en-



Sara Jane Moore at an interview last spring



Mr. Ford being hu

Four More Beame Aides May Lose Their Positions

By FRED FERRETTI

SUSPECT ASSERTED SHE HELPED F. B. I.

Cheers, Then a And Crowd So

By LACEY FOSBURGI
Special to The New York Times

Lawyer Says Nixon Disclaimed 'Responsibility' for Tape Gap

Continued From Page 1, Col. 1

violation of the Fourth Amendment.

The Justice Department is defending the statute. In a brief submitted to the court a few weeks ago, the department argued that Congress had had ample reason to conclude that Mr. Nixon would "not be a trustworthy custodian" of the documents, in view of such fact as the existence of the 18½-minute gap in a tape that was in Mr. Nixon's custody when he was President.

Mr. Miller, in his argument this morning, discussed the reasoning in the department's brief.

"The Government says," he told a panel of three judges, that "Mr. Nixon is untrustworthy. Mr. Nixon will distort the record. Mr. Nixon created a 18½-minute Gap."

Examined Under Oath

"I submit to the court," he went on, "at least with respect to the 18½-minute gap," that the court itself had a stipulation filed last June describing the fact that Mr. Nixon had been examined under oath, "for many hours."

"I challenge the Justice Department" to show that "the matter was not gone into," Mr. Miller said, in loud and somewhat angry tones, and "that his responsibility was not in fact denied under oath."

Mr. Miller, a former Justice Department official, declined later to elaborate on his statement. The special prosecutor's office declined to comment.

Irwin Goldbloom, the attorney representing the Justice Department at today's hearing, however, responded during his turn to argue to the court: "Our papers speak for themselves, and no such allegation [that Mr. Nixon created the gap himself] is made."

What was said, he noted, was that it was "reasonable" for Congress to conclude as it did, in view of the fact that "certain unexplained gaps" occurred in the documents while they were in Mr. Nixon's custody.

Whether a denial of responsibility by Mr. Nixon for the gap is relevant to the issue before the court is in fact open to question.

Congress was concerned in drafting the legislation with what happened while the mate-

rials were in Mr. Nixon's custody. Legally, one lawyer not a party to the case noted later, what is significant is what happened to the materials while Mr. Nixon was their custodian, and not what he personally did with them.

The 18½-minute gap appears on a tape recording of a conversation that Mr. Nixon had with H.R. Haldeman, the White House chief of staff, on June 20, 1972, three days after the break-in at the Democratic headquarters in the Watergate complex here. The break-in was discussed at the meeting; for Mr. Haldeman's notes of the conversation state that there was discussion of a public relations offensive to counteract its effects.

The conversation was included in the first subpoena issued by the Watergate prosecutor for Mr. Nixon's tapes in July, 1973. The existence of the gap was disclosed that fall, after United States District Judge John J. Sirica and then the United States Court of Appeals here ordered Mr. Nixon to comply with the subpoena.

At first the White House said that the gap appeared to have been produced by the mistaken pushing of the wrong button on a tape recorder. Subsequently a panel of experts appointed by Judge Sirica concluded that the gap had been made by a series of at least five erasures.

The special prosecutor's office has investigated the gap but as yet there has been no resolution.

The three judges—Carl McGowan and Edward A. Tamm of the Court of Appeals and Aubrey E. Robinson Jr. of the District Court—took the case under advisement.

Cover-up Laid to Nixon

WASHINGTON, Sept. 22 (UPI)

—A lawyer accused former President Nixon today of lying to cover up existence of wiretaps during his Administration.

John H. F. Shattuck argued before United States District Judge John Lewis Smith that a sworn deposition should be obtained from Mr. Nixon in a civil suit against him by Mr. Shattuck's client, Morton H. Halperin, a former aide to Henry A. Kissinger, whose telephone was tapped. Mr. Kissinger was President Nixon's adviser for national security affairs at the time.

EXHIBIT 10

The New York Times

Founded in 1851

ADOLPH S. OCHS, Publisher 1896-1935
ARTHUR HAYS SULZBERGER, Publisher 1935-1961
ORVILLE DRYFOOS, Publisher 1961-1968

ARTHUR OCHS SULZBERGER
Publisher

JOHN B. OAKES, Editorial Page Editor
A. H. RASKIN, Assistant Editorial Page Editor
A. M. ROSENTHAL, Managing Editor
SEYMOUR TOPPING, Assistant Managing Editor
MAX FRANKEL, Sunday Editor
JACK ROSENTHAL, Assistant Sunday Editor
CHARLOTTE CURTIS, Associate Editor
CLIFTON DANIEL, Associate Editor
TOM WICKER, Associate Editor

Mr. Nixon's Testimony

Less than a year has passed since the mysteries of doctored White House transcripts and erratic tape recordings were uppermost among the concerns of American public life. The collapse of the Nixon Presidency and the conviction of conspirators in high—if not the highest—office naturally tended to close the book on Watergate as an all-consuming public obsession.

It is far more than a footnote to history, however, that former President Nixon has at last submitted to his first interrogation under oath before a Watergate grand jury. The questioning took place discreetly over two days last week, near San Clemente, by two members of the last remaining of the three grand juries which spearheaded the most momentous criminal investigation in American political history.

Lawyers long ago discovered that cross-examination is the only practical legal technique for attempting to sort out contradictions and conflicts in inconclusive testimony. As the nation saw, one-sided personal statements under controlled and advantageous conditions permitted lies and distortions to be perpetuated and further compounded. Even the memoirs of the leading participants, including Mr. Nixon, composed long after the heat has gone out of the controversy, cannot replace expert and minute cross-examination by persons knowledgeable in the details of the case.

The grand jury testimony remains sealed, of course, even though both Mr. Nixon and the special Watergate prosecutor, Henry S. Ruth, asked the court to make the fact of the interrogation public. There is no way of knowing for the present how specific and probing the interrogation was, or whether any new information was elicited about alleged crimes that remain unsolved.

Whatever conclusion the grand jury reaches before its term expires July 7, a way should be found to make this testimony available to the public. Nor should remaining loose ends in the Watergate tangle be dropped just because they are no longer of the acute public interest they once were.

The real issue goes beyond the fate of particular individuals, their personal futures or their roles in history. When crimes are committed, incomplete judgments may be worse than no judgments at all. Punishment for some crimes, of some of those who transgressed the law, cannot be an adequate answer when other crimes and other transgressors are overlooked merely because the society is relieved to forget what happened.

If the Watergate nightmare through which this country was dragged is to have a redeeming element, it must be that of insuring as certainly as possible that the abuses which occurred will not be repeated, and that the unbridled exercise of executive power in the future will have been forestalled.

Without Mr. Nixon's own version of events, taken under conditions comparable to the testimony of all the other conspirators in the White House, the public record and the legacy of Watergate remains incomplete.

carefully a possible new American commitment in all its implications—political, economic and military—before discovering a *fait accompli*.

Bonn's Atomic Sale . . .

Bonn's signature of an agreement to sell Brazil a complete multibillion-dollar nuclear industry, including technology that would permit production of atomic bombs as well as electricity, is a tragedy for West Germany as well as mankind as a whole.

Not the least tragic are the implications for democracy in Germany of the behavior of the Bonn Government, which concealed the deal for months, then, when it became known, belittled American concern, attributed it to commercial jealousy and rushed ahead with the pact's signature without permitting the thorough debate by the West German Parliament and the public that the true facts deserved.

The clearest and most authoritative public statement of American concern on this issue was made by Dr. Fred C. Iklé, the director of the Arms Control and Disarmament Agency, in an interview earlier this month in the *Frankfurter Allgemeine Zeitung*. Dr. Iklé said that American concern did not stem from commercial interests, including West Germany's sale to Brazil of eight huge power reactors, which make up the bulk of the deal. The reactors can be placed under secure international safeguards, which is not true of some of the other technology to be sold.

"Our problem," Dr. Iklé said, "is with the reprocessing equipment which, in treating the spent fuel of reactors, can produce plutonium for weapons. We also have a problem with the uranium-enrichment equipment, which can make weapons-grade uranium. American firms have not been permitted to sell this type of equipment abroad."

Brazil has no need for this type of equipment for civilian pursuits, Dr. Iklé said, adding: "In the United States, at the present time, there are over fifty nuclear power reactors in operation, but not a single commercial reprocessing facility in operation or likely to be in the near future. . . . American industry has not been permitted [by the United States Government] to promote reactor sales abroad by offering also to provide, as a 'sweetener,' enrichment and reprocessing facilities."

The United States has proposed that these dangerous facilities be kept out of the hands of national governments and confined to regional, multinational centers. There was wide support for this idea at the recent 69-nation conference in Geneva to review the operation of the Nuclear Non-Proliferation Treaty.

"We need a little more time" to achieve this goal, Dr. Iklé pleaded, as well as for a research project to make the plutonium and enriched uranium from such facilities chemically unsuitable for weapons use. This is the plea that the West German Government rejected.

. . . Halting Wider Danger

Bicentennial: W

To the Editor:

In his June 6 letter, "Bice What? Are We Celebrating?" Baird questions whether we h thing at all to celebrate, current issues that have dispute for many years: "The fulfillment of the original dream," the U.S. as "a high oppressed," "equal justice u law," "freedom from gov domination," "freedom from sive taxation" and the heavy dens of the middle class.

These issues have been wit will be with us for generatio we celebrate is the continui cessful struggle to mitigate an ish the severity of issues wh either reflect "our forgotten g stem from conflicts of class, s and region.

And there are frequently : solutions as there are points I suspect that Mr. Baird's a would be diametrically oppos

But in the contest between points of view, we gradually the issue and resolve the since it is this method of r that is our common faith ar for celebration. And the politk plays a central, pivotal role tiating, compromising and i these issues need not be mal chastised so incessantly. Rath she should be encouraged to t

Of Peace and Arms

To the Editor:

I read a thoughtful article Times June 18 on the subject-taining peace in the Near Eas was reference to a recent cor supply armaments to Egypt another anticipated for Isra from a different foreign Ominous thought.

The suggestion which follo that continued supply of arm: country should be assured long as that country did n the peace. In the context of omy in some measure supp armaments manufacture, t comforting thought, namely, t peace is kept, the more ar may be justified.

JULIAN H. WH
Wilton, Conn., June

To Pay for an Educati

To the Editor:

In a June 19 news story, J nett is reported as resigning Secretary of the Treasury for reasons, citing the cost of four children to college and that he had had "to borrow conscionable amount of mor further states, "It's a crime being done to people coming erment . . ."

I am most sympathetic to l nett's problem. What puzzles r ever, is that Government offi cluding presumably Mr. Ben unable to extend the same ct ions to the millions made played—and to be kept une for an extended period—by and Federal Reserve policies. "a crime what is being done

EXHIBIT 11

grand jury report took only twelve minutes in Judge Sirica's courtroom. When it was over, most of the defendants either refused comment or expressed their certainty that they will be cleared of all wrongdoing when all the evidence merges in the impending trial battles among high-powered attorneys.

try to have the defendants' cases split off into separate trials. A mass trial affords prosecutors greater opportunity to introduce more evidence affecting each defendant. But the main strategy may be to try to discredit the accusing witnesses, many of whom have admitted

President Nixon issued only a statement through his press office: "The President has always maintained that the judicial system is the proper forum for the resolution to the questions concerning Watergate. The indictment indicates that the judicial process is finally mov-

The Trials of the Grand Jury

Ever since the grand jury system started under Britain's King Henry II in 1166, it has been hailed as a guardian of the people and denounced as an oppressive tool of the government. Both descriptions can be accurate, for a grand jury is as good or bad as the people on it. The Watergate grand jury that handed up last week's historic indictment will be remembered as one of the best.

Convened on June 5, 1972, to hear evidence of crimes in the District of Columbia, the grand jury was shortly presented with the case of the Watergate break-in. On the evidence that federal prosecutors put before it, the 23-member jury indicted seven men accused of the burglary. Then, its work apparently finished, the jury recessed that September. Six months later it was called back to hear new evidence, and it has been hard at work ever since.

Some grand juries are merely rubber stamps for prosecutors, who use the institution's wide-ranging powers of subpoena to harass suspects against whom they have little real evidence. But several members of the Watergate grand jury have acquired such expertness and shown such diligence in questioning witnesses that they have become true partners of Leon Jaworski and the other prosecutors. Once last spring the jury members were so intent on their deliberations that they stayed in session until midnight, when they discovered that the cleaning people had locked them in. It took ten minutes of shouting and pounding before a janitor let them out.

This grand jury is a cross section of the people of Washington. It is made up of 13 women and ten men; 17 are blacks and six whites; only eight members are less than 40 years old. The dominant member is its foreman, Vladimir Pregelj, 46, who was appointed by Judge John Sirica. A native of Yugoslavia and a naturalized citizen, Pregelj (pronounced Pray-gull) is an economist for the Library of Congress. When the jury members asked President Nixon to testify before them, Pregelj wrote the request. Nixon refused to appear, and Pregelj planned to keep a photocopy of the reply as a historical memento. Carefully

he placed it in a newspaper to take home—only to misplace the newspaper.

The second most active member is Harold G. Evans, 42, a Postal Service clerk, who was elected deputy foreman by fellow members. Pregelj and Evans have asked about half of the questions posed by the jury. Others who have been active interlocutors include Lila Bard, 65, a retired Army officer; Enas Broadway, 62, an employee in the National Library of Medicine; George W. Stockton Sr., 55, a Defense Department supply technician; and Naomi R. Williams, 58, a retired teacher and elevator operator. The other members of the jury:

- ▶ Annie Bell Alford, 56, a part-time cleaner and maid.
- ▶ Ellen C. Brown, 66, a retired cleaning woman.
- ▶ Carolyn A. Butler, 31, a secretary-stenographer for the Department of Housing and Urban Development.
- ▶ Elayne Edlund, 45, a secretary for a consulting firm.

FOREMAN PREGELJ LEAVING COURT



- ▶ Clarence L. Franklin, 57, a taxi driver.
- ▶ Maurice P. Glover, 34, a receptionist for the U.S. Court of Claims.
- ▶ Dorothy M. Gray, 58, a housewife.
- ▶ George V. Gross, 49, an offset platemaker for the Government Printing Office.
- ▶ Wallace N. Hawkins, 35, a clerk for the Washington city government.
- ▶ Christopher C. Hopkins, 39, a mail handler for the Postal Service.
- ▶ Ruth W. Loveridge, 67, a secretary-receptionist for a private firm.
- ▶ Arthur McLean, 66, a retired plant foreman.
- ▶ Ethel M. Peoples, 39, a lunch clerk in the Washington city schools.
- ▶ Susie Ann Robinson, 59, a housekeeper.
- ▶ Kathryn Ann Smith, 37, a technical information specialist for the House of Representatives.
- ▶ Julie L. White, 39, who quit her job as a janitor at George Washington University to stay on the jury.
- ▶ Priscilla L. Woodruff, 30, occupation unstated.

Of the 23 original jurors, all have lasted the course so far. The burden has been more than most people anticipated, and lives and careers have been seriously interrupted. Government workers get full salary while on duty, in lieu of the standard jury fee of \$25 a day after 30 days of service, but some others receive only that meager stipend. "We are all affected," says Pregelj. "The hardship depends on how much you make and who employs you." Pregelj, though not suffering financially, says that because of his jury leave he has lost ground on the promotion list at the Library of Congress.

Unlike jurors in some celebrated trials, grand jurors are not sequestered and forced to live in hotel rooms. They are not supposed to talk about what goes on in their deliberations, but they can go home after duty; they can freely listen to the radio and watch TV.

The Watergate jurors seem aware that despite the hardships, they are privileged participants in history. Because of the restrictions on them, the story of their deliberations has not yet been fully told, but it is bound to be a remarkable account by a group of men and women thrust into history.

EXHIBIT 12

'Gemstone' Drew Watergate Noose

By Jack Anderson

The story can now be told how one word, "Gemstone," slowly tightened the Watergate noose around the neck of Jeb Stuart Magruder until he decided to confess.

He has confirmed Watergate wiretapper James McCord's written statement, quoted to us on April 2, that the Watergate bugging was planned in the Justice Department office of then-Attorney General John Mitchell in February, 1972.

Present were Mitchell, Magruder and White House counsel John Dean. They were briefed on the bugging plan by Watergate ringleader G. Gordon Liddy.

Magruder has also confirmed our reports of Dec. 26, Jan. 11 and Jan. 15 that the Watergate defendants were offered money to plead guilty and keep their mouths shut. The attempt to buy their silence, Magruder has now said, was ordered by Mitchell and Dean.

Throughout McCord's revelations, Magruder stuck to his sworn testimony at the Watergate trial that he had no knowledge of the bugging. It was Liddy's secretary, Sally

Harmony, who finally shook his story. She held back during her first appearance before the grand jury. But she went back this month and told all she knew.

In secret session, she told how she had typed up the telephone conversations of Democratic Party official Spencer Oliver on secret stationery marked with the code word "Gemstone."

Asked about the substance of the tapped telephone conversations, she recalled: "There was one conversation at one time, something that had to do with Mr. Oliver's taking a trip either to North Carolina or South Carolina, I have forgotten which."

McGovern Memos

Mrs. Harmony also testified that "I have on occasions typed a couple of memos that have come from (Senator George) McGovern's headquarters."

"At one time," she said, "(Liddy) dictated a memo to me giving information that the workers in the McGovern campaign were very unhappy that their funds were low, they were not going to be

paid, or their pay would be cut drastically . . ."

"Now, did you ever have anything to do with anything else from McGovern headquarters besides the memo relating to staff?"

"Just the list of names," she replied. "I did get the list of names of persons working in McGovern headquarters, on one occasion."

She reported that wiretapper McCord had dropped off reports for Liddy and that she once took an empty brown manila envelope to the campaign treasurer and brought it back filled for Watergate conspirator Howard Hunt.

Mysterious Envelope

Liddy instructed her, she said, to "give it to Hugh Sloan (the campaign treasurer). He will give it back to you. Call Howard Hunt and ask him to pick it up."

"Did you do that?" asked Silbert.

"I did that . . ." "And where did you give it to Mr. Sloan?"

"I took it to Hugh's office, which was right in the same area."

"And," asked Silbert, "was it

different in any way when you got it back?"

"Yes," she testified. "It had something in it, and it was sealed."

"Do you know what was in it?"

"I do not." "Was it the same size as money would have been?"

"Yes," she said. "I would assume it was the same size as money would have been." Thereafter, she handed the envelope to Hunt.

But it was the code word, "Gemstone," that upset Magruder's appercart. His assistant, Robert Reisner, testified that he had been instructed by Magruder to remove all sensitive material from his office after the Watergate burglary-bugging team was arrested. One of the files that was removed, stated Reisner, was a blue folder marked "Gemstone."

This was evidence that Magruder had received the Watergate bugging reports from Liddy. The handsome, cavalier Magruder, facing perjury charges for denying any advance knowledge of the bugging, decided to turn state's evidence.

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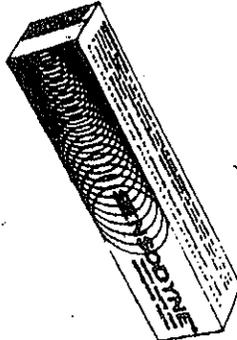
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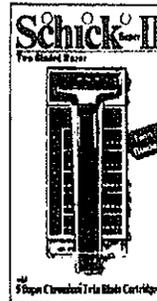
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McCord Tells of Watergate Payments

By Jack Anderson

In secret testimony before the grand jury, Watergate defendant James McCord has confided that his co-conspirator, Howard Hunt, last July feared the President's campaign chiefs were abandoning them and wrote a three-page letter demanding "to contact someone in the White House."

Thereafter, money allegedly was delivered to Hunt's attorney, William O. Bittman, for distribution to the defendants. Mrs. Hunt, acting as the courier, arranged to meet McCord at various places and slip him cash payments. McCord testified that he received around \$45,000 after the Watergate break-in for "salary" and legal expenses.

The grand jury is trying to track down who authorized the payments and whether the money was intended to buy the defendants' silence. Bribery to obstruct justice, of course, is a serious federal violation.

As McCord related it to the grand jury, he received a phone call around July 20 from Hunt. "He asked me," said McCord, "to go to a pay phone away from the house."

'Afraid We Might Talk'

"He felt the Committee to Re-elect the President (was) trying to do him in and to do us in for good and to put us away and abandon us. This

was his, almost his exact words.

"And he said that he was going to do, well, he said words to the effect that he was going to now assume a leadership role in dealing with the committee." McCord said he, too, felt "they were more interested in keeping us in jail than they were in getting us out, because they were afraid we might talk."

McCord later learned from Mrs. Hunt that her husband had written a three-page letter which was read to the campaign committee's attorney, Kenneth W. Parkinson. Re-counted McCord: "She said that when Bittman read the letter to Parkinson that, Hunt wanted to contact someone in the White House, Parkinson said, 'Give us a week.' And Hunt came back and said, 'No you get two days.'"

"So they said, 'Okay. Something will be worked out in a couple of days.' And that something, it appeared to me, had to do with a contact and it also had something to do with the funding for the defendants."

Not long afterward, Mrs. Hunt, using the code name "Chris," called to arrange the first transfer of funds. "I went over to her car and she gave me an envelope and she said, 'This is the payment for your salary for five months, beginning in July through whatever

it is'—I think it was November . . .

"I asked her if she wanted a receipt and she said, no, it was not necessary, that she would be making an accounting to Mr. Bittman for it." McCord also talked to her about legal fees. "They want to know," she reported back to him later, "if you're going to keep quiet."

'Executive Clemency'

Still later, Hunt brought up the same question with him directly. Testified McCord: "(Hunt) said, 'we have legal fee money for you.' And I said, 'What goes along with it?' . . . He put it this way, 'Everybody's naturally interested in knowing whether you're going to keep quiet.'"

McCord felt this was merely a maneuver to keep him quiet until the election, so he put off Hunt until Nov. 7. Then he decided "to go ahead and take the legal fee money." But he refused to be bound if the legal fees were offered "as a weapon to keep us from saying anything."

The question came up again at a meeting with Mrs. Hunt on Nov. 30. As McCord interpreted the conversation, "essentially there wasn't going to be any more money unless you fellows agree to plead guilty and take executive clemency at a later time and keep your mouth shut."

He quoted her as saying,

"They want to know if more than one year is okay with you . . . staying in jail more than one year, and then executive clemency." McCord turned down the deal saying he was going to plead not guilty and fight the case. "And she repeated this to me three more times," he recalled, "and it was in the context of 'Well, I'm not sure they're going to give you any more money' . . ."

"The meaning was very clear; that 'Unless you agree to go along with this, you can forget about any further legal fee money, or any further salary continuance.'"

Footnote: After the break-in squad was arrested inside Democratic Party Headquarters, McCord testified, the higher-ups first wanted to blame it on the CIA. But neither Hunt nor McCord would go along with that cover story. Then there was talk about blaming the whole affair on Gordon Liddy, the Watergate ringleader. McCord quoted Mrs. Hunt as saying she had been told "that there were now plans to charge Liddy. Some type of plan was under way to charge Liddy stole the money and bribed Hunt and McCord to perform the operation. I said, 'Well, you can pass the word that I won't stand for that . . . it's not true. It's not the way it happened.'" Parkinson has denied any role in getting money to the defendants.

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The Washington Merry-Go-Round

Secret Testimony on Delivery of Cash

By Jack Anderson

Secret grand jury testimony reveals that H. R. Haldeman, the White House manager, ordered \$350,000 in \$20, \$50 and \$100 bills loaded in a White House safe during the 1972 campaign.

After the election, the cash was delivered surreptitiously to a campaign aide, with Haldeman's approval, in an apparent violation of the new campaign disclosure law.

This is the sworn testimony of Haldeman's loyal farmer assistant, Gordon Strachan, who picked up the money the day before the disclosure law went into effect. He received it from Hugh Sloan, the campaign treasurer, but returned it to Fred LaRue, a campaign aide, at his Watergate apartment.

It took Strachan 45 minutes, he testified, to count all the cash. Yet no receipt was asked, and none was given. He quoted LaRue as saying: "I'll take care of this."

The money was supposed to be used, explained Strachan, for polling. He acknowledged that the President's campaign committee was already conducting "a very, very extensive polling operation." Yet \$350,000 was taken away from the committee and stashed in the White House, he said, "in

case we needed to get even more polling."

"Who told you to go to Mr. LaRue and give him the money?" asked Seymour Glanzer, an assistant U.S. attorney. "I decided that myself," said Strachan.

Haldeman's Role

"Did you discuss this incident with anybody afterwards?" pressed Glanzer. "Yes, I told Mr. Haldeman the money to Mr. LaRue."

