Revealing Documents from the Watergate Prosecutions
Reference Materials

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Introduction

The Watergate Scandal began on June 17, 1972, with the arrest of five burglars in the offices of the Democratic National Committee in the Watergate office/hotel complex in Washington, D.C. It ended two and a half years later with President Nixon resigning in disgrace and the conviction of two dozen members of his administration. It remains the most significant scandal of the Twentieth Century.

Four batches of internal documents of the Watergate Special Prosecution Force have surfaced since 2013, which raise troubling questions about whether Nixon and his appointees received the due process of law guaranteed by the Fifth and Sixth Amendments to our Constitution.

The Fifth and Sixth Amendments are reproduced here, for ease of reference.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a *presentment* or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without *due process of law*; nor shall private property be taken for public use, without just compensation.

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously

ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Select documents are be grouped into five areas for discussion

- Prosecutors *Ex Parte* Meetings with Watergate Trial Judges
- Efforts to have Judge Sirica Disqualified as Self-appointed Trial Judge
- Seemingly Politicized Selection of Watergate Defendants
- Possible Suppression of Exculpatory Evidence
- Secret Misrepresentations to the House Judiciary Committee

PART I. Due Process Issues in the Cover-up Trial

The prosecution of John Mitchell, Bob Haldeman and John Ehrlichman (among others) began in October, 1974, lasted for three months, and ended on January 1, 1975 with each being convicted on all counts – of conspiracy, obstruction of justice and perjury. President Nixon had resigned in disgrace on August 9 and was pardoned by President Ford one month later. His former top aides were among the most despised in the country.

Did they get the fair trial envisioned by the Fifth and Sixth Amendments to our Constitution?

I. *Ex Parte* Meetings with Watergate Trial Judges

Special Prosecutor Leon Jaworski had numerous *ex parte* meetings with District Judges John Sirica and Gerhard Gesell. Here are four instances where Jaworski described the meeting in his own words.

1. 12/14/73. Jaworski letter confirming four top WSPF prosecutors met with Judges Sirica and Gesell on 12/14/73. https://shepardonwatergate.com/documents/RN072-B.pdf

2. 1/21/74. Lacovara's memo urging *ex parte* meeting with Sirica to pre-clear their Road Map. https://shepardonwatergate.com/documents/RN072-C.pdf

3. 2/12/22. Jaworski memo detailing the meeting itself. https://shepardonwatergate.com/documents/RN072-D.pdf

4. 3/1/74—Jaworski's description of his meeting with Sirica in chambers on indictment day, so they could rehearse the steps necessary to enable Sirica to appoint himself as trial judge. They met again, following the indictment presentations, to review how the proceedings went, agreeing to stay in touch. https://shepardonwatergate.com/documents/RN072-G.pdf

Can there be a fair trial where judges and prosecutors have gotten together in secret to work out issues in advance?

II. Efforts to have Sirica Disqualified as Self-Appointed Trial Judge

Once Judge Sirica had appointed himself, defendants sought to have him disqualified as trial judge.

4/30/74—They first petitioned Sirica to recuse himself, which he declined, saying that since everything he had done was done in his capacity as chief judge, there could be no question as to propriety (U.S. v Mitchell, 377 F.Supp 1312 (D.D.C., 1974) https://law.justia.com/cases/federal/district-courts/FSupp/377/1312/2343440/

Defendants then sought Writ of Mandamus from DC Circuit Court, for force his removal, asking both for an Evidentiary Hearing into his possible ex parte meetings with prosecutors, as well as assigning the responsibility for selecting the trial judge to the judges on the District Court's Calendar Committee.

Prosecutors Reply Brief, dated 5/20/74, defended Sirica's self-appointment, without ever mentioning or responding to defendants' request for an Evidentiary Hearing. Since they knew full well that such ex parte meetings had occurred, their silence on this issue raises serious ethical questions.

Interestingly, the ACLU filed an *amicus* brief in support of defendants' motion, emphasizing their essential right to a fair and objective judge.

5. https://shepardonwatergate.com/documents/Book3-Y.pdf

On 6/7/74, The DC Circuit Court denied issuing a Writ of Mandamus in single sentence order, issued *per curium* and without the opportunity for oral argument, with the court sitting *sua sponte en banc.* Judge MacKinnon filed a fiery dissent, calling the entire process into question. (Mitchell v Sirica, 502 F.2d 375 (1974).

6. https://casetext.com/case/mitchell-v-sirica

Shortly thereafter, Lacovara circulated an internal memo, dated 7/24/74, which both complemented MacKinnon's dissent, while lamenting prosecutors' past decision to allow Sirica to appoint himself as trial judge.

7. https://shepardonwatergate.com/documents/Book3-FF.pdf

It thus appears that even the special prosecutors knew Judge Sirica should not have been allowed to appoint himself to preside over the Cover-up Trial. Was Judge Sirica the sort of fair and impartial judge envisioned by the Fifth Amendment's due process guarantees?

III. Seemingly Politicized Selection of Watergate Defendants

Charles Colson, a prominent Republican and fierce Nixon defender, was indicted on rather weak evidence, while William Bittman, Howard Hunt's defense attorney who was extensively involved in the cover-up, was not.

Charles Colson was named in both the Cover-up and the Plumbers indictments.

He was among Nixon's most prominent and vocal defenders, once saying he'd run over his own grandmother to help Nixon get re-elected. That said, he was not centrally involved in the cover-up. WSPF staff meeting notes describe the discussion when the Watergate Task Force recommended his inclusion in their cover-up indictment. Under questioning, they estimated the chances of securing a conviction to be 50-50, at best.

- Peter Kreindler's staff meeting notes from 1/31/74 record Jaworski as saying he was familiar with the facts and had met with Colson and his attorney. It was a weak case, but he'd sign the indictment because Colson had already expressed an eagerness to reach a plea bargain. https://shepardonwatergate.com/wp-content/uploads/2015/06/AD-7-2.pdf

- James Vorenberg's notes, from the same meeting, record Jaworski was agreeing it was not a strong case, but he'd sign the indictment because "he'd really like to nail" Colson. https://shepardonwatergate.com/wp-content/uploads/2015/06/AD-7-41.pdf

- Lacovara was so troubled by Colson's inclusion that he wrote Jaworski shortly afterwards, saying that bringing an indictment under those circumstances violated DOJ guidelines – which required prosecutors to have a high degree of confidence an unbiased jury would convict if they knew what prosecutors knew – and suggesting that every other staff attorney in the meeting opposed Colson's inclusion.

    8. https://shepardonwatergate.com/documents/RN072-L.pdf

    Regardless, Colson remained as one of the seven defendants indicted for the cover-up.

Conversely, William Bittman, although unanimously recommended for indictment by the Watergate Task Force on two separate occasions, was omitted entirely.

Bittman was a Democratic icon, having secured the first conviction of Jimmy Hoffa in the Test Fleet case in Detroit in 1962 and then convicting Lyndon

Johnson's Senate aide, Bobby Baker, for tax evasion in 1964 -- without the newly inaugurated president's name ever coming up at trial. Jaworski was a protegee of Lyndon Johnson and may have been inclined to protect Bittman in light of his previous record. Wikipedia's entry on Bobby Baker is fascinating: https://en.wikipedia.org/wiki/Bobby_Baker

As Hunt's criminal defense counsel, Bittman was extensively involved in the cover-up, disseminating Dean's information regarding the FBI investigation to other defense counsel, distributing payment for their legal fees, and generally acting as the central contact for defense coordination. He also neglected to disclose to prosecutors Hunt's written lament over his need for additional funds.

Bittman was twice recommended for indictment – both in the Cover-up Trial and in its aftermath, when his law firm gave prosecutors the Hunt letter (which had somehow disappeared from the firm's file system).

> Peter Kreindler's notes from their meeting of 1/31/74 record Jaworski as saying that he "was troubled because of Bittman's record" and that "from his experience, it may not have dawned on Bittman that he was doing anything criminal."
>
> Vorenberg's notes from that same meeting record Jaworski as saying he was troubled by the case and didn't want to indict him unless prosecutors were certain of conviction – because indictment alone would ruin him, regardless of whether he was convicted or not.
>
> Kreindler's notes from the February 20, 1974, meeting, titled "Final Decisions," where Assistant Special Prosecutor Jill Wine-Volner presented the case for Bittman's indictment, show Jaworski going out of his way to belittle their case – in startling contrast to his responses to indictment recommendations of Colson and Ken Parkinson.