"What did he say to you?" "Fine," Strachan quoted Haldeman as saying. "Does the... Committee to Re-Elect the President conduct its business in Mr. LaRue's apartment?" demanded the prosecutor.

"No," said Strachan. "It was a matter of course. He's a senior official. He asked me to drop it by after work."

"Do you have any idea why Mr. LaRue asked you to return this money to his apartment, where actually you could just walk across 17th Street?" asked the grand jury foreman.

"No, I do not," said the witness. "I mean, I find it somewhat dangerous for a person to be carrying this amount of

money in Washington in the evening... said the foreman. "When it would have been much easier and handier just to walk across 17th Street."

"I agree, and I was nervous doing it, but I did it," shrugged Strachan.

"Did it occur to you at the time," broke in another juror, "that it was not the proper way to do it?"

"Well, 'proper' is not—" stammered Strachan. "Is 'proper' an obsolete word these days?" snapped the juror.

"No," said Strachan. "Whether it was proper or improper, I was asked to return the money, and he asked me to deliver it to him at his home, and I did that."

Incredulous Juror

The foreman seemed incredulous. "I'm still puzzled," he said. "You get the money from the treasurer or whatever. Mr. Sloan's position was in the committee... and the money sits for seven months. Then Mr. Haldeman decides it has to go back to the committee. You call Mr. LaRue—you don't call Mr. Sloan and say 'Hugh, seven months ago you gave me this \$350,000 and we haven't used any of it. I'd like

to give it back to you since I got it from you,' but you call Mr. LaRue."

First Strachan said it was because Sloan had left the committee. When asked why he didn't return it to his successor, he said: "I honestly don't know."

Then Glanzer resumed the questioning. "Have you talked to Mr. Haldeman in the last couple of weeks?" he asked. "Yes I have," replied Strachan.

"About your appearance before the grand jury?" "Yes I have."

"What did you say to him and what did he say to you, and what did the prosecutor pressed the prosecutor. "He told me," replied Strachan, "to tell the absolute truth and to not worry about any political consequences. And those are my orders."

"Is there any reason," demanded Glanzer, "why Mr. Haldeman would have to urge you to tell the truth?" "No, there's no reason," said Strachan, "except it's a matter of real concern, the political damage that has resulted from this."

The handsome Strachan had one final word about Haldeman. "He's a man," said Strachan. "I admire xery much."

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Testimony on Segretti Hiring Differs

By Jack Anderson

White House chief of staff H. R. Haldeman, according to secret grand jury testimony, approved the hiring of Donald Segretti to be a political saboteur during the 1972 presidential campaign.

But former White House aides Gordon Strachan and Dwight Chapin swore under oath it was their idea to employ Segretti. Assistant U.S. Attorney Seymour Glanzer asked, incredulously, whether the two junior aides had the authority to unleash Segretti on a sabotage campaign "just on your own initiative?"

"Oh yes," replied Strachan, "we talked about that, just the two of us."

"Did you go back," asked Glanzer, "and check with Mr. Haldeman to find out whether it was all right to engage in such (political sabotage)?"

"Yes we did."

"What did he say?"

"He said, yes, go ahead," testified Strachan.

The youthful Strachan also acknowledged that he had put Segretti in touch with G. Gordon Liddy, the Watergate ring-leader. As Strachan recalled the circumstances, Liddy phoned him in agitation to report strange activities in the field. Democratic and Republican candidates alike, Liddy reported, were encountering mysterious foul-ups. He sus-

pected sabotage by a man he described as "about six foot... fairly good-sized."

"That," said Strachan, "does not fit Don Segretti's description. Don is a very small guy."

Liddy-Segretti Link

But small or tall, Liddy demanded to know who the Republican undercover operative was. "I want that information about that individual in the field," Strachan quoted Liddy as insisting.

So, said Strachan, "I gave him Segretti's telephone number. He was quite upset." Then Strachan notified Segretti. "I called Don Segretti and I told him to expect a call from Gordon Liddy, that he was concerned about his activities in the field and that he should answer his questions."

Both Strachan and Chapin insisted that Segretti operated on his own and seldom reported to them. "We thought we could pay him and forget him," explained Strachan.

"Do you mean," asked the grand jury foreman, "you would give him a lump sum and let him go on his own?"

"Yes," replied Strachan, "we wanted to set him up and get him started and not have to worry about him later." They heard from him, Strachan testified, "maybe once every six weeks."

Assistant Attorney General Donald Campbell broke in. "Mr. Strachan... let's just

take one month, January of '72. During that month, there were 16 phone calls from Mr. Segretti to the White House. Now this is a little bit more frequently than once every six weeks." Campbell asked whether Strachan had "any explanation."

The former Haldeman aide answered simply "No." Later, he said sorrowfully that hiring Segretti "was a stupid decision, and I sincerely regret it. But I did it. I don't know what else to say. It was dumb, and the press, publications and so forth show it's dumb. But I did it."

Slow Mail

Congressmen investigating the nation's slowpoke postal service are furious over reports that local postmasters have been ordered not to talk about their problems to members of Congress.

Just last month, Postmaster General Elmer T. Klassen assured Congress that no "gag rule" had been imposed prohibiting postal employees from speaking out. On the contrary, Klassen said he had personally urged his employees to be candid with Congress. The news, however, has failed to reach many postmasters.

Rep. Wayne Owens (D-Utah), for example, recently sent letters to some 240 postmasters throughout Utah. Owens, who pledged to keep the names of

the postmasters confidential, simply wanted ideas on how mail deliveries might be speeded up.

More than a month has gone by, and Owens has received only a handful of replies. As one postmaster explained to Owens: "We have been told not to discuss this very thing with our Congressmen or Senators... A liaison officer has been selected by the (Post Office) department to do this."

Another postmaster replied simply: "I wouldn't dare to put in print what I think of the service, and don't even quote me saying that."

Owens' complaints have triggered an angry response from Rep. James Hanley (D-N.Y.), chairman of the House Post Office subcommittee. In a "Dear Ted" letter, sent to Klassen last week, Hanley said he found the complaints "especially annoying" because they apparently contradicted Klassen's testimony. Hanley added: "I would be pleased if you would transmit a directive to Postmasters in accord with your testimony."

Owens, meanwhile, has learned that a supervisor walked through a local Utah post office asking mail carriers whether any had voted for Owens in the last election. Those who admitted voting for Owens allegedly were assigned extra deliveries that day.

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The Washington Merry-Go-Round

Watergate Called Part of Vast Plan

By Jack Anderson

Watergate conspirator Howard Hunt has told a federal grand jury that he and Gordon Liddy traveled to Miami under aliases in December, 1971, to set up a vast spy mission against the Democrats.

As part of the mission, Hunt, a former Central Intelligence Agency sleuth, went to the CIA's placement bureau, which willingly provided him with the name of a locksmith skilled in "lockpicking" and opening "a locked room." The locksmith, Thomas Amato, said he'd rather sailboat with his family than spy for the GOP, Hunt testified.

The articulate Hunt, who once paid a secret visit to ITT memo-writer Dita Beard in an ill-fitting red wig, said he disguised his name during the Miami mission out of habit. As a CIA man he had often traveled under false papers in case he was hijacked to Cuba, he said.

It was natural, then, that when he went to Miami with Liddy, the same air of mystery that surrounded Hunt's CIA work and his numerous published thrillers prevailed.

Hunt told the grand jury that his and Liddy's main target was information on the Democratic National Convention in Miami, and especially on the role of Sen. Edward Kennedy (D-Mass.) who then seemed to have "a lead" among the candidates. Hunt

testified that "when Kennedy ... would in fact be a candidate" was the big question for Liddy, the flamboyant counsel for the Committee for the Re-election of the President.

But Hunt, traveling as "Ed Warren" and Liddy, as "George Leonard," had far more in mind than just espionage on Kennedy's place in the presidential race. They checked into Miami Beach's plush Playboy Plaza and met with Hunt's old "comrade in arms," ex-CIA agent Jack Bauman. What Liddy, who was running the Miami venture, wanted from Bauman was no less than total "intelligence" on everything the Democrats were doing "in terms of political action," Hunt swore.

Total Intelligence

Obviously awed at the breadth of this mandate for spying, the prosecutor in the grand jury asked Hunt, "What kind of Democratic activities?" Hunt reiterated: "Political activities."

Under questioning, Hunt spelled out for the jurors Liddy's grandiose master scheme. For one thing, Liddy wanted to discover all that the Democrats were doing "against each other." He wanted to know all their motivations, who was strong enough to "knock another man out of position" and who at any moment was "gaining ascendancy," Hunt asserted.

The Liddy blueprint also

called for spying on those candidates close to "radical people," reports on where all candidates were at all times and how many hotel rooms each candidate's delegations were occupying.

Faced with this demand for nearly total knowledge of the opposition, the capable Bauman told Hunt and Liddy that "his services would come very high," Hunt testified. In fact, said Hunt, Bauman wanted payment in the form of a "trust fund [for] the future of his children."

The Playboy Plaza meeting ended with Bauman agreeing to "give the matter some consideration and [to] let us know." A few days later, Bauman sat down again with Hunt at the Hay Adams hotel just across Lafayette Park from the White House. As Hunt gloomily described it to the grand jury, Bauman said he "was not going to cooperate" with the master spying scheme.

At about the same time, the conspirators got the bad news on Amato's preference for sailing. When the prosecutor asked Hunt why they needed a lockpicker, Hunt said Liddy told him that in "ensuing months" there would be a "wide variety" of tasks, among them lockpicking. Later, observed Hunt pointedly to the grand jury, he found out exactly what Liddy meant. Presuma-

bly Hunt meant to break in at Democratic headquarters in Washington's Watergate complex.

White House Offices

In the course of his appearances before the grand jury, Hunt testified that Liddy had a White House office and pass at the very time he was plotting missions against the Democrats. Hunt, too, had a White House office which the Secret Service had secured with a special lock, he said. His papers were in a three-way combination safe, which White House aides cracked after Hunt's arrest.

It was in the White House and, once, in Hunt's kitchen at home, that Liddy unfolded some of his plans for activities against the Democrats.

Hunt kept \$8,500 in cash in his White House safe for Liddy in case speedy funding was needed on weekends for Liddy's Mission Impossible duties. The money finally was turned over by Hunt to lawyer Douglas Caddy, after the Watergate housebreakers were captured on June 17, 1972. Caddy was the first lawyer to step in on behalf of the Watergate suspects.

Footnote: While the Bauman approach failed, there is evidence that the Watergate gang was planning other spying against the Democrats at the time they were captured.

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Watergate Team Hit Democrats Twice

By Jack Anderson

The Watergate Mission impossible team, which was arrested inside Democratic Party headquarters on June 17, 1972, broke into the premises three weeks earlier during the Memorial Day weekend.

This previous espionage mission has been described to a federal grand jury by James McCord, President Nixon's erstwhile campaign security chief, who confessed he bugged Democratic official Spencer Oliver's telephone while others photographed party documents.

The Memorial Day break-in was staged by eight men, three more than were caught at gunpoint in the early hours of June 17. Asked how many actually entered the Democratic lair, McCord told the secret panel: "Seven Cubans and me, or I. I think that's correct."

"And do you remember the different functions that were performed by any of the different people?" he was asked. "I mean, what were they doing? Could you tell us that?"

McCord explained

McCord, "was electronics, while Mr. Bernard Barker went through various end sundry files, and he and some of the others picked out certain material to be photographed. It seems to me that Barker helped set up, or one of the men helped set up, the photographic pieces of equipment to take pictures."

"And Mr. Frank Sturgis and two or three of the others were generally the lookout men, so to speak. Keeping an eye on the guard, if he were coming out, or anyone else that might come into the office. The other Cubans, generally, seemed to be supporting Mr. Barker in the photographic operation."

Inside Watergate

He was asked how long they stayed inside. "It seems to me," he answered, "that we were in a couple of hours. It may have been a little less than that, about an hour and a half."

Going into more detail, McCord testified: "As best I recall, the others went in first, went through the front door. And I got a call, I think from

Howard Hunt, as best I recall, by telephone from his office at the Watergate Hotel, which conveyed the message that, in so many words, that the men were inside and I should go ahead and join them."

"So I came up the back stairs from the basement, which were taped, and came up to the back door, and I think Frank Sturgis let me in the back door."

"The prosecutors wanted to know how the other conspirators got in the front door. 'Well,' said McCord, 'I wasn't there, but my understanding was that a locksmith opened the lock or otherwise they jimmied it.'"

Earlier, McCord told the grand jury he had purchased the bugging devices in Chicago. Seymour Glanzer, an assistant U.S. attorney, showed him an electronic device.

"Mr. McCord..." said Glanzer, "I want to ask you, sir, if this in one of the devices that you purchased from Mr. Stevens of the Stevens Company in Chicago?"

"I can say that it looks like it," agreed McCord. "It's about the same size. I can't posi-

tively identify it, because there's no serial numbers on it, but it has a very close appearance and I would guess it was the same."

"I see," said Glanzer. "And does it resemble the one that you placed upon Spencer Oliver's phone?"

"It does," testified McCord.

Hiding Evidence

After the June arrest, McCord got rid of most of the incriminating equipment. He explained to the grand jury:

"Some of that equipment I had stored in a sort of wooden cabinet, along with a lot of other electronic parts that had been purchased, and these were stored in a closet near the laundry room, in my home. Like some people have a carpentry workshop, I have a bit of an area there where I kept some of the electronic equipment."

"So I took all of it, and, essentially, I wanted to get it out of the house, and I took that equipment and stashed it either out on a country road—those two country roads—except for some of the things which I tossed in the Potomac."

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Web Tightens Around Nixon Advisers

By Jack Anderson

The Watergate web is tightening around three of President Nixon's closest advisers—former Attorney General John Mitchell, former aide Jeb Magruder and White House counsel John Dean.

All three have protested their innocence, and the case against them is still largely circumstantial. But witnesses before the grand jury have given secret testimony, which darkens the cloud over the trio.

The case against them rests heavily upon Watergate wire-tapper James McCord's charge that the burglary-bugging operation was actually planned in Mitchell's Justice Department office by Mitchell, Magruder and Dean, with Watergate ringleader G. Gordon Liddy giving the briefing.

On April 2, we quoted from McCord's confidential initialed memo that "John Dean, Jeb Magruder, Gordon Liddy and John Mitchell in Feb. 1972 met in Mitchell's office at the Department of Justice and held the first formal discussion of bugging and related operations."

The memo states that Liddy prepared huge four-foot-by-four-foot charts for the meeting. "The charts were brought in late one afternoon and left in (Liddy's) office on the 4th floor wrapped in brown paper," McCord related.

Liddy's former secretary, Silvia Panarites, has confirmed to the grand jury that a meeting was scheduled. "It was a meeting at the Justice Department," she testified, "among Mr. Liddy, Mr. Magruder and Mr. Mitchell."

Mysterious Package

"Now, Miss Panarites," asked Assistant U.S. Attorney Donald Campbell, "did there come a time when you observed a brown package in Mr. Liddy's office?"

"Yes, sir," she replied. She described the package as about four feet in dimension, an inch thick, wrapped in brown paper. "Mr. Liddy himself carried the package into the office . . ." she testified. "He did say that I was not to look in the package; that it was better for me not to know of its contents . . ."

The mysterious package was left in Liddy's office overnight, she said, so Liddy asked her to hide it in case "somebody should happen to walk in, it would not be seen . . . So I moved the bookcase and put the package behind the bookcase."

Another prosecutor, Seymour Glanzer, asked whether Liddy's removal of the package the next day was "related in your mind to this appointment he had at Justice?"

"I can't relate it to anything," she responded, "other

than the fact that he removed it himself."

Mitchell reiterated to us in a telephone conversation that he had no advance knowledge of the Watergate bugging. Magruder acknowledged attending the February, 1972, meeting but insisted the bugging had not been discussed. We couldn't reach Dean, but our White House sources say he has now admitted to his superiors that Liddy presented various "wild" bugging plans at the meeting.

"Gemstone" Papers

The most damaging grand jury testimony disputes Magruder's sworn statement that he knew nothing of the Watergate bugging. Another Liddy secretary, Sally Harmon, testified that she had typed up reports on the conversations of Democratic Party officials. She used secret stationery with the code word, "Gemstone," printed on top, she said.

She reported that the campaign committee's own printer had delivered the "Gemstone" stationery to Liddy's office and had cautioned her: "Mr. Liddy said no one is to see this."

After the arrest of the burglary-bugging squad at the Watergate, Magruder in a phone call from California instructed his assistant, Robert Reisner, to remove sensitive files from his office. One was

a blue folder, which Reisner testified he associated with Liddy.

"Now my memory is vague," he stated, "as to whether it said 'Source' or whether it said 'Memorandum from.' But it said that first, and then the second word was 'Gemstone.' It seemed to me that was from Mr. Liddy."

"Gemstone?" asked prosecutor Earl Silbert.

"That's right."

Reisner said he turned the "Gemstone" folder over to campaign official Robert Odle who later testified he returned it to Magruder without examining it.

Reisner also recalled that Magruder, in introducing Liddy to the staff in January, 1972, said: "This is Gordon Liddy, who is going to come to the staff as a lawyer, and Gordon Liddy also has other talents."

Commented Reisner: "(Magruder) was trying to make a joke about the fact that Mr. Liddy was . . . engaged in doing kinds of research activities." Afterwards, Reisner overheard enough around the office to "infer" that Liddy "was responsible for some sort of secret activity or research."

It would appear Magruder must have had more knowledge than he has admitted of Liddy's Watergate operation.

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KALMBACH LINKED TO DESTRUCTION OF CAMPAIGN DATA

Nixon Attorney at the Time Reportedly Acted Before New Financing Law

DONORS WERE SHIELDED

Action Could Be Violation of Federal Act in Effect When It Took Place

By SEYMOUR M. HERSE
Special to The New York Times
WASHINGTON, May 3—Herbert W. Kalmbach, who was President Nixon's personal attorney until a few days ago, has told Government investigators that he destroyed all his campaign finance records before the new Federal campaign finance law took effect April 7 last year, sources close to the case said today.

The sources reported that Mr. Kalmbach had said that he destroyed the records to prevent any public disclosure of the donors' names. Such destruction of records could be a violation of the 1922 Federal Corrupt Practices Act, which calls for maintenance of such files for at least two years. The Corrupt Practices Act expired when the new law went into effect.

It could not be immediately determined whether the data in the destroyed records were duplicated in other records.

Associate Explains Act

The maximum penalty for the accidental destruction of such records under the old act was a fine of \$1,000 or one year's imprisonment. The deliberate destruction of the records could result in a fine of \$10,000 or two years in jail. Some lawyers said these penalties would still apply.

Some officials have estimated that the Committee for the Re-election of the President collected more than \$22-million before the April 7, 1972, reporting deadline.

In an interview today, one of Mr. Kalmbach's close associates acknowledged that the files had been destroyed and explained it this way: "If a man says to you, 'I want to help the President but I don't want it known' and you assure him confidentiality, you've got to assure that confidentiality."

Destroyed 'Everything'
The associate said that Mr. Kalmbach had destroyed "everything that he had" in connection with the contributions before the April deadline.

The documents were destroyed, the associate said, both in Mr. Kalmbach's office in the re-election headquarters, where he served as associate chairman of the Republican finance committee, and in his private offices in Newport Beach, Calif., where he maintained a private law practice. Most of his funds were reportedly raised among wealthy



John D. Ehrlichman, right, and H.R. Haldeman, second from right, with their attorney, John J. Wilson, going to meeting yesterday with Watergate prosecutor, Earl J. Silbert.

Haldeman and Ehrlichman Testify Before Grand Jury

By WALTER RUGABER
Special to The New York Times

WASHINGTON, May 3—H. R. Haldeman and John D. Ehrlichman, who resigned recently as senior advisers to President Nixon, appeared at length today before a Federal grand jury investigating the Watergate affair.

The two former White House officials arrived at the United States Courthouse here early this morning and conferred privately with the principal Assistant United States Attorney, Earl J. Silbert.

Mr. Ehrlichman then went alone before the grand jurors and spent more than four hours in the secret proceedings. Mr. Haldeman, who followed him this evening, appeared for an hour and 15 minutes before the 23-member panel.

ELLSBERG JUDGE ORDERS HUNT DATA

Court in Capital Will Send Testimony, Reportedly on Los Angeles Break-In

By MARTIN ARNOLD
Special to The New York Times

LOS ANGELES, May 3—The judge in the Pentagon papers trial ordered today that the grand jury testimony of E. Howard Hunt Jr. be given yesterday in the Watergate case be turned over to him immediately.

Hunt reportedly testified that he and G. Gordon Liddy, convicted in the burglary at national Democratic headquarters last June, personally took part in the break-in at the office of Daniel Ellsberg's psychiatrist the night of Sept. 3-4, 1971.

In Washington, Federal District Judge John J. Sirica ordered that 37 pages of testimony by Hunt be sent to Federal District Judge William Matthew Byrne Jr., who is presiding at the trial here of Dr. Ellsberg and Anthony J. Russo Jr.

Judge Byrne reiterated today, with some anger, that "the burden is on the Government" to prove that neither the Justice Department nor the White House nor the Watergate conspirators had interfered with the constitutional rights of Dr. Ellsberg and Mr. Russo and.

EXCHANGE TO SEEK BROKERS' FEE RISE

Directors Approve Proposal to Aid Troubled Firms—S.E.C. Holds Authority

By VARTAN G. VARTAN

Plans to raise commission rates and possibly other brokerage charges that would affect all small and some large investors were endorsed yesterday by directors of the New York Stock Exchange.

The proposal is designed to produce \$300-million in additional revenue annually for the financially troubled member firms—a 10 per cent increase over last year's total revenues of \$3-billion.

The next step is discussion with the Securities and Exchange Commission, which holds ultimate authority over any changes in commission rates.

The reaction of the S.E.C.—approval, partial approval or rejection of the proposal—is a matter of conjecture. The S.E.C. may decide to hold public hearings on the matter.

James J. Needham, chairman of the exchange, termed the need for increased revenues "urgent," citing an aggregate loss of approximately \$75-million for member firms in the first three months of this year.

Vesco Warrant Issued

A warrant for the arrest of Robert L. Vesco, the New Jersey financier who secretly gave \$200,000 to President Nixon's re-election campaign, was issued in Federal court here yesterday. Details on Page 19.

KISSINGER VIEWS CAMBODIA PARLEY AS POSSIBLE SOON

Speaks as President Issues Annual Message on the State of the World

Special to The New York Times
WASHINGTON, May 3—

Henry A. Kissinger said today that the situation in Cambodia had improved both militarily and politically in recent weeks and that there was a possibility that negotiations might begin in the near future to end the fighting there.

His statement came at a news conference at the White House as President Nixon sent Text of message conclusions is printed on Page 8.

his annual State of the World Message to Congress. The 232-page report said in its section on Indochina that if North Vietnam continued to violate the Vietnam cease-fire accord of Jan. 27, "it would risk revived confrontation with us."

Mr. Kissinger, the President's adviser on national security and negotiator of the accord, spoke in a decidedly more encouraging tone than the report, which he said, was written several weeks ago and reflected the situation then.

'Process of Adjustment'

Mr. Kissinger said that although the United States had repeatedly said that it was "disappointed" with the way the agreement was being carried out, "it is also true that for all the parties there is a difficult process of adjustment."

"We are not pessimistic about the long-term prospects," he declared. "In the negotiations that we are conducting with the North Vietnamese, we are approaching them with the attitude that the difficulties can be ameliorated, if not solved, and that one can look at this as an evolutionary process rather than a final settlement."

Mr. Kissinger was referring to the recent preliminary talks held in Paris by William H. Sullivan, Deputy Assistant Secretary of State for East Asia and Pacific Affairs, and Nguyen Co Thach, the Deputy Foreign Minister of North Vietnam. They were aimed at preparing the way for a meeting, possibly in mid-month, between Mr. Kissinger and Le Duc Tho, Hanoi's chief negotiator.

Nixon Makes Radio Speech

In a radio broadcast tonight reporting on the State of the World Message, Mr. Nixon expressed hope that the problems of Indochina, including a cease-fire in Cambodia, "can be solved at the conference table," but he added:

"We will not turn our back on our friends and allies while Hanoi makes a mockery of its promise to help keep the peace."

The President's message, which stresses 1973 as "the year of Europe," discloses the United States approach to the forthcoming talks with the So-

LEBANESE JE ATTACK PAL AFTER A CE

4 in Mackell's Off Free Car Use, A

By DAVID BURNHAM

The Avis-Rent-A-Car System, Inc., permitted at least four employees in the office of former District Attorney Thomas J. Mackell of Queens to use cars free at a time the office was prosecuting a case whose outcome benefited Avis, according to documents presented to the Joint Legislative Committee on Crime.