9. https://shepardonwatergate.com/documents/RN072-K.pdf

Department of Justice prosecutors are supposed to be non-partisan, assuring even-handed enforcement of federal criminal statutes. Do their choices to

prosecute Charles Colson but not William Bittman raise serious issues of selective enforcement based on political considerations?

IV. Prosecutors' Possible Suppression of Exculpatory Evidence.

Federal prosecutors have an obligation to share with defense counsel any information they come across that would be helpful to the defense. This is called the Brady Rule.

Two internal memos contain information seriously undermining the credibility of the government's two lead witnesses, John Dean and Jeb Magruder. Yet, neither was shared with defense counsel, as mandated by law.

John Dean

Background. The first document is the November 15, 1973, memo to files by Peter Rient and Judy Denny.

10. https://shepardonwatergate.com/documents/RN004-U.pdf

As his cover-up collapsed, Dean or his criminal defense counsel spoke or met with career prosecutors -- Earl Silbert, Seymour Glanzer and Donald Campbell – a dozen times during April, 1973. WSPF attorneys later worried these career prosecutors might inadvertently have given Dean implied immunity during one or more of those conversations. This was particularly important since Dean had become the government's lead witness against his former colleagues.

WSPF attorneys thus conducted interviews with them, in anticipation of formalizing Dean's plea agreement. Silbert was interviewed separately. WSPF attorneys Peter Rient and Judy Denny interviewed Glanzer and Campbell together on two occasions – September 18 and October 10 -- which were memorialized in a single memo dated November 15, 1973. Their approach was to review each and every meeting, walking the career attorneys through Dean's disclosures.

It is this November 15 memo which is the focus of immediate concern, because it documents a series of disturbing changes in Dean's testimony, as well as his own cover-up role, as he sought immunity from those career prosecutors.

Here are some of the interesting parts:

- 4/6/73 [first extensive meeting with Shaffer]: **"Shaffer talked only of Dean's knowledge regarding Mitchell and Magruder. There was nothing said about Ehrlichman, Haldeman, Colson, or Nixon."** p. 5
- 4/8/73 [first face-to-face meeting with Dean]:
    - **"President had not been told everything yet." p. 6**
    - **"Dean did not mention his subsequent meeting with Haldeman at this time. He gave no information at all about Haldeman or Ehrlichman." p. 7**
- 4/9/73 [second extensive meeting with Dean]:
    - **"Dean did not mention cover-up until later, so prosecutors didn't understand Dean's references to money other than that money was to pay Hunt's requests conveyed by O'Brien."** p. 7
- Meeting of 4/9/73 [second extensive meeting with Dean]:
    - **"Dean never acknowledged a cover-up or conspiracy or paying the defendants for silence until after he was fired (April 30, 1973)."** p. 10
    - "Dean said that at some point Parkinson and LaRue had come to Dean's office with a sheet of paper with money requests from Hunt on it, **but Dean never said that the money was for Hunt's silence**." p. 12
    - Campbell remembers that Dean told of the March 21 meeting where Dean attempted to tell the President about the situation, **but that the President didn't understand**." p. 13
    - May 1 By the end of April, Dean had become much more antagonistic toward Haldeman and Ehrlichman in his discussions with the prosecutors and also in public, issuing the "scapegoat" statement. **Before that, the impression he gave of Haldeman was of a "great devoted public servant," clean and hard working. He had been restrained in his praise of Ehrlichman**." p. 17

- **"**On May 3, **Dean began focusing on Presidential involvement, thus dramatically changing his previous stance**. Glanzer and Campbell agree with Silbert's account of Dean's statements about the President." p. 23

As the memo notes, Dean failed in his attempt to obtain immunity from the career prosecutors, who had concluded that Dean was minimizing his own leadership role. Dean's counsel informed them the evening before, that rather than appearing before the grand jury on May 5, 1973, as previously agreed, he had obtained immunity from the Senate Ervin Committee and would testify as their star witness.