One of those identified as receiving the free use of Avis cars was Assistant District Attorney Frederick J. Ludwig, the man who became the acting head of the Queens prosecutor's office when Mr. Mackell resigned recently. The resignation followed Mr. Mackell's indictment on charges of blocking the investigation of a criminal matter.

Mr. Ludwig, in a telephone call to the committee's counsel, Jeremiah B. McKenna, immediately denied the assertion by an Avis representative that he failed to pay for rented cars on four occasions — in

Revised Narcotics Is Voted 80-65 in

By WILLIAM E. FARRI
Special to The New York Times

ALBANY, May 3—The Assembly passed a newly altered version of Governor modification legislation dealing with drug Rockefeller had agreed to the changes to have the bill brought up for a vote.

The resolution of the impasse in seeking the necessary Republican votes required to pass the bill without Democratic support came at a G.O.P. conference this morning when the latest modifications were adopted to placate wavering members of the majority party. A total of 76 votes was needed to pass the bill in the Assembly.

Assembly Speaker Perry B. Duryea, Republican of Montauk, L.I., quickly moved the Governor's narcotics legislation—which easily passed the Senate last week—to the floor, where it was debated for six hours.

Speaking from the rostrum, Mr. Duryea assured the members that the Governor had acceded to the new changes and that they would be enacted by the Senate.

Passage tonight drew criticism from the New York Civil Liberties Union, which called the action "one of the most ignorant, irresponsible and inhumane acts in the history of the state."

The Assembly minority leader, Stanley Steingut, Democrat

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EXHIBIT 14

NEW YORK, SATURDAY, MAY 5, 1973

U.S. APPEAL COURT UPHOLDS RELEASE OF BIAGGI MINUTES

Decides, 2-1, to Bare Jury Testimony Without Names —5-Day Stay Is Granted

By **ARNOLD H. LUBASCH**
A Federal appeals court yesterday affirmed a decision to disclose the grand jury testimony of Mario Biaggi on the ground that the Bronx Representative had waived his right to secrecy.

In a 2-to-1 opinion, the court rejected Mr. Biaggi's appeal against disclosing the testi-

Texts of majority opinion and dissent, Page 20.

mony with other names deleted. However, it delayed the disclosure for five days to permit the mayoral candidate to go to the United States Supreme Court. His lawyer, Arthur H. Christy, conferred with Mr. Biaggi last night, but a spokesman said they had not yet decided whether to appeal to the Supreme Court, which could agree to hear the extraordinary case or allow the disclosure decision to stand without reviewing it.

Court sources said last night that Mr. Biaggi had applied to the Appeals Court for a rehearing of his case, arguing that, contrary to the majority opinion rendered yesterday, he had not waived his rights to secrecy.

Issue in Campaign

Mr. Biaggi's 1971 testimony became a major issue in the current mayoral race when The New York Times reported on April 18 that—despite his assertions that he had answered all questions put to him by the grand jury—he had invoked the Fifth Amendment.

According to yesterday's opinion by the United States Court of Appeals for the Second Circuit, the testimony before the grand jury could not be disclosed if Mr. Biaggi had not come to court seeking a disclosure.

Critics contend that Mr. Biaggi applied for severely limited review of his testimony, then asked for total disclosure, in the hope that his legal motions would be denied while enabling him to claim he had tried to divulge the truth.

The rule against releasing grand jury testimony generally prevails, the court observed, "no matter how much, or how legitimately, the public may want to know whether a candidate for high public office has

HAIG ASSUMING HALDEMAN DUTIES; HUNT LINKS WHITE HOUSE AND C.I.A. TO BURGLARY IN ELLSBERG INQUIRY

GRAND JURY DATA

2 Nixon Men Named—Krogh Said to Admit Role in Break-In

By **MARTIN ARNOLD**
Special to The New York Times

LOS ANGELES, May 4—The plot to break into the office of Dr. Daniel Ellsberg's psychiatrist was conceived, supervised and paid for in the White House, and the Central Intelligence Agency supplied the camera and disguises for the job, according to testimony by E. Howard Hunt Jr. before the grand jury investigating the Watergate break-in.

Hunt's testimony, taken Wednesday in Washington, was released here today by the

Excerpts from grand jury testimony are on Page 15.

Judge in the Pentagon papers trial. It disclosed in detail an elaborate movie-thriller scenario, which, Hunt said, was personally directed by two men then on the White House staff—Egil Krogh Jr. and David Young.

The Associated Press reported in Washington that, according to a highly qualified source, Mr. Krogh had acknowledged that he had helped supervise the Ellsberg burglary. The report said that earlier he had been in "personal communication" with President Nixon but did not elaborate on the nature of any such communication.

Defense Motion Denied

The testimony told how Hunt and G. Gordon Liddy—the first pleaded guilty and the other was convicted in the Watergate trial—first "cased" the doctor's home neighborhood and his office, how they obtained a special camera for the job from the C.I.A., and how they visited a C.I.A. "safehouse" in Washington to obtain disguises and false identification material.

In another development today, Judge William Matthew Byrne Jr., who released the testimony, denied a defense motion for dismissal based on his own visits with John D. Ehrlichman, then President Nixon's



Gen. Alexander M. Haig Jr. in the White House office formerly used by H. R. Haldeman, whom he succeeds.

'INTERIM' CHOICE

Packard the 'Leading Candidate' to Be Pentagon Chief

By **BILL KOVACH**

Special to The New York Times
MIAMI, May 4—Gen. Alexander M. Haig Jr. was named Assistant to the President today as President Nixon began to redesign a White House staff devastated by the Watergate scandal.

The appointment of General Haig, now Vice Chief of Staff of the Army, was described by the White House as an "interim" appointment to continue most of the duties that had been performed by H. R. Haldeman as head of the White House staff. Both Mr. Haldeman and President Nixon's top adviser on domestic affairs, John D. Ehrlichman, resigned as a result of the Watergate affair.

The Counsel to the President, John W. Dean 3d, has also resigned. He has been replaced by Leonard Garment.

The President decided on the appointment of General Haig, according to the White House press secretary, Ronald L. Ziegler, as the first step in a complete re-evaluation of the operations of the White House.

Packard May Get Post

Mr. Ziegler also implied that David Packard would be the new Secretary of Defense. Mr. Packard served in the Pentagon in the first Nixon Administration.

Speaking of General Haig Mr. Ziegler said, "The President felt the necessity to have someone assume the many responsibilities of Bob Haldeman at this time while the President considers the entire matter of how the White House operates in the future."

Although he refused to characterize the kinds of changes the President is considering, Mr. Ziegler did indicate a desire for basic changes.

"Members of the staff with great responsibilities are now leaving," he said, "and he is making changes and adjustments he feels [will be] designed to allow the business of the White House to proceed

Segretti Indicted in Mailing Of Bogus Muskie Letter

By **MARTIN WALDRON**
Special to The New York Times

ORLANDO, Fla., May 4—A Federal grand jury today indicted Donald H. Segretti, a national campaign worker for President Nixon, on a charge of political espionage in Florida last year.

The grand jury accused Mr. Segretti and a Tampa accountant, George H. Hearing, of arranging for the mailing of a fictitious letter on the stationery of Senator Edmund S. Muskie, Democrat of Maine, who was a candidate in the Florida Presidential primary at the time.

The letter accused two other Democratic candidates for President—Senator Hubert H. Humphrey of Minnesota and Senator Henry M. Jackson of Washington—of sexual misconduct.

Mr. Humphrey and Mr. Jackson vigorously denied the charges at the time, and aides to Senator Muskie disclaimed any knowledge of the letter.

Linked to Plot

Mr. Segretti, a 28-year-old Los Angeles lawyer, has been linked with several top Republican campaign workers and officials alleged to have been involved in a national plot to destroy Senator Muskie's

DEAN SAYS HE TOOK WATERGATE DATA

Reports Putting Documents in a Bank to Prevent Their 'Illegitimate Destruction'

By **WALTER RUGABER**
Special to The New York Times

WASHINGTON, May 4—John W. Dean 3d said today that before his dismissal as counsel to President Nixon he removed documents dealing with the Watergate scandal from his White House office to prevent their "illegitimate destruction."

Mr. Dean, in papers filed this afternoon with the United States District Court here, reported that he had placed the

Petersen Wants Special, Outside Prosecutor to Oversee Inquiry

His Confidence Must Be Restored

sure for Independent Investigation Comes From Congress and G.O.P.

DAVID E. ROSENBAUM
Special to The New York Times

WASHINGTON, May 4 — E. Petersen, who is in charge of the Federal investigation of the Watergate case, has associates that he would like to have a special, outside prosecutor appointed to oversee the entire inquiry.

Petersen, who is head of the Justice Department's Criminal Division, is said to have expressed a belief that public confidence in the administration of justice can be restored if someone not connected with the Nixon Administration is in charge of the prosecution.

In the last two weeks, as information about the Watergate affair has unfolded, confidence has increased from members of Congress and from Republican party leaders for the appointment of an independent investigator.

Petersen was apparently placed in charge of the Federal investigation in late March, at a time when President Nixon had obtained new information about the burglary and tapping of Democratic national headquarters in the Watergate complex last June.

It is not clear when Mr. Petersen began to argue for the appointment of a special prosecutor, but as early as two months ago he remarked that he was uncomfortable heading the investigation.

Department Since 1951
Mr. Petersen has served in various positions since 1951. Until he became an Assistant Attorney General last year, he had never had a job by Presidential appointment.

He is widely respected by career officials in the department. Many of them do not have a special prosecutor in the Watergate case, partly because they believe it might reflect poorly on Mr. Petersen and also because they view it as outside the purview of the department's responsibilities.

Mr. Petersen has met with President Nixon's nominee to be Attorney General, and is convinced that Mr. Richardson will name an outside director of the investigation. But Mr. Richardson has declined to commit himself. There were many rumors in legal circles on Capitol Hill about whom Mr. Richardson might pick. William T. Coleman, a Philadelphia lawyer who served with Richardson as clerk to the Supreme Court Justice, Frankfurter, was ruled as a possibility by White House and Congressional sources. These sources said among other factors, Mr. man was too close personally to Mr. Richardson to be considered independent.

New York Lawyer
Another name discussed was that of Lawrence E. Walsh, a lawyer from New York who is in the American Bar Association and who has a background as a prosecutor and a member of the Senate Judiciary Committee. Mr. Walsh said today he had not been approached for the job.



H. R. Haldeman and John D. Ehrlichman, right, outside the Senate Office Building after meeting yesterday with Senate committee investigating the Watergate case.

Dean Says He Removed Watergate Documents

Continued From Page 1, Col. 7

conduct an initial White House investigation into the break-in and bugging of the offices of the Democratic National Committee last June 17 at the Watergate complex.

Mr. Nixon said in August that the report had vindicated his staff. But Mr. Dean, now implicated in an alleged White House cover-up of the affair, has asserted that his report had been tampered with or kept from the President altogether.

Senators Hear Two
Other Watergate developments today included the following:

Senators Haldeman and John D. Ehrlichman, two ranking White House aides who resigned on Monday, spent the day in preliminary testimony before the staff of the Senate select Watergate committee. The panel is scheduled to begin public hearings in about two weeks.

It was disclosed that officials of President Nixon's political fund-raising unit secretly collected between \$1-million and \$2-million in cash and then destroyed records in which the

donors were identified. E. J. Kelly, a former White House aide involved in a Presidential investigation of the Pentagon papers case, conferred with Federal prosecutors handling the Watergate investigation.

In Los Angeles today, testimony from the Watergate grand jury released at the Pentagon papers trial showed that E. J. Kelly had ordered him and G. Gordon Liddy to break into the office of Dr. Daniel Ellsberg's psychiatrist.

In his court papers, Mr. Dean said he "has reason to believe that some, if not all," of the documents he removed from his office "may have a bearing on the subject under investigation" by the Senate Watergate panel.

ing Attorney General G. Kleindienst and Gray 3d, acting director of the Federal Bureau of Investigation.

Mr. Dean said he had the documents from before his discharge from the White House consigned to a safe place under his control until put in the bank yesterday.

He said he was "the reasonable man" either a covert or an office before his discharge by persons unknown to him, and that the termination of his file agents "thereby risked illegitimacy of the documents."

The files of Mr. Haldeman and Ehrlichman were placed under the clock guard by since the three men were indicted.

Mr. Dean said he had been out of town and said he had deposit box No. 100 at Alexandria-Nation on his return.

Hunt Links the White House and the C.I.A. to Burglary in Ellsberg In

Continued From Page 1, Col. 5

top domestic affairs adviser. He also took under submission a motion to dismiss on the ground of Government misbehavior — for suppressing evidence and for the burglary. He refused, at this time, to hear arguments on whether the case had been "tainted."

"I am convinced beyond any doubt at all," he said, "that nothing has compromised my ability to act as a fair and impartial judge in this case."

But the most startling development was the release of the Hunt testimony.

In it, he told how Mr. Krogh and Mr. Young had supervised the operation, and how they had been kept aware of every step of it. Previously, Mr. Ehrlichman had told the F.B.I. that he had been directed by President Nixon to head an officio White House investigation of the release of the Pentagon papers, and that he turned that job over to Mr. Krogh and Mr. Young.

Last Wednesday, Mr. Krogh suddenly took a leave of absence from his job as Under Secretary of Transportation. While working at the White House, he had reported directly to Mr. Ehrlichman. He was a member of Mr. Ehrlichman's domestic council as an adviser on criminal justice matters.

Also on Wednesday, Mr. Young resigned his staff position on the National Security Council.

According to an F.B.I. report made public this week, Mr. Ehrlichman on April 27 told the bureau that he didn't know Liddy and Hunt had broken into the psychiatrist's office until after it had happened, that he did not agree with the "method of investigation" and told the two men "not to do this again."

Asked tonight about Hunt's testimony, a spokesman for the Central Intelligence Agency said: "The Central Intelligence Agency had no advance knowledge of any sort of the break-in by Mr. Hunt of the office of Dr. Ellsberg's psychiatrist or of the Watergate investigation."

great length" on Dr. Ellsberg continued to flow to the White House from the F.B.I., and "a picture of a man began to emerge" that "allowed not only interest on the part of certain White House officials, and I'm not sure who all of them [were], but certainly on the part of Mr. Krogh and Mr. Young."

He said that Mr. Krogh and he decided that "the best instant source of a full readout" on Dr. Ellsberg "would be through the files" of Dr. Ellsberg's psychiatrist.

He said that he had been told that the F.B.I. could not supply these files because it had ceased "training its agents in entry operation."

Hunt also said that in preparing a "psychiatric profile" of Dr. Ellsberg, it had been arranged to receive help from Dr. Bernard Melloy, who had supplied information on "perceptions of interest to the United States Government."

He said that thereafter Dr. Melloy assisted in compiling for the White House the "psychiatric profile," and that Dr. Melloy then gave his own report "probably to Mr. Young or Mr. Krogh."

Thus the thriller operations started, Hunt said. He and Liddy were authorized by Mr. Krogh to fly to Los Angeles, which they did on Aug. 25, 1971, checking into the Beverly Hilton Hotel.

"We were authorized to make a preliminary vulnerability and feasibility study," was the way he described it. He said that they "passed through" the building, in which

Dr. Ellsberg's psychiatrist, Dr. Lewis J. Fielding, had his office in Beverly Hills, and took some photographs "with a very special camera."

They also took the mileage between the doctor's home and office. At one point, they took pictures of the building, with Liddy posing outside of it "to provide a reason for taking photographs on a particular street."

Liddy was wearing dark glasses, he said, and the camera used "was concealed in a tobacco pouch."

The camera, he said, was given to him by a "technical services representative of the C.I.A.," a man whose name he did not know, but a man he met "in a safehouse, the same one that we used when we were given disguises and other physical equipment." It was on Massachusetts Avenue in Washington, he said of the "safehouse."

He said that through all this it was "pointed out to us... that no one from the White House could be involved in any way directly with such an operation."

He said that, therefore, he was asked in the White House if he could come up with a burglary team, and he came up with the two Cuban exiles and Bernard L. Barker, a former C.I.A. agent who pleaded guilty in the trial.

Hunt said that on approximately "D minus one or D minus two" arrangements were made for Barker and the two Cubans to fly to California to meet with Hunt and Liddy.

Hunt and Liddy stopped first in Chicago to obtain walkie-talkies and other equipment, Hunt testified. The following story of the break-in was told by Hunt: "We knew where Dr. Ellsberg was. We knew from previous reconnaissance that the building was not locked, and that access was quite feasible because a cleaning woman was there for several hours during the night, and both the front and rear doors were customarily left open. "We wanted a pretext entry, a fact that was obtained by equipping two of the men from Miami with delivery men's clothing and a large, green suitcase which actually carried the camera equipment inside it. "The suitcase itself was adorned with Air Express invoices and stickers, 'rush immediately' to Dr. Fielding. "On the basis of the appearance of that object, representations were actually made to the cleaning woman, and she admitted these two gentlemen into the Fielding offices. "They simply deposited the suitcase inside the office. Then, to the best of my recollection, they punched the unlocking button on the inside of the door and departed. "Later on that night, I was stationed at Dr. Fielding's residence to make sure that his car remained in his garage. Mr. Liddy was cruising the general area around—I can't even remember the names of the streets in Beverly Hills, but it was South Road Drive, possibly. It was something like that. "I think that they went in around 11. In any event, I was

satisfied that Fielding was not going to leave. I more or less put him to bed, and then I came back to the downtown section of Beverly Hills.

"I understood subsequently when the operation was completed that the entry had been accomplished, but that it had to be accomplished through the use of force; that is to say, that entry had been made in the rear of the building because the cleaning lady had gone home, being Saturday night or a holiday weekend, or whatever, so that the doors were not open as we had expected. "Either two or three men went into the office, pried open a file, the patient file, and began—again, this is hearsay—examined it as they were told to do just before they entered in the operation. They were told to look for any file, any material on Ellsberg and to disregard anything else. "It was reported to me that they had gone through every file in Dr. Fielding's office, including the one in his desk, and that there had been absolutely no material in it with the name of Ellsberg on it of any sort. "We met back in the Beverly Hilton for a discussion of the operation. Nothing evolved from it. They were told to take the next plane out of town, and because of the visits there was Mr. Liddy and I departed subsequently."

Hunt said that when he returned to Washington after the Sept. 3, 1971, break-in, he and Liddy "made a full report of it to Mr. Krogh and Mr. Young."

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Mr. Krogh Admitted
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He said he was "the reasonable man" either a covert or an office before his discharge by persons unknown to him, and that the termination of his file agents "thereby risked illegitimacy of the documents."

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Excerpts From Hunt's Grand Jury Testimony About

LOS ANGELES, May 4 (AP) — Following are excerpts of testimony by E. J. Kelly, a former White House aide involved in a Presidential investigation of the Pentagon papers case, conferred with Federal prosecutors handling the Watergate investigation.

Dr. Ellsberg and his associates, and I shared that concern, my own feeling being that he would probably become a martyr in looking at things politically, and I felt that it was a poor judgment to draw. Nevertheless, the reports came in and continued. Some

Liddy, was that the White House did not have sufficient confidence in the Secret Service in order to entrust them with a task of this sort. There came a time shortly thereafter when it was suggested that perhaps the unit, which has been popularly

to-hand, or forwarded by buck slip. It was pointed out to us, and this had been the understanding all along, that no one with any association with the White House could be involved in any way directly with such an operation.

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ial, Outside Prosecutor to Oversee Inquiry on Watergate

Dean Says He Removed Watergate Papers to Bank

Continued From Page 1, Col. 7

conduct an initial White House investigation into the break-in and bugging of the offices of the Democratic National Committee last June 17 at the Watergate complex.

Mr. Nixon said in August that the report had vindicated his staff. But Mr. Dean, now implicated in an alleged White House cover-up of the affair, has asserted that his report had been tampered with or kept from the President altogether.

Senators Hear Two

Other Watergate developments today included the following:

¶H. R. Haldeman and John D. Ehrlichman, two ranking White House aides who resigned on Monday, spent the day in preliminary testimony before the staff of the Senate select Watergate committee. The panel is scheduled to begin public hearings in about two weeks.

¶It was disclosed that officials of President Nixon's political fund-raising unit secretly collected between \$1-million and \$2-million in cash and then destroyed records in which the

donors were identified.

¶Egil Krogh Jr., a former White House aide involved in a Presidential investigation of the Pentagon papers case, conferred with Federal prosecutors handling the Watergate investigation.

In Los Angeles today, testimony from the Watergate grand jury released at the Pentagon papers trial showed that E. Howard Hunt Jr. said that Mr. Krogh had ordered him and G. Gordon Liddy to break into the office of Dr. Daniel Ellsberg's psychiatrist.

In his court papers, Mr. Dean said he "has reason to believe that some, if not all," of the documents he removed from his office "may have a bearing on the subject under investigation" by the Senate Watergate panel.

He noted a letter sent to him on Jan. 16 by Senator Mike Mansfield of Montana, the Senate majority leader, requesting the retention of "any records or documents" that might deal with the Congressional study of the episode.

Mr. Mansfield's office said it had sent similar letters to a number of other officials then in the Administration, includ-

ing Attorney General Richard G. Kleindienst and L. Patrick Gray 3d, acting director of the Federal Bureau of Investigation.

Mr. Dean said he had taken the documents from his office before his discharge as the White House counsel and held them in "a safe and secure place under his custody and control" until putting them in the bank yesterday.

He said he was "anticipating the reasonable likelihood of either a covert break-in to his office before his termination by persons unknown or the sealing of his files after his termination by Government agents," thereby running "the risk of illegitimate destruction of the documents involved."

The files of Messrs. Dean, Haldeman and Ehrlichman have been placed under an around-the-clock guard by F.B.I. agents since the three men resigned.

Mr. Dean indicated he had been out of town this week and said he had rented safe deposit box No. 592 at the Alexandria National Bank upon his return.

The legal problem with which Judge Sirica was evidently confronted involves Mr. Dean's suggestion that nel-

ther the Senate committee nor the Government prosecutors "may carry the requisite security clearance" to see the papers.

On the other hand, Mr. Dean said that he, "as a terminated White House staff member," should no longer exercise control over the documents.

The former White House counsel, who has warned that he will not be a "scapegoat" in the burgeoning scandal, is known to have supplied Justice Department officials with potentially incriminating information.

The appearances by Mr. Haldeman and Mr. Ehrlichman before the Senate committee followed the pattern set yesterday when they testified before a Federal grand jury here.

Both men arrived at the new Senate Office Building shortly before 10 A.M. Two Capitol policemen guarded the corridor on which the offices open.

Mr. Ehrlichman met with the committee staff first and answered questions for about five hours. Mr. Haldeman was then interrogated for more than three hours. Both men said afterward they had cooperated with the investigators.

Neither man, however, would give details of the questioning. Mr. Ehrlichman paused a moment to tell a crowd of cameramen and reporters outside the building that he had been "gratified" by the way the session was conducted.

The White House issued new guidelines on the use of executive privilege, but neither Mr. Haldeman, the former chief of staff, or Mr. Ehrlichman, who had served as the President's domestic adviser, would say whether it had been used to avoid answering questions.

Asked whether the guidelines would prevent investigators from finding out whether the President had knowledge of the bugging before it took place, an informed White House source said that "executive privilege covered only 'official acts' and not 'the commission of crimes or conversations about those crimes.'"

The questioning of Mr. Ehrlichman and Mr. Haldeman was led by the committee's chief counsel, Samuel Dash. During part of the interrogation, Senator Lowell P. Weicker Jr., a Connecticut Republican, who is a member of the panel, sat in.

Mr. Krogh, who has taken a leave of absence as Under Secretary of Transportation, served on Mr. Ehrlichman's staff at the time the White House ordered an investigation of the Pentagon Papers disclosure.

Mr. Krogh refused to comment on his meeting with the prosecutors today, but he decried a report yesterday that he was about to make a detailed public statement on his role in the Ellsberg investigation.



Associated Press

man, right, outside the Senate Office Building after a committee investigating the Watergate case.

White House and the C.I.A. to Burglary in Ellsberg Inquiry

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Dr. Ellsberg's psychiatrist, Dr. Lewis J. Fielding, had his office in Beverly Hills, and took some photographs "with a very special camera."

They also took the mileage between the doctor's home and office. At one point, they took pictures of the building, with Liddy posing outside of it. "to provide a reason for taking photographs on a particular street."

Liddy was wearing dark glasses, he said, and the camera used "was concealed in a tobacco pouch."

The camera, he said, was given to him by a "technical services representative of the C.I.A.," a man whose name he did not know, but a man he met "in a safehouse, the same one that we used when we were given disguises and other physical equipment." It was on Massachusetts Avenue in Washington, he said of the "safehouse."

He said that through all this it was "pointed out to us . . . that no one from the White House could be involved in any way directly with such an operation."

He said that, therefore, he was asked in the White House if he could come up with a burglary team, and he came up with the two Cuban exiles and Bernard L. Barker, a former C.I.A. agent who pleaded guilty in the trial.

Hunt said that on approximately "D minus one or D minus two" arrangements were made for Barker and the two Cubans to fly to California to meet with Hunt and Liddy. Hunt and Liddy stopped first

in Chicago to obtain walkie-talkies and other equipment, Hunt testified.

The following story of the break-in was told by Hunt:

"We knew where Dr. Ellsberg was. We knew from previous reconnaissance that the building was not locked, and that access was quite feasible because a cleaning woman was there for several hours during the night, and both the front and rear doors were customarily left open.

"We wanted a pretexted entry, a fact that was obtained by equipping two of the men from Miami with delivery men's clothing and a large green suitcase which actually carried the camera equipment inside it.

"The suitcase itself was adorned with Air Express invoices and stickers, 'rush immediately' to Dr. Fielding.

"On the basis of the appearance of that object, representations were actually made to the cleaning woman, and she admitted these two gentlemen into the Fielding offices.

"They simply deposited the suitcase inside the office. Then, to the best of my recollection, they punched the unlocking button on the inside of the door and departed.

"Later on that night, I was stationed at Dr. Fielding's residence to make sure that his car remained in his garage. Mr. Liddy was cruising the general area around—I can't even remember the names of the streets in Beverly Hills, but it was South Road Drive, possibly. It was something like that.

"I think that they went in around 11. In any event, I was

satisfied that Fielding was not going to leave. I more or less put him to bed, and then I came back to the downtown section of Beverly Hills.

"I understood subsequently when the operation was completed that the entry had been accomplished, but that it had to be accomplished through the use of force; that is to say, that entry had been made in the rear of the building because the cleaning lady had gone home, being Saturday night or a holiday weekend, or whatever, so that the doors were not open as we had expected.

"Either two or three men went into the office, pried open a file, the patient file, and began—again, this is hearsay—examined it as they were told to do just before they entered in the operation.

They were told to look for any file, any material on Ellsberg and to disregard anything else.

"It was reported to me that they had gone through every file in Dr. Fielding's office, including the one in his desk, and that there had been absolutely no material in it with the name of Ellsberg on it of any sort.

"We met back in the Beverly Hilton for a discussion of the operation. Nothing evolved from it. They were told to take the next plane out of town, and because of the visits there was Mr. Liddy and I departed subsequently."

Hunt said that when he returned to Washington after the Sept. 3, 1971, break-in, he and Liddy "made a full report of it to Mr. Krogh and Mr. Young."

It was, he said, "a clean operation, but it had failed its purpose."

Hunt also said that the funds for the operation had been given "by Mr. Krogh directly to Mr. Liddy."

The trial has been recessed until Tuesday.

Krogh Admission Reported

WASHINGTON, May 4 (AP)—Egil Krogh acknowledged today that sometime after "personal communication" with President Nixon, he helped supervise the Ellsberg burglary, a highly qualified source said.

The source did not say whether Mr. Krogh said the President had knowledge of the burglary or whether plans for the burglary merely went forward in an atmosphere of intense Presidential concern over diplomatic effects of the Pentagon Papers leakage.

The White House had made efforts to suppress the confession, which has been sent by two different routes to the presiding judge in the Pentagon papers trial in Los Angeles, the source said.

Mr. Krogh "admitted to general supervisory responsibility" of the Sept. 3, 1971, burglary of the office of Dr. Ellsberg's psychiatrist, the source said.

Mr. Krogh's statement also includes a "statement of a personal communication with the President," the source said, and "will disclose the President's own concern with the leakage of the material and his perceived ramifications of that leakage."

Excerpts From Hunt's Grand Jury Testimony About Ellsberg Raid

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He came in with a long stride, and I said, "I have something that might be of interest to you. It has to do with my activities this past

EXHIBIT 15

...through the files" of Dr. Ellsberg's psychiatrist.

He said that he had been told that the F.B.I. could not supply these files because it had censored "training its agents in entry operation."

Hunt also said that in preparing a "psychiatric profile" of Dr. Ellsberg, it had been arranged to receive help from Dr. Bernard Melloy, who headed a special C.I.A. unit that supplied information on "persons of interest to the United States Government."

He said that thereafter Dr. Melloy assisted in compiling for the White House the "psychiatric profile," and that Dr. Melloy then gave his own reports "probably to Mr. Young or Mr. Krogh."

Thus the thriller operations started, Hunt said. He and Liddy were authorized by Mr. Krogh to fly to Los Angeles, which they did on Aug. 25, 1971, checking into the Beverly Hilton Hotel.

"We were authorized to make a preliminary vulnerability and feasibility study," was the way he described it.

He said that they "passed through" the building in which

Liddy was wearing dark glasses, he said, and the camera used "was concealed in a tobacco pouch."

The camera, he said, was given to him by a "technical services representative of the C.I.A.," a man whose name he did not know, but a man he met "in a safehouse, the same one that we used when we were given disguises and other physical equipment." It was on Massachusetts Avenue in Washington, he said of the "safehouse."

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The questioning of Mr. Ehrlichman and Mr. Haldeman was led by the committee's chief counsel, Samuel Dash. During part of the interrogation, Senator Lowell P. Weicker Jr., a Connecticut Republican, who is a member of the panel, sat in.

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Mr. Krogh refused to comment on his meeting with the prosecutors today, but he denied a report yesterday that he was about to make a detailed public statement on his role in the Ellsberg investigation.

Excerpts From Hunt's Grand Jury Testimony About Ellsberg Raid

LOS ANGELES, May 4 (AP) — Following are excerpts of testimony by E. Howard Hunt Jr. before a Federal grand jury looking into the Watergate affair in Washington. The excerpts were released in Federal Court here today.

Q. You were taken on as a consultant at the White House on July 6th, 1971.

A. Yes, sir.

Q. One of the first assignments, and I think that you have testified to this before the grand jury, related to the project involving the so-called Pentagon papers.

A. The leaks attending them. Yes, sir.

Q. The leaks attending the Pentagon papers?

A. Yes, sir.

Q. And you worked on that with Mr. Liddy is that correct?

A. That's correct, sir.

Q. And Mr. Young, David Young, was also involved in the project?

A. As I have testified, Yes, sir. . . . A group came into being which was simply for our purposes known as Room 16.

Mr. Young was there. Mr. Liddy had a full-time office there, I had a part-time office there in addition to the one that I had on the third floor of the White House. The operational direction of that group was provided by Mr. Egil Krogh, who at that time, I believe, was the principal deputy to John Ehrlichman.

It became known to Mr. Liddy and myself, and I believe it must have been Mr. Krogh who told us, that there was an intense amount of interest in Mr. Ellsberg.

Mr. Ellsberg had been indicted not long before, and the White House had been receiving, I believe on a daily basis, reports from the Federal Bureau of Investigation and other agencies of the Government.

I was given access to all of this material on an absolutely routine basis. I became very familiar with the case itself.

At that time, as I understood it, there was some concern in the White House about the appropriateness of seeing the prosecution actually take place with regard to

Dr. Ellsberg and his associates, and I shared that concern, my own feeling being that he would probably become a martyr in looking at things politically, and I felt that it was a poor judgment to draw.

Nevertheless, the reports came in and continued. Some of them dealt at great length — I am now referring to Federal Bureau of Investigation reports . . . Inasmuch as the Government was contemplating at that time a major prosecution which in fact has evolved. It was felt, and I believe Mr. Krogh who was the lawyer, suggested that it would be well if something could—if some way could be found whereby a judgment call could be made on Ellsberg in regard to his prosecutability.

Low-Key Talk Cited

To that end, extracts were made of material dealing with Dr. Ellsberg's rather peculiar background, and we read these excerpts and concluded that the best instant sources of a full read-out, or a reasonably full read-out on Dr. Ellsberg would be through whatever files the psychiatrist had been maintaining on him during the period that Dr. Ellsberg was under analysis.

I don't know who mentioned the possibility of a bag job on the psychiatrist's office first, but in any event it became a topic of low-key conversation around the office.

At that time I was fairly new to the White House. I said, "Well, if you want the materials, why can't we just simply get the F.B.I. to prepare it?"

The answer, which I believe was provided by Mr. Liddy, was that in the last five or six years, under Mr. Hoover's aegis, the Federal Bureau of Investigation had ceased training its agent in entry operations, and that the cadre that the bureau used to maintain for the type of operation was no longer in existence.

I recall raising the question as to whether or not the Secret Service might not be an appropriate unit for such a task. The reply that was given to me, and I believe it was also by Mr.

Liddy, was that the White House did not have sufficient confidence in the Secret Service in order to entrust them with a task of this sort.

There came a time shortly thereafter when it was suggested that perhaps the unit, which has been popularly described as the "plumbers" in the press but which was never so-called during incumbency, might be able to undertake such an operation on its own.

To that end, Mr. Liddy and I were authorized to fly out to the West Coast, Los Angeles. . . .

We were authorized to make a preliminary vulnerability and feasibility study for such an operation.

Q. Who authorized that, sir?

A. Mr. Krogh.

Q. Did Mr. Young know about that?

A. Yes.

Q. Did any other official know about it?

A. Not to my direct knowledge. No, sir.

Q. To your indirect knowledge?

A. No, sir, not to my knowledge. I have no knowledge of whether other officials might have known about it. . . .

Calls Study Thorough

Although that certainly is not to say that there were not others, because I don't know with whom Mr. Krogh and Mr. Young might have been in consultation. . . .

We did a rather thorough, I think, professional study of the objective. We took photographs outside the building of the area itself, and then we returned to Washington and wrote up our findings.

This took the form of — I don't believe it was a formal memorandum, but rather a series of paragraphs that described the operation or the operative circumstances. The photographs were developed and attached, and then the decision was available. . . .

to-hand, or forwarded by buck slip.

It was pointed out to us, and this had been the understanding all along, that no one with any association with the White House could be involved in any way directly with such an operation. . . .

We knew where Dr. Ellsberg was. We knew from previous reconnaissance that the building was not locked, and that access was quite feasible because a cleaning woman was there for several hours during the night, and both the front and rear door were customarily left open.

We wanted a pretested entry, a fact that was obtained by equipping two of the men from Miami with delivery men's clothing and a large green suitcase which actually carried the camera equipment inside it.

The suitcase itself was adorned with Air Express invoices and stickers. "Rush immediately" to Dr. Fielding. On the basis of the appearance of that object, representations were actually made to the cleaning woman, and she admitted these two gentlemen into the Fielding office.

They deposited the suitcase inside the office. Then, to the best of my recollection, they punched the unlocking button on the inside of the door and departed. . . .

I understand subsequently when the operation was completed, that the entry had been accomplished but that it had to be accomplished through the use of force; that is to say that entry had been made at the rear of the building because the cleaning lady had gone home, being Saturday night or a holiday weekend, or whatever, so that the doors were not open as we had expected.

Either two or three men went into the office, pried open a file, the patient file, and began — again, this is hearsay — examined it as they were told to do just before they entered in the operation.

They were told to look for any file, any material on Ellsberg, and to disregard anything else. . . .

It was reported to me that they had gone through every file in Dr. Fielding's office, including the one in his desk,

and that there had been absolutely no material in it with the name of Ellsberg on it of any sort.

They took a Polaroid camera shot of at least one, if not two of the open files in the file cabinet, or the file drawers, by way of indicating that the job had actually been accomplished.

We met back in the Beverly Hilton for a discussion of the operation. Nothing evolved from it. They were told to take the next plane out of town, and Mr. Liddy and I departed subsequently. . . .

Q. Now, when you returned to Washington, to whom did you report?

A. At about four o'clock in the morning immediately following the entry, we were all back in the hotel. Mr. Liddy placed a prearranged call to Mr. Krogh.

Q. Are you aware of any other attempts to obtain information about Dr. Ellsberg in this fashion?

A. No, sir.

Q. Or in a like fashion?

A. No, sir. Well, possibly I can get to what I think you want. Following our post-operation briefing of Mr. Krogh, there entered a discussion, and I don't know whether Mr. Krogh brought it up, whether Mr. Liddy did, or whether I did, but we suggested that if in fact there was an Ellsberg psychiatric file, it might conceivably be kept at Dr. Fielding's home.

Some discussion in the next few days, possibly even weeks, was made as to whether or not this was a viable type of approach, and it was finally decided that it was not. . . .

Questioned About Talks

Q. Did you ever have a discussion with anyone else about this subject matter?

A. I attempted to on one occasion, but I was unsuccessful.

Q. With whom did you attempt to have it?

A. I entered the office of Mr. Charles Colson, probably on the Monday or Tuesday — in any event, the day following our return to Washington. I had in my hand at that time a photograph of the rifled safe.

He came in with a long stride, and I said, "I have something that might be of interest to you. It has to do with my activities this past weekend."

He said, "I don't want to hear anything about them," and he went on into his office.

Q. Did you ever have a conversation with Mr. [John] Ehrlichman relating to this operation?

A. No, sir, at any time.

Q. Let me ask you this. With respect to Dr. Ellsberg, do you know, or were you ever aware of any other attempts to obtain information about Dr. Ellsberg's psychiatric profile or his background profile in any manner, shape or form?

A. Well, some months subsequent to that, it occurred to me that the C.I.A. might be helpful in providing such a psychiatric profile.

Q. So what did you do?

A. How did I arrange that? I asked — I suggested to David Young—I said, "After all, we had a special psychiatric unit set up at the Central Intelligence Agency to provide in effect second-hand profiles of persons of interest to the United States Government. That is an activity that has been ongoing for many years."

I happened to know the chief of the unit, Dr. Bernard Melloy. I mentioned his name to Mr. Young, and Mr. Young, I believe, was instrumental in bringing Dr. Melloy to our offices in Room 16.

At this time we discussed what was required of him, and he said that he would consult with the Chief of Security at Central Intelligence Agency. In due course we embarked upon a program in which we assisted Dr. Melloy by providing him excerpts of F.B.I. reports and other materials relating to Dr. Ellsberg so that he could construct this sort of psychiatric profile.

Q. Did he provide such a report?

A. He did.

Q. To whom did he provide it?

A. Well, he provided it—it was transferred from Dr. Melloy probably to Mr. Young or to Mr. Krogh by memorandum. I don't know to whom; I didn't see it.

EXHIBIT 16

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	Criminal No.
)	
v.	)	Violation of 18 U.S.C.
	)	§§241, 1001, 1623
JOHN D. EHRLICHMAN, CHARLES W.	)	(Conspiracy Against
COLSON, G. GORDON LIDDY,	)	Rights of Citizens,
BERNARD L. BARKER, FELIPE DE DIEGO,	)	False Statements to a
and EUGENIO R. MARTINEZ,	)	Government Agency, and
	)	False Declarations
Defendants.	)	Before a Grand Jury).

INDICTMENT

COUNT ONE

The Grand Jury charges:

1. At all times material herein up to on or about April 30, 1973, JOHN D. EHRLICHMAN, the DEFENDANT, was acting in the capacity of an officer and employee of the United States Government, as Assistant for Domestic Affairs to the President of the United States.

2. At all times material herein up to on or about March 10, 1973, CHARLES W. COLSON, the DEFENDANT, was acting in the capacity of an officer and employee of the United States Government, as Special Counsel to the President of the United States.

3. From on or about July 20, 1971, up to on or about December 10, 1971, G. GORDON LIDDY, the DEFENDANT, was acting in the capacity of an officer and employee of the United States Government, as Staff Assistant to the President of the United States.

4. From on or about July 1, 1971 up to and including the date of the filing of this indictment, in the District of Columbia and elsewhere, JOHN D. EHRLICHMAN, CHARLES W. COLSON, G. GORDON LIDDY, BERNARD L. BARKER, FELIPE DE DIEGO,

motives of the individual or individuals who were responsible for, participated in, and had knowledge of an entry into the offices of Dr. Lewis J. Fielding, located in Beverly Hills, California, and related activities.

4. At the time and place alleged, JOHN D. EHRLICHMAN, the DEFENDANT, appearing as a witness under oath before the said Grand Jury, did knowingly declare with respect to the aforesaid material matters alleged in paragraph 3 as follows:

Q. Very well, sir. Now there came a time when this operation became concerned with Dr. Ellsberg himself, is that not correct?

A. Yes.

Q. And then there was an attempt or a decision made to find out as much about Dr. Ellsberg as could be done, is that correct?

A. Yes.

Q. And even part of that investigation was going to center on his psychological profile, his mental attitudes, his habits, and possible motivations. Is that correct?

A. Well, I learned about that after the fact, but that is my understanding of the decision that was made.

Q. When you say you learned about it after the fact, what do you mean by that, sir?

A. Well, I learned after the break-in that they were looking for information for what they call a psychological profile.

I was not aware of that before the fact.

Q. So before the fact you were not aware that there was an attempt by Mr. Krogh, or persons working under his supervision or authority, to -- there was no attempt made by these people to ascertain information that would be helpful in drawing out the psychological profile if I understood what you just said. Is that right?

A. I didn't know if they made an attempt or not. I was just saying that I didn't learn of it until after I learned of the break-in.

Q. Just so that the Grand Jury and we are clear on this, prior to receiving information about the break-in, you had no information, direct or indirect, that a psychological profile of Dr. Ellsberg was being drawn up?

A. I can't recall hearing of a psychological profile until after I had heard of the break-in.

5. The underscored portions of the material declarations quoted in paragraph 4, made by JOHN D. EHRLICHMAN, the DEFENDANT,

Q. Now were you aware before this break-in, which took place on or about September 3rd, 1971, that an effort was going to be directed towards obtaining information from Dr. Ellsberg or Dr. Ellsberg's psychiatrist?

A. Ahead of the fact? No.

5. The underscored portions of the material declarations quoted in paragraph 4, made by JOHN D. EHRLICHMAN, the DEFENDANT, were material to the said investigation and, as he then and there well knew, were false.

(Title 18, United States Code, Section 1623.)

COUNT FIVE

The Grand Jury further charges:

1. On or about May 14, 1973, in the District of Columbia, JOHN D. EHRLICHMAN, the DEFENDANT, having duly taken an oath that he would testify truthfully in a proceeding before the June 1972 Grand Jury, a Grand Jury of the United States duly empanelled and sworn in the United States District Court for the District of Columbia, did make false material declarations as hereinafter set forth.

2. At the time and place alleged, the said Grand Jury was conducting an investigation in conjunction with the United States Attorney's Office for the District of Columbia and the Federal Bureau of Investigation to determine whether violations of 18 U.S.C. §§371, 1001, 1503, 1621, 1623, 2511, and 22 D.C. Code 1801(b), and of other statutes of the United States and of the District of Columbia, had been committed in the District of Columbia and elsewhere, and to identify the individual or individuals who had committed, caused the commission of, and conspired to commit such violations.

3. It was material to said investigation that the Grand Jury ascertain, among other things, the identity and motives of the individual or individuals who were responsible for, participated in, and had knowledge of an entry into the offices of Dr. Lewis J. Fielding, located in Beverly Hills, California, and related activities.

4. At the time and place alleged, JOHN D. EHRLICHMAN, the DEFENDANT, appearing as a witness under oath before the said Grand Jury, did knowingly declare with respect to the aforesaid material matters alleged in paragraph 3 as follows:

Q. You indicate here that you did maintain a newspaper clipping file on the Pentagon Papers case.

A. Right.

Q. But you say there were other papers in addition?

A. I think there were some others. There was a small file and it just went out. I didn't have occasion to look at it before it went, but it went.

* * *

Q. You mentioned a moment ago, in response to Mr. Silbert's question, that there were some files. Did you have a file relating to --

A. No. I don't believe I kept a file.

Q. Who had a file?

A. I think Mr. Krogh had a file.

Q. Anybody else have a file?

A. I don't know.

Q. So as far as you know, prior to the break-in, whenever that was, I think it was sometime in September, September 3rd, the only person that had a file that you knew of was Mr. Krogh?

A. I believe that's right. I, of course, had a great many other things going on. He would, from time to time, post me on the whole Pentagon Papers matter.

This was not just Ellsberg at that time. There were all kinds of things going on. There were lawsuits involving the New York Times. There was a lot of activity going on.

He would inform me from time to time of things that would happen. But I kept no paper as I recall. I would move paper out if any came in on this, and usually sign it over to Krogh.

Q. And subsequent to the break-in, did you learn that there were any files anywhere in existence?

A. I think there were a number of files both before and after.

Q. In whose hands?

A. Well, I assume Krogh. I think that he would be the one that I would always look to for paper work on this with the exception of -- I do recall running across this very bulky clipping file that we had in our office, and why we had it I don't know.

But at sometime or another we accumulated a tremendous amount of newspaper clippings on this case. That was the whole Pentagon Papers case.

Q. Any other files in the custody of anybody else involved in this operation?

A. Not that I know of. I would assume that Krogh had them all.

Q. Did you ever learn that anybody had any files before or after September 3rd?

A. No, I don't believe so.

5. The underscored portions of the material declarations quoted in paragraph 4, made by JOHN D. EHRLICHMAN, the DEFENDANT, were material to the said investigation and, as he then and there well knew, were false.

(Title 18, United States Code, Section 1623.)

A TRUE BILL,

Leon Jaworski
Special Prosecutor
Watergate Special Prosecution
Force

Forelady

EXHIBIT 17

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	
)	
v.	)	Criminal No.
)	
EGIL KROGH, JR.	)	Violation of 18 U.S.C. §1623
	)	(False declarations)
Defendant.)	

INDICTMENT

COUNT ONE

The Grand Jury Charges:

1. On or about August 28, 1972, in the District of Columbia, EGIL KROGH, JR., the DEFENDANT, having duly taken an oath that he would testify truthfully, and while testifying in a proceeding before and ancillary to a Grand Jury of the United States, duly empanelled and sworn in the United States District Court for the District of Columbia, did make false material declarations as hereinafter set forth.
2. At the time and place alleged, the said Grand Jury was conducting an investigation in conjunction with the United States Attorney's Office for the District of Columbia and the Federal Bureau of Investigation to determine whether violations of 18 U.S.C. 371, 2511, and 22 D.C. Code 1801(b) and other statutes of the United States and of the District of Columbia had been committed in the District of Columbia and elsewhere, and to identify the individual or individuals who had committed, caused the commission of, or conspired to commit such violations.

23

3. It was material to the said investigation that the Grand Jury ascertain the nature of the activities engaged in by E. Howard Hunt, Jr., a subject of the investigation, while he was employed at the White House during 1971 and 1972, and the identity of the individual or individuals who directed those activities.

4. At the time and place alleged, the DEFENDANT, appearing as a witness under oath at a proceeding before and ancillary to the said Grand Jury, did knowingly declare with respect to the material matter alleged in paragraph 3 as follows:

Q. I see. Do you have any knowledge of any travel that Mr. Hunt made in connection with the declassification of the "Pentagon Papers" or the narcotics program that he was working with you on?

A. I'm aware of the trip to Texas that he took, but other travel, no.

Q. During any other period while Mr. Hunt was working at the White House, which would have been through, I believe, the end of March, 1972, are you aware of any travel that he made for the White House?

A. No, I'm not.

Q. Are you aware of any travel that Mr. Hunt made, whether he made it for himself personally, or for any other person?

A. No, I'm not.

5. The underscored portions of the declarations quoted in paragraph 4, made by the DEFENDANT, as he then and there

well knew, were false.

All in violation of Title 18, United States Code,
Section 1623.

COUNT TWO

The Grand Jury further charges:

1. The Grand Jury realleges all of the allegations of paragraphs 1 and 2 of Count One of this indictment.

2. It was material to the said investigation that the Grand Jury ascertain the nature of the activities engaged in by G. Gordon Liddy, a subject of the investigation, while he was employed at the White House during 1971, and the identity of the individual or individuals who directed those activities.

3. At the time and place alleged, the DEFENDANT, appearing as a witness under oath at a proceeding before and ancillary to the said Grand Jury, did knowingly declare with respect to the material matter alleged in paragraph 2 as follows:

Q. Now, what travel did Mr. Liddy do while he was at the White House that you're aware of?

A. He made a trip to California for me on some customs matters, customs issues on narcotics, which was more of an in-house watchdog-type of trip to determine the effectiveness of the program out there.

He had been involved in developing Operation Intercept in 1969, which pretty much was located out of the Los Angeles area, Terminal Island.

And this was an out date, so to speak, on how things were going in Los Angeles area.