Still, as a result of their interviews with career prosecutors, the special prosecutors had in their possession a detailed account of changes in Dean's story, as he continued to pursue immunity, which they failed to share with defense counsel.

It gets worse. Here is that same entry, from handwritten notes, presumably taken by Judy Denny. Note the startling changes:

> 5/2-5/3, 1973: "Situation in state of flux because of Senate Committee & Cox after 4/15**. Dean becomes antagonistic to Ehrlichman & Haldeman whereas before he had given impression that H was clean & was restrained as to E's involvement.** This was around time of 'scapegoat' statement by Dean." p. 1

11. https://shepardonwatergate.com/documents/RN072-M.pdf

These observations, made from notes taken by the career prosecutors who first interviewed Dean, shows material changes in his story that could have enabled defense counsel to seriously undermine Dean's credibility as the government's lead witness.

Concluding Thought. Hiding exculpatory evidence is grounds for dismissal.

It is instructive to note a somewhat parallel situation that arose in connection with WSPF's prosecution of Frank DeMarco, Nixon's tax advisor.

In U.S. v. DeMarco, 407 F. Supp. 107 (C.D. Cal. 1975)), Judge Warren Ferguson (a Lyndon Johnson appointee, later elevated t to the Nineth Circuit by Jimmy Carter) dismissed the charges, due to prosecutorial misconduct: failure to disclose exculpatory evidence. His opinion is startlingly candid.

12. https://law.justia.com/cases/federal/district-courts/FSupp/407/107/2281061/

Here's what Judge Ferguson said in the third paragraph of his opinion:

> Thus, this is no ordinary criminal matter. The public interest in a resolution of the issues raised by the government's indictment is manifest. But the public has a greater interest in the proper administration of our system of criminal justice. The defendant Frank DeMarco, Jr. has moved to dismiss charges against him on the ground of prosecutorial misconduct, and the motion must be granted.

Does prosecutors' failure to share possibly exculpatory evidence with defense counsel raise the same misconduct issues that led Judge Ferguson to dismiss their case against Frank DeMarco?

Jeb Magruder

Magruder was prosecutors' second most important witness. Nixon's lead defense counsel, Fred Buzhardt, told Shepard back in 1974 that James Neal – the lead prosecutor in the Cover-up Trial -- had mentioned they were not at all sure that they could put Magruder on the stand in good conscience as a government witness, since they did not trust his testimony, because he had lied so frequently.

Wine-Banks echoes this point in her recent book, *The Watergate Girl* (Henry Holt and Company, 2020) in her chapter about Magruder, titled "The Watergate Boy." Here are some excerpts:

- "I was used to sexist assumptions. What I wasn't used to was Magruder's utter amorality. He had lied and lied and lied. To the FBI, to Justice Department investigators, to a federal grand jury, to Judge Sirica." (p. 27)

- "Lying was as natural to him as breathing." (p. 27)
- "You might think lying was part of Magruder's DNA." (p. 28)
- "No witness in my experience had affected me the way Magruder did. I was stunned by the ease with which he dissembled, even as he tried to clear himself. He was a slippery confabulator, and, I came to the conclusion, based on our many hours of conversation, that he had no moral center." (p. 30)
- "I detected a slight smirk on his face and felt he was just telling me what he thought I wanted to hear." (p. 30)

In spite of these doubts, WSPF prosecutors chose both to go ahead with Magruder as a lead witness – and not to share evidence of their doubts as to his veracity with defense counsel. Volner offers the following explanation:

> "Magruder wasn't telling us the *whole* truth. Still, we needed him badly. He was the only key figure in the planning of the break-in and the early development of the cover-up whom we were likely to secure as a witness, and he was the bedrock of any case against his former boss, John Mitchell." (p. 30)

The key document is the undated Magruder Direct Exam Guide, which warns of dozens of topics where Magruder's testimony is expected to conflict with his prior sworn statements or those of other government witnesses. https://shepardonwatergate.com/wp-content/uploads/2015/06/AD-7-7.compressed.pdf

Codes of Professional Ethics prohibit putting a witness on the stand who is likely to lie. One wonders how prosecutors justified using Magruder and why they did not reveal their concerns to defense counsel, as required by law.