Q. Now, he was supposed to contact
custom officials in the Los Angeles --

A. That was my understanding, but he did
not give me an itinerary of --

Q. Was there a report filed by him with
you of the trip?

A. No, just an oral report.

Q. Oral?

A. Right.

Q. Now, do you know of any other travel
that Mr. Liddy might have performed --

A. No.

Q. -- For the White House or for anyone
else, or for himself?

A. No.

* * * *

Q. Other than this one trip to California,
can you think of any reason why he would have
had to travel to California for the White House?

A. No.

4. The underscored portions of the declarations quoted
in paragraph 3 made by the DEFENDANT, as he then and there
well knew, were false.

All in violation of Title 18, United States Code,
Section 1623.

A True Bill

Foreman

ARCHIBALD COX
Special Prosecutor

- 4 -

(33)

EXHIBIT 18

FILED IN OPEN COURT

MAR 1 - 1974

JAMES F. DAVEY, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, HARRY R.
HALDEMAN, JOHN D. EERLICHMAN,
CHARLES W. COLSON, ROBERT C.
MARDIAN, KENNETH W. PARKINSON,
and GORDON STRACHAN,

Defendants.

Criminal No. 74- 110

Violation of 18 U.S.C.
SS 371, 1001, 1503, 1621,
and 1623 (conspiracy,
false statements to a
government agency, ob-
struction of justice,
perjury and false
declarations.)

INDICTMENT

The Grand Jury charges:

Introduction

1. On or about June 17, 1972, Bernard L. Barker, Virgilio R. Gonzalez, Eugenio R. Martinez, James W. McCord, Jr. and Frank L. Sturgis were arrested in the offices of the Democratic National Committee, located in the Watergate office building, Washington, D. C., while attempting to photograph documents and repair a surreptitious electronic listening device which had previously been placed in those offices unlawfully.

2. At all times material herein, the United States Attorney's Office for the District of Columbia and the Federal Bureau of Investigation were parts of the Department of Justice, a department and agency of the United States, and the Central Intelligence Agency was an agency of the United States.

3. Beginning on or about June 17, 1972, and continuing up to and including the date of the filing of this

FILED
MAR 1 1974
JAMES F. DAVEY, Clerk

4. At the time and place alleged, JOHN N. MITCHELL, the DEFENDANT, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 as follows:

Q. Was there any program, to your knowledge, at the Committee, or any effort made to organize a covert or clandestine operation, basically, you know, illegal in nature, to get information or to gather intelligence about the activities of any of the Democratic candidates for public office or any activities of the Democratic Party?

A. Certainly not, because, if there had been, I would have shut it off as being entirely non-productive at that particular time of the campaign.

* * *

Q. Did you have any knowledge, direct or indirect, of Mr. Liddy's activities with respect to any intelligence gathering effort with respect to the activities of the Democratic candidates or its Party?

A. None whatsoever, because I didn't know there was anything going on of that nature, if there was. So I wouldn't anticipate having heard anything about his activities in connection with it.

5. The underscored portions of the declarations quoted in paragraph 4, made by JOHN N. MITCHELL, the DEFENDANT, were material to the said investigation and, as he then and there well knew, were false.

(Title 18, United States Code, Section 1623.)

4. At the time and place alleged, JOHN N. MITCHELL, the DEFENDANT, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 as follows:

Q. Did Mr. LaRue tell you that Mr. Liddy had confessed to him?

A. No, I don't recall that, no.

Q. Did Mr. Mardian tell you that he'd confessed to him?

A. No.

Q. Do you deny that?

A. Pardon me?

Q. Do you deny that?

A. I have no recollection of that.

* * *

Q. So Mr. Mardian did not report to you that Mr. Liddy had confessed to him?

A. Not to my recollection, Mr. Glanzer.

Q. That would be something that you would remember, if it happened, wouldn't you?

A. Yes, I would.

* * *

Q. I didn't ask you that. I asked you were you told by either Mr. Mardian or Mr. LaRue or anybody else, at the Committee, prior to June 28th, 1972, that Mr. Liddy had told them that he was involved in the Watergate break-in?

A. I have no such recollection.

5. The underscored portions of the declarations quoted in paragraph 4, made by JOHN N. MITCHELL, the DEFENDANT, were material to the said investigation and, as he then and there well knew, were false.

(Title 18, United States Code, Section 1623.)

4. At the times and place alleged, JOHN D. EHRLICHMAN, the DEFENDANT, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 as follows:

May 3, 1973:

Q. Mr. Ehrlichman, going back to that first week following the Watergate arrest, did you have any conversations besides those on Monday with Mr. Dean?

A. Yes, I did.

Q. Will you relate those to the ladies and gentlemen of the Grand Jury?

A. Well, I don't recall the content specifically of most of them. I know that I saw Mr. Dean because my log shows that he was in my office. I think it was four times that week, once in a large meeting -- excuse me, more than four times.

He was in alone twice on Monday, and in the large meeting that I have described. He was in twice alone on other occasions, and then he was in a meeting that I had with Pat Gray -- well, that was the following week. It was a span of seven days, within the span of seven days.

* * *

Q. All right. Now at any of those meetings with Mr. Dean, was the subject matter brought up of a person by the name of Gordon Liddy?

A. I can't say specifically one way or the other.

Q. So you can neither confirm nor deny that anything with respect to Mr. Liddy was brought up at any of those meetings, is that correct, sir?

A. I don't recall whether Mr. Liddy was being mentioned in the press and would have been the subject of an inquiry by somebody from the outside. If he would have, then it is entirely probable that his name came up.

Q. All right. Let's assume for a moment that Mr. Liddy's name did not in that first week arise in the press. Can you think of any other context in which his name came up, excluding any possible press problem with respect to the name of Liddy?

A. I have no present recollection of that having happened.

Q. So you can neither confirm nor deny whether or not the name of Gordon Liddy came up in the course of any conversation you had with Mr. Dean during that week, or for that matter with anyone else?

A. That's right, unless I had some specific event to focus on. Just to take those meetings in the abstract, I can't say that I have any recollection of that having happened in any of those.

Q. All right. Let's take the example of did anyone advise you, directly or indirectly, that Mr. Liddy was implicated or involved in the Watergate affair?

A. Well, they did at some time, and I don't know whether it was during that week or not.

Q. To the best of your recollection, when was that done, sir?

A. I'm sorry but I just don't remember.

Q. Well, who was it that advised you of that?

A. I think it was Mr. Dean, but I don't remember when he did it.

Q. Would it have been within a month of the investigation? Within three months of the investigation?

A. I'm sorry but I just don't know.

Q. You can't even say then whether it was within a week, a month, or three months? Is that correct, sir?

A. Well, I think it was fairly early on, but to say it was within a week or two weeks or something, I just don't know.

* * *

Q. Now Mr. Dean advised you that Mr. Liddy was implicated. Did you advise the United States Attorney or the Attorney General, or any other law enforcement agency immediately or at any time after?

A. No. I don't think it was private information at the time I heard it.

Q. Well, did you inquire to find out whether or not it was private information?

A. To the best of my recollection, when I first heard it it was not in the nature of exclusively known to Dean, or anything of that kind.

Q. Well, was it in the newspapers that he was involved?

A. I'm sorry. I just don't remember. It probably was, but I just don't recall.

Q. You mean the first time you found out from Mr. Dean that Liddy was involved, Mr. Ehrlichman, it was in the same newspaper or the newspapers that you yourself could have read?

A. No, no. I am telling you that I cannot remember the relationship of time, but my impression is that he was not giving me special information that was not available to other people.

A lot of Mr. Dean's information came out of the Justice Department apparently, and so I think the impression I had was whatever he was giving us by way of information was known to a number of other people. That's what I meant by special information.

May 9, 1973:

Q. When did you first become aware that Mr. Liddy was involved?

A. I don't know.

Q. You don't know?

A. No, sir.

Q. Did you ever become aware of it?

A. Well, obviously I did, but I don't know when that was.

Q. Was it in June?

A. I say I don't know.

Q. Who told you?

A. I don't know.

Q. How did you learn it?

A. I don't recall.

5. The underscored portions of the declarations quoted in paragraph 4, made by JOHN D. EHRLICHMAN, the DEFENDANT, were material to the said investigation and, as he then and there well knew, were false.

(Title 18, United States Code, Section 1623.)

the Democratic National Committee located in the Watergate office building in Washington, D. C., and related activities.

4. At the times and place alleged, JOHN D. EHRLICHMAN, the DEFENDANT, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 as follows:

May 3, 1973:

Q. Now with respect to that, what further information did you receive that really related to this fundraising for the defendants and the defense counsel and their families?

A. I had a call from Mr. Kalmbach within four or five days to verify whether or not I had in fact talked to John Dean. I said that I had.

Q. This was a telephone call, sir?

A. I think it was. It may have been during a visit. I'm not sure. I used to see Mr. Kalmbach periodically about all kinds of things.

It may have been during a visit, but I think it was just a phone call.

He said substantially that John Dean had called me and said that I had no objection, and I said, "Herb, if you don't have any objection to doing it, I don't have any objection to your doing it, obviously."

He said, "No, I don't mind," and he went ahead.

* * *

Q. So far as you recall the only conversation that you recall is Mr. Kalmbach saying to you, "John Dean has asked me to do this," and you stated that you had no objection. He said that he was checking with you to determine whether you had any objection or not?

A. He was checking on Dean.

Q. On Dean?

A. Yes.

Q. And you said to him, "If you don't have any objection then I don't have any objection"?

A. Right.

Q. Was there any discussion between the two of you as to the purpose for which this money was to be raised?

A. I don't think so.

Q. Did you in any way approve the purpose for which this money was being given?

A. No, I don't think so. I don't recall doing so.

Q. Based on your testimony for the background of this, there would have been no basis for your approval or for you to affirm that?

A. That's right. That's why I say that I don't believe that I did.

Q. And your best recollection is that you did not?

A. That's right.

Q. Do you have any recollection of Mr. Kalmbach inquiring of you whether or not this was appropriate, sir?

A. Questioning me with respect to that?

Q. Yes.

A. No, I don't.

Q. He did not, to the best of your recollection?

A. I don't have any recollection of his doing so.

May 9, 1973:

Q. You had never expressed, say back six or seven months ago, to Mr. Kalmbach that the raising of the money should be kept as a secret matter, and it would be either political dynamite, or comparable words, if it ever got out, when Mr. Kalmbach came to see you?

A. No, I don't recall ever saying that.

5. The underscored portions of the declarations quoted in paragraph 4, made by JOHN D. EHRLICHMAN, the

4. At the time and place alleged, GORDON STRACHAN, the DEFENDANT, appearing as a witness under oath at a proceeding before the said Grand Jury, did knowingly declare with respect to the material matters alleged in paragraph 3 as follows:

Q. Did you, yourself, ever receive any money from the Committee for the Re-election of the President, or from the finance committee to re-elect the President?

A. Yes, sir, I did.

Q. Can you tell the ladies and gentlemen of the Grand Jury about that?

A. Yes, sir. On April 6, 1972, I received \$350,000 in cash.

* * *

Q. From whom?

A. From Hugh Sloan.

* * *

Q. What was done with the money after you received it from Mr. Sloan on April 6th?

A. I put it in the safe.

Q. Was the money ever used?

A. Pardon?

Q. Was the money ever used?

A. No, the money was not used.

Q. To your knowledge, was it ever taken out of the safe?

A. No.

Q. To your knowledge, is it still there?

A. No, it is not.

Q. Where is it?

A. I returned it to the committee, at Mr. Haldeman's direction, at the end of November.

Q. November of '72?

A. Yes, '72, or early December.

* * *

Q. To whom did you return it?

A. To Fred LaRue.

Q. Where did that transfer take place?

A. I gave it to Mr. LaRue in his apartment.

* * *

Q. That was either late November or early December?

A. That's correct.

Q. Well, let me ask you this: Why would it have been given to Mr. LaRue at his apartment as opposed to being given to the Committee?

A. Well, Mr. LaRue is a member of the Committee and he just asked me to bring it by on my way home from work.

Q. After Mr. Haldeman told you to return the money, what did you do? Did you contact someone to arrange for the delivery?

A. Yes, I contacted Mr. LaRue.

Q. That was at Mr. Haldeman's suggestion or direction?

A. No.

Q. Why is it that you would have called Mr. LaRue?

A. I don't think Stans was in the country at that time. He was not available.

Q. What position did Mr. LaRue occupy that would have made you call him?

A. He was the senior campaign official.

Q. That's the only reason you called him?

A. That's correct.

Q. No one suggested you call him?

A. No.

* * *

Q. Was anyone present in Mr. LaRue's apartment at the hotel when you delivered the money to him?

A. No.

Q. Did you ever tell anyone to whom you had given the money? Did you report back to either Mr. Haldeman or anyone else that you had delivered the money and to whom you had delivered the money?

A. I don't think so. I could have mentioned that I had done it. When I received an order, I did it.

Q. Did you get a receipt for the money?

A. No, I did not.

Q. Did you ask for it?

A. No, I did not.

A JUROR: Why?

THE WITNESS: I did not give a receipt when I received the money, so I didn't ask for one when I gave it back.

* * *

A JUROR: Did someone count the money when it came in and when it went out, so they knew there were no deductions made from that \$350,000?

THE WITNESS: Yes, I counted the money when I received it, and I counted it when I gave it back.

A JUROR: You solely counted it; no one else was with you?

THE WITNESS: I counted it when I received it alone, and I counted it in front of Mr. LaRue when I gave it back.

A JUROR: You had that money in the White House for seven months and did nothing with it?

THE WITNESS: That's correct.

* * *

Q. So who told you to give it to Mr. LaRue?

A. I decided to give it to Mr. LaRue.

Q. On your own initiative?

A. That's correct.

Q. Who do you report to?

A. Mr. Haldeman.

Q. Did you report back to Mr. Haldeman that you gave it to Mr. LaRue?

A. No, I did not.

Q. You just kept this all to yourself?

A. He was a senior official at the campaign. I gave it back to him. He said he would account for it, and that was it.

Q. Who told you to go to Mr. LaRue and give him the money?

A. I decided that myself.

Q. Do you have a memo in your file relating to this incident?

A. No, I do not.

Q. Did you discuss this incident with anybody afterwards?

A. Yes, I told Mr. Haldeman afterwards that I had given the money to Mr. LaRue.

Q. What did he say to you?

A. Fine. He was a senior campaign official.

Q. What time of day was it that you gave it to Mr. LaRue?

A. In the evening, after work.

Q. Does the finance committee or the Committee to Re-elect the President conduct its business in Mr. LaRue's apartment?

A. No. It was a matter of courtesy. He's a senior official. He asked me to drop it by after work.

* * *

THE FOREMAN: Do you have any idea why Mr. LaRue asked you to return this money to his apartment, where actually you could just walk across 17th Street?

THE WITNESS: No, I do not.

THE FOREMAN: And you could have had the protection of the Secret Service guards with all that money, if you were afraid someone might snatch it from you.

THE WITNESS: I wouldn't ask for the Secret Service guards protection.

A JUROR: Why not?

THE WITNESS: They protect only the President and his family.

THE FOREMAN: Or the White House guards, whoever. I mean, I find it somewhat dangerous for a person to be carrying this amount of money in Washington, in the evening, and you accompanied by your brother, when it would have been much easier and handier just to walk across 17th Street.

THE WITNESS: I agree, and I was nervous doing it, but I did it.

* * *

THE FOREMAN: I'm still puzzled. You get the money from the treasurer or whatever Mr. Sloan's position was in the Committee -- shall we say on an official basis, between the disburser and you as the receiver, and the money sits in the safe for seven months; then Mr. Haldeman decides it has to go back to the Committee. You call Mr. LaRue -- you don't call Mr. Sloan and say "Hugh, seven months ago you gave me this \$350,000 and we haven't used any of it; I'd like to give it back to you since I got it from you", but you call Mr. LaRue.

THE WITNESS: Mr. Sloan was no longer with the Committee at that time.

THE FOREMAN: Well, whoever took Mr. Sloan's place.

THE WITNESS: Mr. Barrett took Mr. Sloan's place.

THE FOREMAN: Why didn't you call him?

THE WITNESS: I honestly don't know.

* * *

Q. When you got to Mr. LaRue's apartment was he expecting you?

A. Yes. I said I would be by.

Q. And no one was present when you were there?

A. No, sir.

Q. Was the money counted?

A. Yes, sir, I counted it.

* * *

A JUROR: It must have taken a long time to count that money.

THE WITNESS: It did. It took about 45 minutes. It takes a long time to count it.

* * *

Q. How did you carry this money?

A. In a briefcase.

Q. Did you take the briefcase back, or did you leave it?

A. No, I left the briefcase.

Q. Whose briefcase was it?

A. Gee, I think it was mine. I'm honestly not sure.

Q. Did you ever get the briefcase back?

A. I don't think so.

Q. Have you spoken to Mr. LaRue since that day?

A. No -- well, I ran into him at a party two weeks ago.

Q. Did you have a discussion?

A. No, just talked to him.

5. The underscored portions of the declarations quoted in paragraph 4, made by GORDON STRACHAN, the DEFENDANT, were material to the said investigation and, as he then and there well knew, were false.

(Title 18, United States Code, Section 1623.)

A TRUE BILL

LEON JAWORSKI
Special Prosecutor
Watergate Special Prosecution
Force

Foreman

TAB C

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of Richard J. Davis

I, Richard J. Davis, hereby declare as follows:

1. I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon's testimony before a federal Grand Jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force.

2. From 1973-75, I was an assistant special prosecutor with the Watergate Special Prosecution Force ("WSPF"). In that role, I served as chief trial counsel in the trials of Dwight Chapin and Edward Reinecke, and I was chief of the Political Espionage and International Telephone and Telegraph Corporation Task Forces. My responsibilities also included coordinating the WSPF's efforts to obtain Presidential documents and testimony following the pardon of then former President Nixon. Later, I was an Assistant Secretary of the Treasury for enforcement and operations during President Carter's administration. I also served in the Criminal Division of the United States Attorney's Office for the Southern District of New York. In addition, as an expert on standards of prosecution I have testified before the House Judiciary Committee.

3. The responsibilities of the WSPF included investigating far more than the break-in at the Watergate headquarters and the subsequent cover-up. Among the other areas investigated were potential violations of the campaign finance laws, potential

illegal payments to a member of President Nixon's Cabinet, the filing of false tax returns, the activities of Bebe Rebozo, the operations of the so-called Plumbers Unit and illegal wiretapping, the issue of improper influences on the Government's antitrust case against International Telephone and Telegraph, the use of "dirty tricks" directed at the campaigns of various Democratic Presidential candidates, the so-called 18 ½ minute gap in a key Presidential tape and more. Although the pardon issued to President Nixon meant that he could not be prosecuted various aspects of these investigations continued after the pardon as to the potential culpability of others. In this context we concluded that it was important to secure the testimony of the former President, and to do so in a manner that, if possible, would avoid endless litigation over potential executive privilege or other similar claims that would delay the completion of the work of the WSPF. We believed it to be in the public interest that the work of the office be completed in a reasonably expeditious manner.

4. In order to secure this testimony we entered into negotiations with the attorneys representing the former President. Ultimately the negotiations led to an agreement that Mr. Nixon's testimony would be taken in San Clemente, California, in the presence of representatives of the Grand Jury. It was also agreed that the questioning would include those topics where the WSPF could represent that there was an ongoing Grand Jury investigation. In a few additional areas where there was no Grand Jury investigation, but an ongoing criminal investigation it was agreed that representatives of the WSPF would interview the former President immediately following the completion of the testimony. Although I do not recall precisely which topics were covered in the testimony or interview (or the precise position taken by the

former President on the topics covered), because of the Pardon and the fact that the investigation of the break-in itself and the cover-up had been completed some time before, these topics were not included. These testimony and interviews ultimately took place over a two-day period in June, 1975. My recollection is that a transcript of the testimony was subsequently presented to the Grand Jury in Washington. With the agreement of the former President the fact of his testimony was publicly announced after its completion.

5. The resignation of Richard Nixon marks the first and only time that a President of the United States has resigned from office. The testimony taken 35 years ago represents the only occasion where the former President addressed under oath some (albeit not all) of the allegations surrounding his resignation.

6. As a former prosecutor, I understand and support the need to maintain grand jury secrecy. As time goes on, however, some of the key interests underlying the secrecy of grand jury proceedings diminish, particularly as those whose conduct may be referenced in these proceedings are deceased. In contrast, in a limited number of cases, the historical importance of the proceedings does not diminish and, in rare cases, long survives the events. I believe that the fact that a former President testified about criminal activity that occurred during his Administration, and in which his top staff were involved and which led to his resignation, presents one of the exceptional cases in which the historical importance of the material outweighs the need for secrecy. Based on my experience as a prosecutor, I do not believe that disclosure of President Nixon's testimony and the related additional records requested would create the kind of precedent that would threaten the future functioning of the grand jury system.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 1, 2010.

/s/ Richard J. Davis
Richard J. Davis

TAB D

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of John W. Dean III

I, John W. Dean III, hereby declare as follows:

1. I served as Counsel to the President of the United States (informally “White House Counsel”) from 1970-1973, and from 1973-1975 I became the key witness in the Watergate-related investigations undertaken by the United States Attorney for the District of Columbia, the Watergate Special Prosecution Force, the Select Committee on Presidential Campaign Activities of the United States Senate, and the Impeachment Inquiry of President Richard Nixon undertaken by the Committee on the Judiciary of the United States House of Representatives. Before becoming the government’s key prosecution witness, I pled guilty to conspiracy to obstruct justice in connect with my role in the so-called Watergate cover-up.

2. I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon’s testimony before a federal grand jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force, for the reasons set forth below.

3. If there is another living person who has more first-hand knowledge of the events described as Watergate than I do, including both those matters that transpired within the Nixon White House as well as the work of various investigators and prosecutors, that person is unknown to me. I mention this not to boast, for these are hardly matters about which to brag, rather because I believe it is a fact and it is relevant to my understanding of the material sought by this petition. In my role as White House Counsel and later as a key witness, I had countless

conversations with other members of the Nixon White House staff, the President, and those investigating and prosecuting violations of law during the Nixon presidency. Accordingly, I have personal knowledge of most of the key events and players related to the Watergate scandal, as well as the events that have unfolded in the four decades since.

4. I have authored several books about Watergate, including *Blind Ambition: The White House Years* (1976, and with a new afterword in 2010), *Lost Honor* (1982), *Unmasking Deep Throat* (2002), and *Worse Than Watergate: The Secret Presidency of George W. Bush* (2004)—all of which sought to add historical context to as well as an understanding and appreciation of the lessons that can be drawn from the most significant and troublesome political scandal of the twentieth century. As a *New York Times* best-selling author and a bi-weekly online columnist for FindLaw’s *Writ* (since 2000)—and evidencing the continuing interest in Watergate—I am regularly asked and agree to provide commentary for national radio and television shows about Watergate-related events in specific and the presidency in general, and I am a something of a regular guest on MSNBC’s *Countdown with Keith Olbermann*.

5. After writing my first two books about Watergate, and discussing the subject in lecture halls for several years, I lowered my public profile and refused to publicly discuss the subject when I became active in business (private mergers and acquisitions). Indeed, I might never have again discussed the subject but for the publication of *Silent Coup: The Removal of a President* (St. Martin’s Press 1991). Alerted to the bogus revisionism in the book by *60 Minutes* and *Time* magazine (both of which dropped their planned stories on the book after talking with me), my wife and I filed a defamation lawsuit that would end up in this Court, first before Judge Harold Greene and then Judge Emmet Sullivan: *Dean v. St. Martin’s et al.* By ignoring the public record (investigations by the U.S. Attorney, the Watergate Special Prosecutor, the FBI,

and Congress), *Silent Coup* falsely claimed that I had ordered the Watergate break-ins because my girlfriend (now wife) had learned that the Democratic National Committee was using the services of a nearby call-girl ring, with which she was falsely accused of being associated. *Dean v. St. Martin's Press* resulted in my closing my business and devoting all my time to uncovering how this bogus story had been concocted during eight years of extensive discovery with much of it into Watergate. When the case arrived in Judge Sullivan's chambers, he quickly ended the defendants' non-stop discovery and motions practice (which had reportedly cost the defendants' insurance carriers some \$14 million). This amount is mentioned to show the extent of the discovery, which opened countless files from the Watergate Special Prosecution Force at the National Archives and involved the depositions of many Watergate principals almost two decades after the events. As a result of the discovery, I spent eight years (between 1991 and 2000) intensely studying primary and secondary source material relating to Watergate. By the time the case was settled, I knew more about what had happened during Watergate than when I was living through the events.

6. Because of *Dean v. St. Martin's Press*, I not only furthered my knowledge and understanding of Watergate, but I discovered that when accurate information relating to Watergate is not available, those wanting to twist and distort history can do so rather easily. While all traumatic events in American history have provoked some revisionism, Watergate has produced more than its share of bogus explanations. Unsealing former President Nixon's testimony so that it is part of the public record would make it more difficult for revisionists to rewrite history. For this reason, among others, President Nixon's grand jury testimony is of material significance for the historical record.

7. Needless to say the precise nature of former President Nixon's testimony remains unknown. Based on the press coverage at the time of Mr. Nixon's deposition, it appears the general subjects explored during the two sessions involved: Mr. Nixon's knowledge of the content of the erased 18.5 minutes on a White House tape of June 20, 1972, and who had caused the erasure; his role, if any, in altering transcripts of recorded conversations turned over to the House Judiciary Committee during the impeachment inquiry; his role, if any, in using the IRS to harass his political enemies, and his involvement, if any, in the \$100,000 campaign contribution from Howard Hughes to Bebe Rebozo. Although these subjects were extensively investigated by the Watergate Special Prosecutors (and the Hughes contribution was also examined by the Senate Watergate Committee), these investigations remain publicly incomplete without the information from the former president. These topics were discussed only vaguely in the former president's memoirs. Mr. Nixon's answers are vital to complete the historical record on these not unimportant issues.

8. Currently, I am researching my eleventh non-fiction book, a work that will examine why things went so dreadfully wrong in Nixon's presidency. This work will seek to assemble information that I believe will be important to historians studying this period, material which seems to have been overlooked in the past several decades because it is not easily found in the massive record that has emerged relating to the Nixon presidency. Nixon's grand jury testimony of June 23 and 24, 1975, along with material prepared by the Watergate Special Prosecution Force relating to this grand jury session, would be an invaluable addition to my examination of the Department of Justice's pursuit of these matters during this historical period.

9. My activities relating to the events associated with Watergate and other matters may have been discussed in President Nixon's grand jury testimony. If that is the case, I have no personal objection to disclosure of any such testimony.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August [19], 2010.

/s/ John W. Dean III

John W. Dean III

TAB E

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of David M. Dorsen

I, David M. Dorsen, hereby declare as follows:

1. I am Of Counsel to the law firm of Wallace King Domike & Reiskin, PLLC. I make this declaration in support of the above-captioned petition to unseal the transcript of the testimony of President Richard M. Nixon before a grand jury on June 23-24, 1975, and for the release of related materials of the Watergate Special Prosecution Force.

2. From April 1973 until November 1974, I was Assistant Chief Counsel of the Senate Select Committee on Presidential Campaign Activities, popularly known as the Senate Watergate Committee. Before that, between 1964 and 1969, I was an Assistant United States Attorney in the Southern District of New York working under United States Attorney Robert M. Morgenthau.

3. The role assigned by the Senate to the Select Committee was to investigate all aspects of the 1972 presidential election. Among the areas investigated by the Committee and its staff was the break-in of the Democratic National Committee Headquarters in June 1972; illegal campaign contributions, including the so-called milk fund where people involved in the dairy industry made illegal contributions to Nixon's campaign; "dirty tricks" performed by Republican aides to the campaign and the White House; financial transactions between Nixon and members of his family and Howard

Hughes; the cover-up that implicated Nixon and his top aides, and other questionable activities. In the course of the Committee's investigation we discovered that Nixon was surreptitiously recording his conversations in the White House and elsewhere. The disclosure of these recordings led to the release of the recordings, which have largely been made public both in their original form and by way of transcripts.

4. Following the investigation, the Committee issued a comprehensive report, which was made public. The Committee also released to the public virtually all of its files, with narrow exceptions for certain classified material or other matter that could prejudice national security, such as confidential CIA files. Thus, scholars of the period have had access to a broad range of material relating to one of the great crises in American government.

5. One of the few areas closed off to scholars and the American public was the grand jury testimony of Nixon, whose role in the scandal continues to be of great interest and importance. I can say this on the basis of experience beyond my role on the Senate Watergate Committee.

6. Between 1995 and 2002, I taught at the Terry Sanford Institute for Public Policy at Duke University an undergraduate seminar that I created that was entitled, "Governmental Crises and the Legal System." The core of the seminar was the role played by courts, the grand jury, criminal prosecutions, civil actions, and congressional investigation in Watergate (although a smaller portion of the seminar was devoted to other governmental scandals, such as Iran-Contra under President Reagan). The role of the grand jury was an integral part of the process and, for example, I presented a clip of an interview of the foreman of the grand jury that indicted Nixon's top aides and named

him as an unindicted co-conspirator. That Nixon was brought to testify before a grand jury and what he was asked and what he said are an important part not only of the Watergate story, but of the lesson that no one is above the law.

7. For the past nearly five years I have been working effectively full time on a biography of Judge Henry J. Friendly (1903-86) of the United States Court of Appeals for the Second Circuit. Judge Friendly was a judge who respected privacy and was reluctant to release matters that might somehow harm the functions of government or invade legitimate privacy interests. For example, in the so-called Pentagon Papers case, which was heard in the Second Circuit before the Supreme Court, he voted against the immediate release of the documents.

8. Nevertheless, when Judge Friendly saw what he believed was an important and necessary disclosure, he vigorously supported that disclosure. The strongest example involved the grand-jury testimony of Mario Biaggi, a candidate for mayor of New York City, who lied when he stated publicly that he had not pleaded the Fifth Amendment before a grand jury. Judge Friendly wrote the opinion for the court authorizing release of that testimony. *In re Biaggi*, 478 F.2d 489 (2d Cir. 1973). Whether coincidentally or not I do not know, but his opinion is dated May 4, 1973, the same month as when the Senate Watergate Committee began its public hearings.

9. Both for historical reasons and for the important task of educating the public about the consequences of official misconduct, it is essential that the sworn testimony of Nixon be released. Only in this way can the full account of a major event in the country's history be known and understood.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing
is true and correct.

Executed in Washington, DC, on August 13, 2010.

/s/ David Dorsen
David M. Dorsen

TAB F

4. I am frequently quoted as an expert on media issues by the *New York Times*, *Washington Post*, NPR, and CNN, as well as the *Wall Street Journal*, PBS, C-SPAN, the BBC, Fox News, Al-Jazeera, and dozens of other news outlets throughout the world. I have also lectured on journalism history, media law, and related topics at American University Washington College of Law, Duke University, Georgetown University, Hofstra Law School, the University of Istanbul (Turkey), the University of Michigan (Ann Arbor), Northeastern University, the University of Oslo (Norway), the University of Texas (Austin), and Washington and Lee University, as well as the FBI training academy at Quantico, Virginia, the State Department, and other law, government, and journalism organizations in the U.S. and abroad.

5. I have specialized in the history of the Watergate scandal and am widely considered the nation's leading academic authority on media coverage of President Richard Nixon, which is the focus of my forthcoming 480-page book, *Poisoning the Press: Richard Nixon, Jack Anderson, and the Rise of Washington's Scandal Culture*, which will be published by Farrar, Straus and Giroux in September 2010. My other scholarship on Watergate and the news media includes the following articles: "Watergate Revisited," *American Journalism Review*, v. 26, no. 4 (Aug./Sept. 2004): 60-67; "Media Coverage and a Federal Grand Jury: Publication of the Secret Watergate Transcripts (1973)," *American Journalism*, v. 24, no. 2 (Spring 2007): 7-33; "Fighting Quakers: The 1950s Battle Between Richard Nixon and Columnist Drew Pearson," *Journalism History*, v. 30, no. 2 (Summer 2004): 76-90; and "The Jailing of a Journalist: Prosecuting the Press for Possession of Stolen Government Documents," *Communication Law and Policy*, v. 10, no. 2 (Spring 2005), 137-77.

6. In 2006, I testified as an expert witness before the Senate Judiciary Committee about the importance of preserving historical archives involving the Watergate scandal. I have

also provided testimony in various media law cases as an expert witness, plaintiff, and defendant, and have filed dozens of Freedom of Information Act requests—including numerous appeals—with the federal government to declassify records about President Nixon and Watergate.

7. In my professional judgment, it is astounding that the 35-year-old transcript of President Nixon’s grand jury testimony still remains sealed and unavailable to scholars, journalists and the public. No ongoing law enforcement investigations are underway. No corporate trade secrets are at risk. No obvious privacy concerns present themselves given the long-ago death of Nixon and most of the other people from that era who might be mentioned in the late President’s testimony. And any possible threat to national security that potentially could be caused by revealing sources and methods—an extraordinarily unlikely possibility given how much time has elapsed—could easily be dealt with by precise and modest redactions.

8. I am acutely aware of the importance of Rule 6(e) and the vital need to uphold the Constitution’s Sixth Amendment attempt to guarantee fairness in criminal trials. As I wrote in one scholarly publication, “Grand jury secrecy is designed to protect the rights of innocent people who may unfairly come under suspicion by prosecutors but ultimately are not charged. Secrecy can also help encourage witnesses to testify without fear of publicity and can prevent criminal targets from fleeing or destroying evidence, or intimidating or silencing witnesses.”¹ But in the case of Nixon’s sealed grand jury testimony, these legitimate concerns have been rendered moot by the passage of time. So, too, there seems to be an inexplicable double standard that has led to the release of a great deal of other once-sealed grand jury testimony from Watergate—except for that of the late President himself, the most public figure of that era whose

¹ Mark Feldstein, *Media Coverage and a Federal Grand Jury: Publication of the Secret Watergate Transcripts* (1973), 24 *American Journalism* 10 (Spring 2007).

testimony by definition is of more import and interest than any other person involved in that affair.

9. More than three decades ago, the news media revealed much of the key information contained in such testimony. As long ago as April 1973, columnist Jack Anderson obtained hundreds of pages of verbatim transcripts of the still-secret Watergate grand jury testimony and published extensive excerpts from them in seven columns over a week-long period, disseminating them to more 40 million readers in nearly one thousand newspapers around the country. Ever since then, for better or for worse, leaks of grand jury testimony to news outlets have become standard fare across the country.² In these circumstances, to maintain the seal on the testimony of President Nixon, the most important actor in the Watergate scandal, not only is nonsensical; it reinforces the notion that the President is still somehow above the law, the very issue at the heart of the scandal that led to Nixon's downfall in the first place.

10. In my professional judgment, any possible Sixth Amendment concerns still lingering from the late President's 1975 grand jury testimony are significantly outweighed by the First Amendment rights of the press and public to know and discuss Nixon's testimony. The issues at stake in this testimony remain of vital interest to historians, journalists, and the public in order to understand the complete Watergate narrative. Despite the passage of time, the importance of the Watergate crisis is difficult to overstate, not only in American political history but also in contemporary journalism. Journalism professors across the nation regularly teach students about the role of *Washington Post* reporters Bob Woodward and Carl Bernstein

² Ironically, in the Watergate case, the real-time leaks of ongoing grand jury testimony arguably strengthened rather than weakened the Sixth Amendment goal of fairness in prosecutions because the Nixon administration had effectively corrupted the grand jury process in a criminal conspiracy to obstruct justice; thus the leaks to the news media served to strengthen rather than weaken judicial integrity by helping to thwart the Watergate cover-up. Feldstein, *Media Coverage* at 7-33.

uncovering the scandal that brought down Nixon even while scholars continue to debate the media's true role and historical legacy during that time.³ Politicians and pundits routinely affix the Watergate-inspired appellation of “-gate” on the numerous subsequent scandals that have occurred—Iran-gate, Travel-gate, File-gate, Iraq-gate, Katrina-gate, to name just a few—and predictably compare contemporary scandals with the mother of them all: Watergate. The growth of contemporary investigative reporting, the rise of independent special prosecutors, legislation to reform campaign financing and enact government ethics codes—all trace their roots to the only scandal in American history that caused a president to resign. “Nixon’s downfall,” President Clinton’s defense attorney argued after his own “Monica-gate” scandal led to impeachment, “served as the touchstone for the scandal machine that followed,” an interlocking symbiotic relationship between government investigators and the journalists to whom they leaked information.⁴ Accurate or not, this belief is widely shared—and debated—in Washington and around the country, renewed every time another political scandal makes headlines.

11. The specific details of President Nixon’s secret grand jury testimony continue to have relevance today. Admittedly, it is impossible to know exactly what the late President stated in this testimony because it is still sealed; but according to author Seymour Hersh, “in 1975, during his secret grand jury testimony to the Watergate Special Prosecution Force, he [Nixon]

³ See, for example, Michael Schudson, *Watergate in American Memory: How We Remember, Forget, and Reconstruct the Past* (1993); Louis W. Liebovich, *Richard Nixon, Watergate, and the Press* (2003); Joseph C. Spear, *Presidents and the Press: The Nixon Legacy* (1984); Gladys Engel Lang and Kurt Lang, *The Battle for Public Opinion: The President, the Press, and the Polls During Watergate* (1983); David Greenberg, *Nixon’s Shadow: The History of an Image* (2003); Mark Feldstein, *Poisoning the Press: Richard Nixon, Jack Anderson, and the Rise of Washington’s Scandal Culture* (2010); Stanley I. Kutler, *The Wars of Watergate: The Last Crisis of Richard Nixon* at 190, 459, 649 (1990); Edward Jay Epstein, *Between Fact and Fiction: The Problem of Journalism* at 19-33 (1975); Paul Johnson, *Modern Times: A History of the World from the 1920s to the Year 2000* at 649-51 (1999).

⁴ Feldstein, *Poisoning the Press*, *supra*, at 359; Lanny Davis, *Scandal: How “Gotcha” Politics Is Destroying America* at 6 (2004).

shocked the lawyers by insisting that the United States had come ‘close to nuclear war’ during the [1971] India-Pakistan dispute.”⁵ This quotation has repeatedly been cited since then in debates not only about Nixon’s policy during the 1971 India-Pakistan War but also about the effect of that policy on current US relations with India and Pakistan, a vital subject given the ongoing US war against terrorism there.⁶

12. The fact that author Seymour Hersh already made public a partial quotation from Nixon’s secret grand jury testimony underscores a crucial reason for the release of the entirety of this transcript: to verify the authenticity and context of this important claim that Nixon “threatened to go to nuclear war with the Russians”⁷ during the India-Pakistan conflict of 1971. What subject could possibly be of more fundamental interest to the American people than decisions made in secret that potentially could have led to an atomic holocaust? And if this dramatic quotation is inaccurate or incomplete, Nixon’s historical reputation has been unfairly tarnished and deserves correction not only to set the record straight but also to make sure that contemporary policymakers do not draw incorrect lessons from the last major American military involvement in Pakistan while they decide how to prosecute our ongoing war against terrorism there.

13. For all of these reasons stated above, I strongly urge the Court to unseal President Nixon’s June 23-24, 1975 grand jury testimony and all other related materials. Anything less

⁵ Seymour M. Hersh, *The Price of Power: Kissinger in the Nixon White House* at 457 (1983).

⁶ Dennis Kux, *India and the United States: Estranged Democracies, 1941–1991* at 306-07 (1992); William Bundy, *A Tangled Web: The Making of Foreign Policy in the Nixon Presidency* at 288-91 (1998); Feldstein, *Poisoning the Press, supra*, at 173.

⁷ Hersh, *supra*, at 457.

serves to continue the Watergate cover-up that so darkened our nation's political system a generation ago.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August [15], 2010.

/s/ Mark Feldstein
Mark Feldstein

TAB G

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of Don Fulsom

I, Don Fulsom, hereby declare as follows:

1. I am a freelance writer, editor, and researcher. I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon’s testimony before a federal grand jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force.

2. I was formerly a White House correspondent for United Press International (UPI), and a UPI bureau chief in Washington, DC. I have written about President Nixon for the *Washington Post*, *Chicago Tribune*, *Esquire*, and *Los Angeles Times*.

3. Currently, I am an adjunct professor of government at American University, where I teach a course entitled *Watergate: A Constitutional Crisis*. I am also writing a book titled *Nixon’s Greatest Secrets*. Scheduled for publication by Thomas Dunne Books in 2011, the book has already been previewed by the *Washington Post*’s “Political Bookworm” Blog. See Steven Levingston, *Nixon Book Coming Next Year Claims to Dig up Fresh Secrets from National Archives Documents and Tapes*, http://voices.washingtonpost.com/political-bookworm/2010/03/nixon_book_coming_next_year_cl.html. Because his grand jury testimony is one of Nixon’s major remaining secrets, the unsealing of that testimony could provide important fresh material for all journalists and historians, as well as for this particular book.

4. As the political correspondent for *Crime Magazine*—an online publication backed by bookseller Amazon.com—I have authored a number of articles about Nixon and Watergate

under the topic “Nixon’s Crimes,” available at <http://crimemagazine.com/taxonomy/term/5>. The unsealing of Nixon’s secret testimony might well disclose significant new information on topics covered in these articles. This new information would help to educate today’s citizens about a crucial event in American political history, as well as current and future students of American history.

5. For example, one of the above articles deals in particular with billionaire Howard Hughes’s \$100,000 contribution to the President through Nixon’s best friend Charles Gregory “Bebe” Rebozo. Nixon bagman Rebozo accepted the Hughes cash—in two deliveries at two highly secure locations—the Florida and California White Houses. In my article “What Watergate Was All About,” April 15, 2007 (<http://www.crimemagazine.com/what-watergate-was-all-about>), I present only the most widely accepted theory about the Hughes contribution and its role in motivating the Watergate break-in. But the motivation for the break-in—the why—remains the subject of debate today, nearly 40 years later. President Nixon’s answers to grand jury questions could help nail down the likely motive, or motives.

6. Like many students of Watergate, I am convinced that the June 17, 1972 break-in at the Democratic National Committee was intended mainly to repair a faulty bug that the burglars had installed, weeks earlier, on the telephone of DNC Chairman Larry O’Brien. The President was frantic to get political dirt on O’Brien, and he also desperately wanted to know what dirt Larry might have on him. In particular, Nixon wanted to know whether O’Brien knew about the apparent political payoff of \$100,000 to Nixon from Hughes.

7. Rebozo later told Senate Watergate Committee investigators that the money was a campaign contribution that Nixon did not know about and that he, Rebozo, had not yet delivered to any campaign organization. In the end, Rebozo failed to cooperate fully with the Senate panel.

He refused to deliver specified records, and—at one late point in the probe—Rebozo fled the country to avoid further questioning. As I wrote in my article, one of the IRS investigators assigned to the Rebozo case, Andy Baruffi, later revealed: “We had Rebozo primarily on a straight up-and-down provable false statement charge. It was a dead-bang case. I believe a deal was made with the White House to kill the investigation.” Rebozo was never prosecuted.

8. Nixon’s personal lawyer Herb Kalmbach told investigators that the Hughes money was split among Nixon’s brothers, Donald and Edward, and Rose Mary Woods, the President’s longtime personal secretary.

9. Chief committee investigator Terry Lenzner concluded that the cash was a bribe to purchase influence on two federal cases involving Hughes-owned businesses. As discussed in my article, Lenzner later stressed that he is “absolutely certain” the Hughes money played a role in the President’s desire to find out as much as possible about O’Brien.

10. Burglary supervisor G. Gordon Liddy once expressed a similar belief—saying the break-in was “to find out what O’Brien had of a derogatory nature about us, not for us to get something on him or the Democrats.” G. Gordon Liddy, *Will: The Autobiography of G. Gordon Liddy* 237 (1980). Liddy now believes in one of the most curious revisionist theories of the break-in—that it was orchestrated by White House counsel John Dean to conceal his girlfriend’s links to a call-girl ring supposedly used by the Democratic National Committee. Perhaps Nixon’s testimony will jibe with Liddy’s new take. Or put such notions to rest.

11. During his presidency, Nixon was totally silent on the \$100,000 Hughes contribution. His sworn testimony could be key to unlocking a number of mysteries about the Hughes-Rebozo connection.

12. In a more general way, Nixon's testimony might fill many gaps and connect important dots in the Watergate saga, and thus contribute to existing and future scholarship about America's greatest political scandal. After all, Watergate involved a vast web of criminality that forced a president to resign in disgrace and sent 25 of his top aides to prison. Unsealing Nixon's testimony might, in some way, even assist us in finding ways to avoid such abuses of presidential power in the future.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 28, 2010.

/s/ Don Fulsom
Don Fulsom

TAB H

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of David Greenberg

I, David Greenberg, hereby declare as follows:

1. I am an Associate Professor of Journalism and Media Studies and of History at Rutgers University, where I teach courses in The American Presidency, History of Media and Government, and Recent U.S. History. I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon’s testimony before a federal grand jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force.

2. I research and write extensively on American history and politics and contribute to popular and scholarly forums. Among my particular areas of expertise are Richard Nixon’s career and presidency, which I have studied for more than twenty years. My undergraduate thesis, which won Yale University’s Walker Prize for a thesis in American history, dealt with Nixon and the antiwar movement, and my work in journalism involved serving as Bob Woodward’s assistant on *The Agenda: Inside the Clinton White House* (Simon & Schuster, 1994). My doctoral dissertation (Columbia University, 2001) was published by W.W. Norton & Co. as *Nixon’s Shadow: The History of an Image* in 2003, and was widely and favorably reviewed in both popular and scholarly publications. It won Columbia University’s Bancroft Dissertation Prize, the American Journalism Historians Association book award and the *Washington Monthly* book award. It appears on many college and graduate syllabi. I have also written other scholarly articles and book chapters about Nixon both in academic journals and collections (including chapters in *Nixon in the World: American Foreign Policy, 1969-1977*,

published by Oxford University Press in 2008; *Watergate and the Resignation of Richard Nixon*, published by CQ Press, 2004; and *A Companion to Richard Nixon*, Melvin Small, ed., Blackwell Reference, forthcoming in 2011). I have also written on the subject of Nixon for the *New York Times*, the *Washington Post*, *Slate* magazine and other respected journalistic publications. My work on Nixon has earned me invitations to speak at conferences and symposia, including most recently to keynote a conference on Nixon at Oxford University. I have won several academic awards, including the ACLS Frederick Burkhardt Fellowship, the Woodrow Wilson Center Fellowship, the Hiett Prize in the Humanities, and various prizes and grants awarded internally at Rutgers University.

3. I believe it is very important for the sake of historical knowledge that Richard Nixon's grand jury testimony from the Watergate trials be unsealed. For many reasons, Watergate remains one of the most important events in American history. It was the greatest constitutional crisis in American history since the Civil War, the most serious abuse of presidential power and the only one that led to a president's resignation, and a transformative event that remade American politics. It contributed significantly to the decline of public trust in the president and in government, to the concern among journalists with scandal and high-level wrongdoing, and to a political culture of partisan antagonism and retribution. Watergate and Nixon's name remain synonymous with presidential corruption and crime. For thirty-five years the "-gate" suffix has been routinely attached to scandals large and small, attesting to Watergate's continuing cultural importance. Although there were many other important aspects of Nixon's presidency, virtually all historical overviews of his presidency begin with Watergate.

4. Unsealing Nixon's testimony is essential, most obviously, because Richard Nixon was the central figure in the Watergate scandal. When President Gerald Ford pardoned Nixon in

September 1974, many Americans objected strenuously. One reason was that they did not think the president should be “above the law”; they believed Nixon should be subject to the justice system just as his aides had been. A second reason many people wanted Nixon to go on trial was to place him on the record, under oath, answering questions and speaking more fully on a deeply important subject that, as president, he had regularly misled the public about. Although we cannot know if Nixon was truthful in his grand jury testimony, there is the potential that he revealed significant information or opinions that he never otherwise disclosed. At a minimum, historians should be able to scrutinize this testimony to find discrepancies or corroboration with other statements made by Nixon and other key Watergate players.

5. A second, if related, reason for unsealing the testimony is that Watergate is actually provoking renewed interest among historians. Watergate, of course, refers not simply to the break-ins at the hotel and office complex that began Nixon’s undoing; it has become shorthand for the whole panoply of what Nixon’s Attorney General John N. Mitchell called “White House horrors.” For many years, following Nixon’s resignation, a series of books and memoirs about Watergate seemed to satisfy public interest in the subject. In the 1990s, scholars studying Nixon tended more often to examine his domestic policies. That the new historical documents from Nixon’s administration that were being opened up to historians included a great deal of material on under-explored domestic policies—partly because the Nixon Estate was keeping political material off limits—was another reason that historians concentrated their energies there. But in the last decade, the pendulum has swung back in the other direction. Many aspects of the Bush administration’s political behavior struck historians and journalists as resembling Nixon’s, and there was a resurgence of books that looked at Nixon’s political strategizing, including Watergate, such as Robert Mason’s *Richard Nixon and the Quest for a*

New Majority and Rick Perlstein's *Nixonland*. The popularity of the play and motion picture *Frost/Nixon* further underscored this trend. The success of the play, which is about Nixon's effort in 1977 to rehabilitate himself by submitting to a series of interviews with British television personality David Frost, showed a continuing public interest (in Britain as well as the United States) in such issues as Watergate, Nixon's battle for his reputation, and the questions of presidential power and its abuse that were central to Watergate. The play's biggest "laugh line"—which, in the performance I saw, triggered what is best described as nervous laughter—was Nixon's famous statement that "When the president does it, that means that it is not illegal." In short, these subjects are arguably of even greater public and professional interest than they have been in quite some time.

6. A third reason that historians and the public would benefit from the unsealing of Nixon's testimony is that the testimony may answer, or help to answer, lingering mysteries about Watergate. For example, it is not known whether Nixon authorized the Watergate break-in or knew about it in advance. Although the evidence is not conclusive, there is good reason to think that he did. He is known to have told his aides to commit other burglaries, such as at the Brookings Institution (which was never carried out) and to have involved himself closely in the kind of political skullduggery of which Watergate was a part. In his memoirs he wrote that he saw nothing wrong with such burglaries. On June 20, 1972, discussing the recent arrest of the Watergate burglars, he said, on tape, "My God, the committee isn't worth bugging, in my opinion. That's my public line"—implying that his private belief was different. One of the key figures in the Watergate scandal, Jeb Stuart Magruder, has said that Nixon did authorize the break-in, while others denied this. Unsealing Nixon's grand jury testimony would provide additional evidence on this historical question.

7. In addition to the question of Nixon's foreknowledge of the Watergate break-ins, his unsealed testimony might help to answer other questions. For one thing, historians still debate the exact motives for the initial Watergate break-in and what precisely the White House burglars were seeking to find out. Was it something specific, such as having to do with the relationship between tycoon Howard Hughes and Democratic National Chairman Larry O'Brien? Or was it a more general "fishing expedition" in search of anything that might be used against the Democrats in the 1972 campaign—or anything that the Democrats might be planning to use against Nixon? Second, what was on the famous 18½-minute gap, on a key White House tape recording, that was determined to have been deliberately created? Third, how far and wide did Nixon's other abuses of presidential power range? To the extent that Nixon addressed questions such as his abuse of executive agencies such as the FBI, CIA, and IRS, his grand jury testimony could meaningfully enhance and enrich the historical record. It might well help to round out our understanding of Nixon and Watergate.

8. A fourth reason that unsealing the testimony is important is that there have been efforts over the years to distort the historical record, and Nixon's own testimony could help to counter such efforts. Some of these efforts were led by Nixon himself, his aides, and his estate; others were taken up by friendly journalists. The burden of their argument is that Nixon was a more-or-less innocent victim, who may have crossed a few ethical lines but overall did nothing that other presidents hadn't also done. They suggest that Nixon was subject to a double standard by the news media, which always was out to get him, and was railroaded from office by opportunistic Democrats. Their efforts included the creation of a mendacious exhibit at what used to be a privately funded and privately run Nixon Library in Yorba Linda, California, that grossly misrepresented the Watergate scandal. To cite but one example, the exhibit implied that

Democrats wished to oust Nixon in order to orchestrate a coup d'état and put their own party in power—when in fact Democrats and Republicans alike deliberately waited until another Republican, Gerald Ford, was confirmed as vice president before undertaking impeachment proceedings. Fortunately, when the National Archives and the Nixon Library reached an agreement to bring the privately owned Library under federal control, the agreement allowed a new, non-partisan, federally appointed director of the library, historian Timothy J. Naftali, to remove the old exhibit and replace it with a more historically accurate one. Nonetheless, people associated with the old Nixon Library, as well as former Nixon White House officials, continue to promote a dishonest and misleading account of the Watergate affair.

9. Some longstanding Nixon partisans, along with other freelance authors, have promoted even more fanciful claims about Watergate that resemble the well-known conspiracy theories about the Kennedy assassination, the moon landing, Pearl Harbor, or even the Holocaust in that they weave elaborate and sinister theories about hidden histories behind the familiar public accounts. The most popular of these theories holds that Nixon was the victim of back-to-back, unrelated secret plots—the first by his White House Counsel John Dean, who wanted to conceal his wife's supposed history as a call girl, the second by White House Chief of Staff Al Haig, who supposedly fronted a military cabal upset about Nixon's moves toward détente with the Soviet Union. In *Nixon's Shadow*, I refer to the people who promote these bizarre theories as Watergate Deniers—for just as the fringe figures who have developed a small cottage industry devoted to the claim that the Holocaust never happened are more properly called “deniers” than “revisionists” (a term that bestows legitimacy in professional historians' eyes), so the Watergate conspiracy theorists argue that history—or, as they would have it, “official” history—is a lie. They have built their case on faulty logic and tenuous evidence, and yet have argued with

enough passion and relentlessness to win themselves a hearing in mainstream forums—particularly when they are able to get naïve or relatively ignorant students, journalists, or public authorities to entertain their claims. Although I don't believe that the unsealing of Nixon's testimony would disabuse these people of their fantasies—conspiracy theories, by definition, can always explain away inconvenient facts—I do believe, regardless of what Nixon said in his testimony, it will serve as a bulwark against the falsification of history.

10. A final consideration is that Richard Nixon, for all his prominence, was one of the most enigmatic public figures of the 20th century, and this testimony would shed light on the important question of who he was. From almost his first days as a national political figure, the literature on Nixon has been shot through with discussions of his secretive and impenetrable nature. The terms “the real Nixon” and “the new Nixon” became part of the common vocabulary, reflecting the public uncertainty as to his true self. Nixon was the subject of a record number of psychoanalytic biographies, with many of his interpreters reflecting on what the historian Bruce Mazlish, one of his first biographers to use an explicitly psychological approach, called “disturbing speculation about who the ‘real’ Nixon is.” Uncovering the real Nixon became the *raison d'être* of biographies and profiles bearing the titles *In Search of Nixon*, *The Nixon Nobody Knows*, *Richard Nixon: The Man Behind the Mask*, and *The Real Nixon*. The reasons for Nixon's inscrutability are many and complicated. Some have to do with his personality, which was naturally introverted and not given to public disclosure. Others have to do with his deliberate efforts to conceal information from the American public, as seen in his frequent claims of executive privilege during the Watergate investigations and his post-presidential lawsuits to block the release of tapes and papers. Although in an existential sense the “mystery” of Richard Nixon can never be truly solved—no historical figure ever becomes completely accessible and

transparent to historians—his grand jury testimony remains one of the most important outstanding statements he made about the most important episode in his life. I believe that it ought to be made available for historians and the public to see.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July [30], 2010.

/s/ David Greenberg
David Greenberg

TAB I

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of Kenneth J. Hughes, Jr.

I, Kenneth J. Hughes, Jr., hereby declare as follows:

1. I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon’s testimony before a federal grand jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force.

2. I am currently the Nixon Tapes Project Editor with the Presidential Recordings Program (PRP) of the Miller Center of Public Affairs at the University of Virginia. I joined the PRP on August 25, 2000, as a full-time researcher working on the largest collection of presidential recordings, Richard M. Nixon’s secretly recorded White House tapes. Subsequently, in addition to conducting my own research on the tapes, I coordinated the work of other scholars on preparing transcripts of these tapes for publication. The program makes presidential recordings accessible to scholars, teachers, researchers, and citizens by transcribing them and providing the necessary historical background to understanding these historic conversations.

3. Prior to joining the University of Virginia, I wrote several articles on Nixon’s abuse of the powers of the presidency. “Nixon: Still the One,” published in the August 24, 1997, *New York Times Magazine*, proved that Nixon offered a blanket pardon to his top aides before they testified in the Senate Watergate investigation. “The Tapes That Destroyed Nixon,” published on the op-ed page of the December 6, 1997, *Washington Post*, related an unsuccessful attempt by Nixon to persuade his chief of staff to remove the tapes from the White House and destroy them. In the April 1997 issue of the *American Journalism Review*, I wrote about Nixon’s

attempt to use the IRS and the Immigration and Naturalization Service against the publisher of the *Los Angeles Times*. “Nixon Tapes Reveal ’73 Plan to Audit Congress,” published in *The Hill* on April 16, 1997, showed Nixon’s interest in retaliating against congressional critics with IRS audits and derogatory information collected by the State Department. Since joining the Presidential Recordings Program, I have written about Nixon’s abuses of presidential power on the *History News Network* (“How Paranoid Was Nixon?”, Aug. 13, 2007, <http://hnn.us/articles/41698.html>, and “Nixon vs. the Imaginary ‘Jewish Cabal’”, Sept. 24, 2007, <http://hnn.us/articles/42970.html>) as well as the program’s web site (“A Rough Guide to Richard Nixon’s Conspiracy Theories,” Sept. 24, 2007, <http://whitehousetapes.net/exhibit/rough-guide-richard-nixons-conspiracy-theories>).

4. The issues involved in the Watergate case are profoundly important to the functioning of a constitutional republic. Richard Nixon abused the powers of the office of President of the United States. Long before the break-in at the headquarters of the Democratic National Committee in the Watergate apartment and office complex, Nixon used the investigative powers of the federal government for political gain. For example, he created a Special Investigations Unit that operated outside the law and did political dirty work under the cover of protecting national security. Because Nixon resigned the presidency rather than face impeachment and removal from office and accepted a full pardon for his crimes, he deprived the nation of the chance to fully resolve the constitutional and legal issues raised by his abuses. By conspiring in a criminal cover-up to obstruct the investigation of his abuses, he further deprived citizens of the means to hold an elected official accountable for them. Following his resignation, he engaged in a lifelong and partly successful campaign to impede the release of tapes and written documents substantiating these abuses.

5. The historical importance of, and public interest in, the collection of abuses of power covered by the umbrella term of Watergate are great and widely recognized. The Watergate investigations riveted the nation in 1973 and 1974. They resulted in the criminal convictions of a large number of high government officials and the resignation of a President. Watergate has remained relevant throughout the years, as is evidenced by the frequent affixing of the suffix “-gate” to the scandals of the day. Richard Nixon’s role in the scandal was central, but remains controversial. Release of his grand jury testimony would remove a no-longer necessary veil of secrecy from an important part of the record and thereby help dispel the myths that government secrecy engenders.

6. Of great interest to both the general public and scholars is the former President’s testimony regarding the notorious 18½-minute gap on tape 342 recorded at 11:26 A.M. on June 20, 1972, in the “Executive Office of the President,” also known as Nixon’s “hideaway” office in the building next to the White House (conversation 342-16). This was the first tape-recorded conversation between the President and his chief of staff, H.R. “Bob” Haldeman following their return to the White House from Key Biscayne, Florida, where they had learned of the June 17, 1972, arrest of the Watergate burglars. Haldeman’s handwritten notes of the meeting establish that the missing section of the conversation dealt with Watergate, and tape experts determined that the gap was caused by manually recording over that section of the tape at least five times. (See “The EOB Tape of June 20, 1972: Report on a Technical Investigation Conducted for the U.S. District Court for the District of Columbia by the Advisory Panel on White House Tapes, May 31, 1974,” *available at* <http://www.aes.org/aeshc/docs/forensic.audio/watergate.tapes.report.pdf>.) In the decades since the erasure, experts have been unable to reconstitute the conversation

that took place between Nixon and Haldeman. Nixon's sworn grand jury testimony therefore remains a crucial piece of evidence regarding the development of the Watergate cover-up.

7. In addition, Nixon's testimony will advance current and future historical scholarship by providing a benchmark for comparison with his unsworn statements to the American people regarding Watergate and with the record of his contemporaneous tapes and related documents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August [10], 2010.

/s/ Kenneth J. Hughes, Jr.
Kenneth J. Hughes, Jr.

TAB J

and President Nixon as historical subjects and, consequently, a strong understanding of the gaps that exist in the scholarship and documentation on Watergate. The most significant of these gaps lies with the absence of any public knowledge of Richard Nixon's Watergate grand jury testimony.

4. Watergate was the most significant constitutional crisis that the United States faced since the Civil War. Watergate was also the greatest challenge to the constitutional concepts of separation of powers between the three branches of government—their respective responsibilities of oversight connected to the system of checks and balances established by the founding fathers and framers of the constitution as well as the traditional American understanding that no man or woman is above the law. Although the federal government, the nation, and the constitution survived Watergate, the American people have yet to be given a full accounting of the actions and rationale of the nation's highest-level elected public official, President Richard M. Nixon, in this tragic affair.

5. The historical interest in Watergate has only grown over time. As more and more Watergate-related documents have become available to researchers, scholars have produced a growing library on the subject. However, absent from the available primary source materials is what President Nixon stated while under oath before the Watergate Grand Jury, which has secured the unfortunate reality that speculation is the primary manner by which any scholar can discuss President Nixon's role in this unprecedented constitutional and national crisis—an appalling embarrassment for a free and democratic society.

6. All U.S. political crises, both previous and subsequent, are compared to Watergate. A complete accounting of how our government operated during the scandal and the subsequent legal actions therefore should be made available to place Watergate in the proper and

fully honest historical context, which can only be done through the release of Richard Nixon's Watergate Grand Jury Testimony. Additionally, the contemporary culture of the United States disfavors hidden historical truths.

7. The debate over the level of Richard Nixon's involvement in Watergate has the potential to be closed with the release of his Watergate Grand Jury testimony. The release of these specific materials will provide the American people with a significant historical document that they should no longer be deprived of, and these documents will present the American people with a real understanding of Richard Nixon's role in and conscious understanding of Watergate from the former president's personal perspective which he delivered while under oath. Additionally, President Gerald Ford's pardon of Richard Nixon covered all crimes he may have committed during his entire tenure in office and specifically did not extend beyond August 9, 1974. However, the June 1975, Richard Nixon testimony was under penalty of perjury. The possibility of a perjury charge thus leads one to suspect that the content of the former president's grand jury testimony is potentially Nixon's most honest account of his Watergate-related actions. In view of these points, in my view, there is no Watergate-related document of greater historical significance than the Watergate Grand Jury testimony of President Nixon.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 16, 2010.

/s/ Thomas Long
Thomas Long

TAB K

earlier he described the crisis that eventually led to his resignation: The Watergate affair, he stated, “include[s] charges of illegal activity during and preceding the 1972 presidential election and charges that responsible officials participated in efforts to cover up that illegal activity.” This two-part definition had accuracy, clarity, and durability.

4. The term Watergate came from a complex of two large buildings on the banks of the Potomac River in Washington, DC, where on June 17, 1972, police apprehended burglars in the offices of the Democratic National Committee. A Harris Poll that was conducted in the autumn of 1972 found that seventy-six percent of the public had heard about the break-in. In January 1973, Judge John Sirica presided over the trial of the burglars. The next month, by unanimous vote the Senate established the Senate Select Committee on Presidential Campaign Activities to investigate.

5. The three networks—ABC, CBS, and NBC—televised the hearings and the Public Broadcasting Service (PBS) taped the hearings and replayed them in the evenings. During his July 16, 1973 testimony, presidential aide Alexander Butterfield revealed the existence of a taping system that recorded conversations in the Oval Office, the presidential office in the Old Executive Office Building, Camp David, the Lincoln Sitting Room, and the cabinet room. Immediately the Senate Committee and the President-appointed special prosecutor requested access to the tapes. The President refused, although sources as the *Wall St. Journal*, the *National Review*, and 1964 Republican presidential candidate Senator Barry Goldwater all stated that he should release them.

6. The struggle over access to the tapes lasted until July 24, 1974, when the Supreme Court ruled unanimously that the President must release the requested tapes. One tape clearly implicated Nixon in attempted obstruction of justice and abuse of federal agencies. All seventeen

members of the House Judiciary Committee, then voting on articles of impeachment, went on record as planning to recommend impeachment to the House of Representatives. Republican leaders in the Senate informed the President that the Senate would vote to convict. The country, meanwhile, stood with uncommon unanimity that the President should resign or Congress should remove him from office. In that environment, Nixon resigned.

7. Watergate constituted the greatest constitutional crisis since the Civil War. All three branches of government were intimately involved in a series of crises during the struggle for the tapes. In particular, the “Saturday Night Massacre” and the President’s release of transcripts of tapes (rather than the tapes themselves) illustrate the scope of the constitutional challenges that Watergate presented. From July 1973 to August 1974, discussion of Watergate dominated the media.

8. Watergate’s legacies are many. Public opinion polls report—and have consistently done so since the early 1970s—that Americans maintain a fundamental distrust of the federal government. Presidential handling of Vietnam and Watergate are the two major sources of this distrust. Investigatory journalism, mastered by Carl Bernstein and Bob Woodward during Watergate, continues to characterize the media. And to a large degree, investigatory journalism operates on the assumption that presidents and their closest aides are untrustworthy. One positive impact of Watergate was passage of the Presidential Records Act of 1978, a law mandating that presidential records become public property when a president leaves office. The origin of the Act, of course, was mistrust of Nixon’s control of his presidential records.

9. Watergate later directly influenced congressional leaders to forestall any efforts to impeach President Ronald Reagan for his actions in connection with the Iran-Contra affair, as senators from both parties reportedly did not think that the country was ready to go through that

experience again. That reluctance faded by the late 1990s, and the impeachment proceedings against President William J. Clinton suggest that Congress no longer views impeachment with that same hesitancy.

10. Watergate continues to stir the public's interest. For example, during their research into Watergate, Bernstein and Woodward relied on a confidential source they identified only as "Deep Throat." In May 2005, Deep Throat's identity became known and received significant media attention, with stories in all the major news outlets.

11. Scholarly interest in Nixon also remains strong. For example, the National Archives periodically releases transcripts of the tape recordings from the approximately 4,000 hours of Nixon tapes. In June 2009, the Archives released transcripts of 154 hours of tapes, which attracted major attention from scholars and media, both in the United States and abroad. *See, e.g.,* Charlie Savage, *On Nixon Tapes, Ambivalence over Abortion, Not Watergate*, N.Y. Times, June 23, 2009; Simon Jeffery, *Nixon's Black and White View of Abortion*, The Guardian: Deadline USA Blog (June 24, 2009), <http://www.guardian.co.uk/world/deadlineusa/2009/jun/24/richard-nixon-tapes-abortion>.

12. Watergate merits continued analysis, and in a democracy that means access to all relevant archives. It is time to make public Richard Nixon's June 1975 grand jury testimony. Three days after the 1972 break-in, Nixon and his chief-of-staff H. R. Haldeman met for the first time after the break-in. The tape of that meeting has an 18½-minute erasure. What did Nixon say about that meeting? Was the former President involved in the decision to alter transcripts of tapes sent to the House Judiciary Committee? To what extent did the former President's administration use the Internal Revenue Service to harass opponents and critics? What did the former President know about purported campaign contributions from Howard Hughes to Charles

G. “Bebe” Rebozo? The former President’s testimony may provide at least partial answers to the above questions and thus add to a better understanding of Watergate and the abuse of presidential power that the word now represents.

13. Watergate, finally, is part of the larger narrative of the post-World War II “imperial’ presidency.” Nixon’s views of his powers, as he exercised them during Watergate, therefore, have a broader importance. This broader context includes Congress’s and the judiciary’s views of their powers and the relationship between their powers and those of the president.

14. Nixon, of course, is the only president to have resigned. Watergate was the reason, and history deserves full access to all relevant documents.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 6, 2010.

/s/ Keith W. Olson
Keith W. Olson

TAB L

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of Eric S. Perlstein

I, Eric S. Perlstein, hereby declare as follows:

1. I am an historian whose primary field of study is 20th-century American political history. I write under the name “Rick Perlstein.” I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon’s testimony before a federal grand jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force.

2. I am author of *Nixonland: The Rise of a President and the Fracturing of America* (2008) and the editor of *Richard Nixon: Speeches, Writings, Documents* (2008), the first and only scholarly collection of the thoughts of Richard Nixon. I also wrote the foreword to the 2003 book *Healing Richard Nixon*, a memoir by the doctor who treated Nixon around the time that he testified before the grand jury. My writings on politics, history, and culture have appeared in publications including the *New York Times*, *Washington Post*, *Wall St. Journal*, *Newsweek*, *The New Republic*, and *The Nation*. My book *Nixonland* was chosen as the second best nonfiction book of the year by the editors of Amazon.com and was reviewed favorably by writers across the ideological spectrum. My first book, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (2001), which also dealt considerably with Richard Nixon, won the 2002 Los Angeles Times Book Prize for history. According to a 2008 profile of me in the *Politico* newspaper, I am the “chronicler extraordinaire of modern conservatism,” and offer “a hint of how interesting the political and intellectual dialogue might be if [I] could attract some

mimics.” I have lectured on modern American politics at universities including Columbia, Princeton, and Cornell, and my work was the focus of a special roundtable at the 2008 conference of the American Political Science Association.

3. In my view, Richard Nixon’s testifying to the grand jury was an extremely important historical event. Its importance is shown by the unprecedented step of sending a small segment of the grand jury across the country to take the testimony and by the fact that, according to Library of Congress researchers, a former chief executive had never before testified to a grand jury. The significance of hearing Nixon speak about Watergate is further shown by the attention given to the televised interview of Nixon in 1977 by David Frost, which has since been the subject of two books, a Broadway play, and a major motion picture. The television interview drew such attention because Nixon had never faced public questioning on Watergate. The importance of the Frost interview would pale in comparison to Nixon’s sworn testimony to the grand jury.

4. The issues on which Nixon testified on June 23 and 24, 1975, were among the most important in the annals of American law and politics, and indeed the annals of democratic republicanism itself. According to contemporary news accounts, among the issues discussed was the alteration of the transcripts of White House tapes presented to the House Judiciary Committee investigating Watergate. That Committee was absorbed from start to finish in the most vital questions of the separation of powers: Congress’s constitutional duty to hold the executive branch accountable, and the Executive’s duty to submit to investigation. Knowing if, how, why, and to what effect Nixon manipulated the evidence he presented to Congress will illuminate crucial questions in the disciplines of American history and political science about how this key figure in the history of executive power understood his constitutional obligation. Of

the seven presidents to follow Nixon, three (Reagan, in the Iran-Contra matter, Clinton, in the Lewinsky matter, and George W. Bush, in the matter of spying on American citizens), faced the question of how much and what sorts of evidence they would have to yield to congressional investigators. Thus it is reasonable to suppose that these same questions will arise again and again in the future, to the continued investigation and fascination of scholars of American politics.

5. The matter of whether and how the Nixon administration misused the IRS and other federal agencies to punish enemies is crucial to understanding the extent of the abuse of executive power by one of the most widely-studied figures in the history of American politics, the subject of perhaps more biographies per decade than any president except for Lincoln. That matter, and the question of illicit financial transactions between Nixon's friend Bebe Rebozo and industrialist Howard Hughes—which according to contemporary accounts were also discussed in the grand jury testimony—get to the heart of one of the most storied questions in the study of recent American history: was Richard Nixon “a crook”?

6. According to one contemporaneous account, the grand jury discussed the wiretapping carried out at the orders of the President and his national security advisor, Henry Kissinger, of staffers at the National Security Council and of journalists. These charges had been factually proven by the time of Nixon's testimony. Nixon's explanation of why he believed these actions to be legitimate goes to the heart of Nixon's understanding about the extent of his powers as president. “The manner in which the office has appropriated powers never intended for it,” in the words of one review, is the subject of one of the most important books in the field of presidential history, Arthur Schlesinger Jr.'s *The Imperial Presidency* (1973). The subject has only become more relevant since, as seen in books like Garry Wills' *Bomb Power* (2010).

7. The question of the “18 and a half minute gap,” also reportedly discussed in the testimony, is the greatest whodunit in American history. It is the subject of speculation, fable, and satire. The missing material itself promises to cast the most profound light on President Nixon’s direct involvement in a criminal conspiracy. Nixon’s sworn testimony about the eighteen and a half minutes could offer the best new clue as to their contents in 38 years. In parallel, the notion of Nixon testifying under oath—with no fear of legal jeopardy because of the full pardon he had received for any crimes he may have committed while president—about whether he intentionally erased that tape is about as important a piece of data as can be imagined in the ongoing assessment of the character of this most important figure in American history. Like magic, it revives a potential long believed to have disappeared: getting to the bottom of Richard Nixon’s involvement in the Watergate scandal.

8. The headline granted the article about the event in the July 5, 1975 issue of the *Economist* magazine is telling: “The Truth At Last?” Nixon’s own demeanor after the event suggests that the discussion of all the issues mentioned above was intense and robust during the grand jury questioning. According to the *Washington Post* of June 28, 1975, Nixon “rose, pale and shaken.” An associate reported that Nixon had told him “it was very rough.” We see a clue that important issues were discussed in deeply relevant terms, finally, in the fact that both John D. Ehrlichman and H.R. (Bob) Haldeman told the *Post* “they intended to seek access to Nixon’s account in appealing” their own convictions. The question whether Nixon made these two men scapegoats for his own actions is a major one in ongoing considerations of the history of Watergate. Both appeared to suspect, however, that this testimony would help clear them by indicating that the president himself directed the activities for which they served jail time.

9. Revealing the contents of Richard Nixon’s testimony will profoundly contribute to existing scholarship and aid future research. My most recent scholarly contribution to Nixon studies is a chapter on the 1972 presidential election to the forthcoming volume *The Blackwell Companion to Richard Nixon*, edited by top Nixon scholar Melvin Small. The existence of this book project in itself attests to the vitality and importance of Richard Nixon as an ongoing scholarly concern: Blackwell’s “Companion to” series is reserved only for major scholarly disciplines and subdisciplines. (It will join “Blackwell Companions to” Philosophy, the Bible, Consciousness, the Qur’an, Catholicism, Phonology etc.) The book is now in the final editorial process. In the event of a favorable ruling for the petitioners in this case, I can’t but imagine that any number of the chapters will have to be sent back to the authors for revision—so important does this new historical evidence promise to be.

10. Although he was pardoned for any crimes he may have committed as president, Nixon was under legal jeopardy if he perjured himself in grand jury testimony. Comparing his testimony to the facts known today might reveal whether he perjured himself. This question whether or not Richard Nixon would have committed the crime of lying to a grand jury in order to protect his historical legacy is crucially relevant to ongoing attempts to assess his character and personality. The testimony can furthermore be weighed against all his other public statements about these events that were not under oath to help to determine what might have happened had he gone to trial. It would also answer crucial questions about the extent of his truthfulness in his public defense in the years 1973 and 1974.

11. Watergate has remained in the public consciousness for nearly four decades. My search of the Google News database found that the word “Watergate”—and this testimony cuts to the core of the issues that attach to that word—appeared in articles in the indexed newspapers

55,500 times between 1975 and 1980, 24,400 times between 1980 and 1985, 29,900 times between 1985 and 1990, 31,500 times between 1990 and 1995, 41,800 times between 1995 and 2000, 35,400 times between 2000 and 2005, and 53,600 times between 2005 and 2010. I myself am one of myriad scholars who has devoted an entire professional career to these events. Most recently, the controversies over how to renovate the Watergate exhibit at the Richard Nixon Library and Museum were the subject of a major *New York Times* article. The exhibit itself, which is still under construction, may well have to be further modified to accommodate new information that could come out in this grand jury testimony.

12. The issues of executive power and the accountability of the president to the legislative branch for that power have recurred at regular intervals ever since Watergate, as I noted in paragraph 4, above. Indeed, since Watergate, the question whether a president or former president can, or should, be called to testify during his term of office in a legal proceeding concerning his conduct has arisen numerous times. These issues were the subject of an important 1999 book by Bob Woodward, *Shadow: Five Presidents and the Legacy of Watergate*. And recently, Republican Congresswoman Michele Bachmann (R-MN) has suggested that subpoenas against the Obama White House will certainly follow if the Republicans take back the House in November 2010, which will revive the discussion once more.

13. The transcript of President Nixon's grand jury testimony is a unique historical document, and virtually nothing about its content is now known. Releasing it would be an enormous boon to scholarship.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2010.

/s/ Eric S. Perlstein
Eric S. Perlstein

TAB M

as well. My own work over the years in the National Archives' Nixon collection has involved both printed and electronic materials.

4. Although few presidencies have produced so much archival material so soon after its termination, there are still scores of questions that remain about President Nixon and the lacunae in our understanding of Watergate. As I examine the Watergate chapter written by Watergate scholar Keith Olson in my new book on Nixon, I have come to realize that we are still far from nailing down the complete story. The release of Nixon's grand jury testimony in the Alger Hiss case has enriched our understanding of that seminal event in Cold War History. I am certain that the release of Nixon's testimony in the Watergate affair will make a comparable contribution for historians and their students, and other chroniclers of the complicated story of how Richard Nixon became the only president who felt compelled to resign from office. This story is too important in our nation's history to justify the withholding of this potentially important data from public purview, thirty-five years after the fact.

5. Among the issues that may be cleared up with the release of the grand jury testimony, at least in part, are the relationship between President Nixon and Howard Hughes, the president's use of the IRS to harass enemies, and the famous eighteen-and-one-half-minute gap in the tapes—all issues of continuing interest and debate among historians.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July [31], 2010.

/s/ Melvin Small

Melvin Small

TAB N

4. I served as a major consultant to the National Constitution Center in Philadelphia, which opened in 2003, where I helped write the extensive exhibit copy that explains the history of the three branches of the federal government.

5. I am past president of the Society for History in the Federal Government, the Association for Documentary Editing, and the Association of Centers for the Study of Congress. I currently serve on the National Historical Publications and Records Commission, an independent agency affiliated with the National Archives and Records Administration.

6. Access to records that reveal how the United States Government conducts its business is an essential requirement of our representative democracy. If the public is ill-informed, or misinformed about actions of elected officials, our Constitutional government suffers and could fail. The Watergate investigations revealed how fragile our Constitutional government can be when laws are broken and crimes covered up by high government officials including the President of the United States. We can be proud of the fact that once crimes and improper conduct became public information, and once sufficient documentary evidence came to light in the Watergate scandal, Constitutional checks and balances came into play that led to the resignation of the president and jail sentences for other officials. Unsealing the transcript of President Nixon's federal grand jury testimony will enable historians, journalists, and other writers to spread this important information to the American public. Without an informed public, as Madison, Jefferson, and other Founders put it, our system of representative democracy could fail.

7. The investigation of Watergate, which involved all three branches of the government playing major Constitutional roles, is one of the most significant episodes in the annals of American history. Until the release in July and August of 1974 of tape recordings in the

Oval Office, ordered by a unanimous decision of the Supreme Court, the Congressional investigation was stalled. The release of the tapes made it possible for the House Judiciary Committee to move forward with articles of impeachment that led to the President's resignation. The entire investigation hinged on the High Court's decision that the public's right to know what was on those tapes outweighed presidential privilege to keep them secret.

8. We should not have to wait any longer for additional details and records that will add depth to our understanding of Watergate. Although there are certainly compelling reasons why grand jury testimony is sealed, I believe that sufficient time has passed that the initial reasons for secrecy are greatly diminished if not non-existent and weigh less in the equation than does the need to have all Watergate documents, especially President Nixon's grand jury testimony, and related matter brought into full public light.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 31, 2010.

/s/ Raymond Smock
Raymond Smock

TAB O

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE PETITION OF STANLEY)
KUTLER, *et al.*) Miscellaneous Action
_____)

Declaration of Barry Sussman

I, Barry Sussman, hereby declare as follows:

1. I am the editor of the Watchdog Project of the Nieman Foundation for Journalism at Harvard University. Our goal, mostly through a website (www.niemanwatchdog.org), is to encourage better news reporting on public policy issues. I submit this declaration to support the above-captioned petition to unseal the transcript of President Richard Nixon's testimony before a federal grand jury on June 23-24, 1975, and associated materials of the Watergate Special Prosecution Force.

2. From 1965 to 1987, I was a *Washington Post* editor, holding the positions of city editor, special Watergate editor, special projects editor, and pollster and public opinion analyst (I founded the *Washington Post* poll and was co-founder of the Washington Post/ABC News poll). In addition, I was a columnist for the *Washington Post* National Weekly Edition.

3. I am the author of three books. Of particular relevance here is my first book, *The Great Coverup: Nixon and the Scandal of Watergate*, published in 1974 and named one of the best books of the year by the *New York Times* and *Washington Post*. The book was reissued in 1992 and a new ebook version is coming out soon, probably this fall.

4. Interest in Nixon and Watergate continues to be high. This past month I received emails from Norway and England from people who had just read *The Great Coverup* and who had specific questions about events back then. In the same period I spoke to two journalism

groups here in Washington about watchdog reporting in general, and both times what they wanted to hear about the most was Watergate.

5. As a journalist in 1975, I believed Richard Nixon's testimony to be an extremely significant event, in light of the continuing investigation into Watergate and the fact of a former president testifying before a grand jury investigating criminal activity, much less criminal activity involving that president's own Administration. Indeed, the event was so important that the *Post* reported the news under a banner headline – a headline format reserved for the biggest stories. A copy of the front page of the *Washington Post* from that day is attached to this declaration.

6. Although the *Post* devoted prime “above the fold” space to reporting on Mr. Nixon's grand jury testimony, it was unable to report on the content of it. Instead, it devoted part of its coverage to explaining that the transcript was sealed. Therefore, even 35 years later, the story remains incomplete.

7. It is not just my own point of view that persuades me that interest in the Watergate scandal and Nixon remains high 35 years after the grand jury disbanded and 38 years since the story broke. Watergate is taught in high schools and colleges and is often the subject of debate even now. For example, in June 2010, the D.C. Circuit's Judicial Conference organized and hosted a panel discussion on the topic “Who Solved Watergate?” As it happened, I was asked to and did participate. Later I was told that the discussion had been a highlight of the three-day conference.

8. In addition, last year I took part in a panel discussion on watchdog reporting at the annual convention of the leading college journalism teachers' group. There too the questions often turned to the subject of Watergate and Richard Nixon.

9. It is my view that the Watergate scandal and the fact that Nixon was never indicted damaged the country's faith in its government. Making Nixon's grand jury testimony public would help to restore faith in the legal justice system and would be extremely valuable for scholars.

10. For all these reasons, I believe that the public interest would be served by opening the grand jury testimony – and ill-served if it is not opened.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Potomac, Maryland, on July 30, 2010.

/s/ Barry Sussman
Barry Sussman

when Justice Department sources first hinted that the testimony of the President himself was needed by a grand jury, Nixon had resisted.

"It would be constitutionally inappropriate," his press secretary, Ronald L. Ziegler, had argued. "It would do violence to the separation of powers."

From that point on, Nixon pleaded "executive privilege," official harass-

"I will do nothing to weaken the office of the President," Nixon told a presidential press conference last year, "and to submit to cross-examination under circumstances that would, in effect, pit the President in the box if he went to the Senate. I think would be improper."

He declined to appear before the Watergate grand jury or the Senate

Nixon asked aloud, "Jefferson didn't do that to protect Jefferson. He did that to protect the presidency. And that is exactly what I will do in these cases."

The way things developed, his testimony was not needed to resolve the most crucial question: Whether he should continue as President. The more he denied complicity in his public statements, the more he stood re-

testimony, it did no Nixon did provide money on one occasion though not in person answered a brief writ in the Ellsberg breach Ehrlichman. He no "plumbers" until established the source information leaks but commit a burglary.

Two Jurors Take Nixon's Testimony

TESTIFY, From A1

House tape subpoenaed as evidence in the Watergate cover-up investigation.

There was no immediate indication of the content of Nixon's testimony in any area.

Nixon's appearance before the two grand jurors and the prosecutors was announced yesterday morning in an agreement, released by Hart, and signed by Miller and Watergate Special Prosecutor Henry S. Ruth Jr.

Nixon asked for the fact that he testified to be made public "because inquiries have been made concerning this matter," the agreement said.

Nixon's attorneys said in a statement released in Washington that "it was the former President's desire to cooperate with the office of the special prosecutor in the areas which that office desired to interrogate him and it was Mr. Nixon's feelings in the view of the anticipated length of his testimony, the present state of his health, and the complications unavoidably attendant to extended travel, his examination would be most efficiently conducted in California."

Nixon's decision to testify "followed consultation with his medical advisers," the attorneys said.

Last October, when Nixon was subpoenaed to testify at the Watergate cover-up trial, court-appointed doctors said he was too ill to travel because of recent surgery for phlebitis and resultant pneumonia.

The interrogation of Nixon, conducted in the former presidential offices in San Clemente, is the second time he has ever commented under oath about a Watergate-related issue.

The only other sworn testimony came when he answered in written form six brief questions submitted to him by U.S. District Judge Gerhard A. Gesell during the trial of White House aide John D. Ehrlichman and others in connection with the break-in at the office of Daniel Ellsberg's psychiatrist.

The special prosecutor's office and the original Watergate grand jury had called for Nixon's appearance as a witness before the grand jury early in 1974, but Nixon had declined to appear "on constitutional grounds," he told a press conference on Feb. 25, 1974.

He said at the time that he had offered to respond to written questions or to answer questions directly to a prosecutor, but that the prosecutor "indicated he did not want to proceed in that way."

The grand jury subsequently named Nixon as an unindicted co-conspirator in the Watergate cover-up by a 12-to-0 vote, after being told by Special Prosecutor Leon Jaworski that a sitting President could not be indicted for crimes.

The information gathered by the grand jury was submitted to the House Judiciary Committee, which based its vote to impeach the President on that evidence and other evidence it gathered.

Since resigning as President, Nixon also has been asked to give testimony in some of the approximately 20 civil suits filed against him for various acts while in office.

It is unclear what effect his testimony before the grand jury might have on future attempts to take depositions from the former President.

Discussions have been in progress for the past several months between the prosecutor's office and Nixon's attorneys concerning his possible grand jury appearance, according to informed sources.

The sources pointed out the prosecutor's desire to take Nixon's testimony before the special prosecutor's office was disbanded, probably by this fall.

Neither side wanted to enter a possibly protracted legal battle over the issuance of a subpoena for Nixon's testimony, the sources said.

Then, a little more than two weeks ago, the prosecutors came to Judge Hart and said the arrangement had been made for two grand jurors to accompany members of the prosecution staff to California for the sworn Nixon testimony.

Hart signed an order approving the session, and making it an official grand jury proceeding.

Hart asked U.S. District Chief Judge Edward J. Schwartz of San Diego to go to San Clemente to administer the oath to Nixon. He was reportedly selected for the rather routine chore in an attempt to keep the sessions as secret as possible before they occurred.

Schwartz said yesterday that he administered the oath about 9:45 a.m. (PDT) Monday. The testimony sessions, which were not attended by Schwartz, lasted about five hours on Monday and six hours on Tuesday.

Schwartz said yesterday that Nixon "was nicely dressed, looked in fine shape, and asked me how things were in San Diego." The former President was "friendly and affable," and shook hands with those present, Schwartz added.

The Watergate Special Prosecutor's Office would not comment yesterday on how the two specific jurors were selected, or why the prosecutors agreed to question Nixon in California instead of in the grand jury room of the federal courthouse here.

The agreement concerning the Nixon grand jury appearance was signed late Thursday, but was not released until the court clerk's office opened here yesterday morning.



RICHARD M. NIXON
witness under oath



HENRY S. RUTH JR.
special prosecutor

Prosecutors (But Disclosure of I

PROSECUTOR, From A1

vowed to fight for access to the former president's secret testimony, which they sought in vain last fall and winter during the prolonged cover-up trial that led to their conviction.

"It seems very strange," protested one of the defense attorneys. "That now, at the end of the ball game, they bring in the principal player."

The counsel for former White House aides John D. Ehrlichman and H. R. (Bob) HALDAMAN both said they intended to seek access to Nixon's account in appealing the convictions Jan. 1 of the two men. Ehrlichman's lawyer, William S. Frates of Miami, said he thought it ought to be made public in any event.

"In prospective of the litigation involved, I personally feel, as we contended at the trial, that he (Nixon) was the main participant in all those activities," Frates said of the tangled events collectively labeled Watergate. "I think the people have a right to know, not just John Ehrlichman."

The Nixon testimony was taken in ascertainable pursuit of investigations still under way, such as the 10-minute erasures in one of Nixon's key Watergate tapes, the deletions of incriminating contacts from the transcripts of other conversations that the Nixon White House provided the House impeachment inquiry, and the handling of various Nixon campaign con-

tributions and cash \$100,000 from Hughes, by the close friend, C. G.

The prosecutor tipped about what might result from litigation. Formerly guessing, a question of what were likely

Some thought it the 1's and crossing Nixon's testimony last step before en

Others felt the p-bother to obtain a—as distinct from or statement that he—unless there tions under way.

Indictments aside the final report v caused disingenuous prosecutor's office, why that it is likely beyond what is al record.

Such a report, point of view, may public with court judge whether a fully pursued an evidence brought.

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Sen. Philip Hart point explicitly i

pers to an investigation in the early days of the republic.
 "Now why did Jefferson do that?" you asked aloud. "Jefferson didn't do that to protect Jefferson. He did it to protect the presidency. And it is exactly what I will do in these cases."
 The way things developed, his testimony was not needed to resolve the most crucial question: Whether he would continue as President. There he he denied emphatically in his public statements, the more he stood re-

first-hand testimony depreciated. The Judiciary Committee did not seek his testimony. It did not need it.
 Nixon did provide courtroom testimony on one occasion as President, though not in person. Last July he answered a brief written interrogatory to the Ellsberg break-in trial of John Ehrlichman. He answered four questions about the White House "plumbers" unit, saying that he had established the secret squad to plug information leaks but had not told it to commit a burglary.

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proved, but the judge himself has...
 ... counted how much reliable information Nixon could give the jury about the Watergate affair.
 "The value of Mr. Nixon's testimony to the defendants should not be overestimated," Sirica said. "Mr. Nixon himself has been named by the grand jury as an undetected conspirator in this case."
 In short, the judge said: "His testimony would be subject to an instruction to the jury that it should be received with caution and scrutinized with care."



RICHARD M. NIXON
 ... witness under oath



HENRY S. RUTH JR.
 ... special prosecutor



HERBERT J. MILLER
 ... Nixon lawyer



GEORGE I. HART JR.
 ... U.S. District chief judge

Prosecutors Get Data for Last Chore

But Disclosure of Nixon Testimony Is Highly Uncertain

PROSECUTOR, FROM A1
 ... owed to fight for access to the former president's secret testimony, which they sought in vain last fall and winter during the prolonged cover-up trial that led to their conviction.
 "It seems very strange," protested one of the defense attorneys, "that now, at the end of the ball game, they bring in the principal player."
 The counsel for former White House aides John D. Ehrlichman and H. R. (Bob) Haldegan both said they intended to seek access to Nixon's account in appealing the convictions. One of the two men, Ehrlichman's lawyer, William S. Frazer of Miami, said he thought it ought to be made public in any event.

contributions and cash funds, including \$100,000 from billionaire Howard Hughes, by the former President's close friend, C. G. (Bebe) Rebozo.
 The prosecutor's office was tight-lipped about whether any indictments might result from their ongoing investigations. Former insiders, all admittedly guessing, were divided on the question of whether any indictments were likely.
 Some thought Ruth was just "dotting the i's and crossing the t's" by obtaining Nixon's testimony as an obligatory last step before ending the inquiries.
 Others felt the prosecutor would not bother to obtain grand jury testimony—as distinct from a routine deposition or statement that could be made public—unless there were live investigations under way.

First Watergate prosecutor at a hearing before the Senate Judiciary Committee. He wanted to know whether the final report would include "not merely a summary of the actions that you did take, but a reasonably detailed explanation of the actions that you didn't take."
 Alluding to the enormous speculation at the time about "important figures in our country," Hart said that if no action were taken as the result of one inquiry or another:
 "I think it would be better for the public's confidence in the efforts of the special prosecutor and be more fair to those figures who are under public discussion to have you indicate in your final report what you thought the applicable law was or what the evidence was before you in regard to them, and your conclusion as to why action was not appropriate."

Ruth, however, has taken the position that such full disclosure could harm the vindicated and the innocent, that prosecutors should say nothing outside a court of law even if the entire truth were not laid out there.
 The report itself is being drafted now under the guidance of a Harvard law school professor, James Vorenberg, a former associate special prosecutor. It is expected to be completed by the end of September.
 "It hasn't been finally cast yet," said Leon Jaworski, the second Watergate special prosecutor who said he has volunteered to work on it.

"Irrespective of the litigation involved, I personally feel, as we contended at the trial, that he (Nixon) was the main participant in all those activities," Frazer said of the tangled events collectively labeled Watergate. "I think the people have a right to know, not just John Ehrlichman."
 The Nixon testimony was taken in extensive pursuit of investigations still under way, such as the 10½-minute enuresis in one of Nixon's key Watergate tapes, the detentions of incriminating remarks from the transcripts of other conversations that the Nixon White House provided the House impeachment inquiry, and the handling of various Nixon campaign con-

Indictments aside, the issue of what the final report will say has already caused disagreement within the prosecutor's office, with some predicting that it is likely to say very little beyond what is already on the public record.
 Such a report, according to this point of view, might not provide the public with enough information to judge whether all leads had been fully pursued and all the relevant evidence brought to light.
 That was not what Congress or Cox evidently had in mind when the special force was set up in May, 1973.
 Sen. Philip Hart (D-Mich.) raised the point explicitly in questioning the

Cox said he agreed—with a "theoretical" reservation for minor figures who might be hurt by a full disclosure of all the evidence touching on them. But he quickly added, "I am not thinking of individuals in high office, because I am quite sure that all the facts with respect to them ought to be out."
 "There was intense interest, Cox agreed, "in finding out what the facts were and knowing the truth, as it were, quite apart from whether anybody is fined or goes to jail."

In a telephone interview yesterday afternoon, Jaworski said he had thought last year that the trauma produced by the Watergate scandal, the impeachment inquiry and finally Nixon's resignation and pardon would leave the public too exhausted for fuller explanation. But he said he finds now that he was mistaken.
 "The correspondence just doesn't cease," Jaworski said of the letters that keep piling up at his Houston law firm.
 Many of the most pressing inquiries, he said, come from individuals who only last year wanted to hear no more who were insistent on putting Watergate behind them. Now that the exhaustion is gone, Jaworski suggested, the demand for facts has become all the more intense.

TAB P

campaign finance that contained analyses of the institutional impact of Watergate, including most recently a book chapter on the relationship between conservatism and presidential power since President Nixon. I am co-editor of the *Politics and Society in Twentieth Century America* book series, and a member of the editorial board of *The Journal of Policy History*. I am a regular contributor to CNN.com and Politico, and I have published articles in the *New York Times*, *Washington Post*, *Los Angeles Times*, and *Newsweek*, among others.

3. As a historian who specializes in the evolution of Congress, I have spent a considerable amount of time trying to understand how Watergate transformed the institution. One of the most important effects of this scandal was to produce a period of major reform in Washington, one that is only rivalled by the Progressive Era. As a result of Watergate, many members of Congress moved to strengthen their institution. The scandal had raised important questions about the balance of power between Congress and the president, with growing awareness of the problems that had resulted from the growth of presidential power throughout the twentieth century. The scandal also amplified the need to correct some of the internal problems that reformers had pointed to with regards to how Congress worked. Rather than focusing simply on the wrongdoing of Richard Nixon, reforms looked at the institutional roots of the scandal to try to prevent this from happening again. The scandal gave political momentum to reforms such as the War Powers Act of 1973 and the Budget Reform Act of 1974 which attempted, sometimes unsuccessfully and other times successfully, to reclaim some of the influence that legislators had lost.

4. As a result of Watergate, Congress also passed many other kinds of government reforms to diminish the chances of corruption and abuse of power that had long-term consequences and which are important when reformers grapple with these issues in current

times. For example, reformers passed a series of sunshine laws that required politicians to conduct more of their business in open so that their work could be subject to public scrutiny. Congress also passed ethics laws that created tighter restrictions on the behavior of legislators and executive branch officials. In 1978, Congress established the Office of the Independent Counsel, which lasted until 1999, that resulted in aggressive, independent investigations of the executive branch when there was evidence of corruption. The campaign finance system also underwent huge reforms that strengthened the role of small contributors, introduced public funds into presidential campaigns, and made campaign contributions more transparent than ever before. Our current political process is rooted in the changes implemented in this era.

5. Efforts to reform government today must begin with an examination of this last great period of reform. All of the issues that were tackled in this period—from the growth of presidential power and how to restrain it, to the relationship between money and politics—continue to be enormously relevant, and understanding the history can provide us with new insights about our current times.

6. In addition, the 1970s has become one of the most vibrant decades in terms of historical scholarship. So much attention has been paid to the 1960s that historians overlooked the important significance of the decade that followed—one that many argue was more important to the current era.

7. Better understanding Richard Nixon's presidency and Watergate will be central to our historical research on this period. As I argue in a chapter about conservatives and presidential power since the 1970s, Richard Nixon's presidency was enormously important and arguably had as much impact as would Ronald Reagan's on domestic politics, ranging from the evolution of the Republican Party and modern conservatism to the evolution of the executive branch.

President Nixon's grand jury testimony would be a valuable addition to our archival data from the period. The more information that we have about what actually happened during this scandal, the better equipped historians will be to produce their work. So much of Watergate has been understood through partisan eyes (whether through Nixon's opponents or supporters), that it is crucial to have historical data from which we can develop our historical understanding of these events.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 31, 2010.

/s/ Julian Zelizer
Julian Zelizer