Part II: Secret Allegations Regarding President Nixon

So much for the prosecutions of Nixon's top aides. What about Nixon himself?

A. Stage Setting: The Smoking Gun Tape

President Nixon announced his intent to resign in an address to the nation on Thursday, August 8, 1974, just three days after release of the transcript of a tape of his meeting with Bob Haldeman on July 23, 1972, when he concurred in his staff's suggestion that they head off FBI interviews of two witnesses following the June 17 Watergate break-in arrests by directing the CIA to tell the FBI those two individuals were part of an Agency operation. Release of this transcript, quickly dubbed the "smoking gun" was seen as proof positive that Nixon had been in on the cover-up from the very outset and triggered the collapse of Nixon's remaining support.

Over forty years later, John Dean stated in a footnote in his 2014 book, *The Nixon Defense*, that the tape had been completely misunderstood – and that the purpose of protecting those two witnesses was to protect the identity of prominent Democrats who had made substantial contributions to the Nixon campaign, based on a pledge of absolute confidentiality.

13. https://shepardonwatergate.com/documents/Book3-72914.pdf

Whether one believes this tape has been misunderstood as Dean asserts, it first became public on August 5, 1973. Nixon was already on the ropes: He had been named a cover-up co-conspirator by the grand jury and his impeachment had been urged by the House Judiciary Committee.

B. Prosecutors' Focus on President Nixon

Once Jaworski and Sirica concluded the law was too unclear as to whether a sitting president could be indicted, they sought a way to forward grand jury evidence, gathered in anticipation of bringing criminal charges, to the House Judiciary Committee, where it could be used as the basis for Nixon's impeachment. In a memo to his deputy, Henry Ruth, Leon Jaworski criticizes the continuing efforts to get the President, "at all cost," in a stinging rebuke to his staff's approach and objectivity.

14. https://shepardonwatergate.com/documents/RN072-I.pdf

In this regard, prosecutors prepared two key documents (i) a sealed report for the grand jury to forward to the House Judiciary Committee, and (ii) a purported draft Prosecutive Memo concerning President Nixon. Both remained under seal until 2018, such that even Nixon's defense team did not know the specific allegations being lodged against the President.

C. The Road Map

Prosecutors' recommended approach to transferring grand jury evidence to the Congress is described in Lacovara's January 21, 1974 memo to Jaworski discussed as Document #2 above (https://shepardonwatergate.com/documents/RN072-C.pdf).

The result was a fifty-five page outline of the evidence that special prosecutors believed showed Nixon's criminal cover-up involvement, this "presentment", technically a grand jury report designed for transmittal to the House Judiciary Committee, was quickly dubbed the "Road Map," since it would lead to Nixon's impeachment.

The Road Map was dated March 1, 1974, the same day the cover-up indictments were announced, and transmitted under seal to the House Judiciary Committee on March 26. It remained secret until unsealed in 2018 and is now posted on the National Archive website

15. https://www.archives.gov/files/research/investigations/watergate/roadmap/docid-70105890.pdf

Note the legend at the top, in red: Unsealed on October 11, 2018, by order of Chief Judge Beryl Howell– citing the case number, which is Shepard's Court Petition. The first two pages are the transmittal request, asking Judge Sirica to forward to the House Judiciary Committee. Then comes the Table of Contents.

The first of its four sections is the most substantive, essentially asserting that Nixon must personally have approved the $75,000 payment to Howard Hunt. While there was no witness testimony as to Nixon's alleged actions, there was a strong circumstantial case: Nixon first learned of Hunt's

demands at his meeting with John Dean on the morning of Wednesday, March 21, 1973. Their meeting ended at noon – and the actual payment occurred at 10pm that very evening.

What must have happened, prosecutors asserted, was that after that meeting, Nixon must have instructed Bob Haldeman, his chief of staff, to telephone John Mitchell, Nixon's former Attorney General and director of his re-election campaign, to instruct Mitchell to meet Hunt's demands. Where upon, Mitchell must have called Fred LaRue, his former assistant who was acting as paymaster for the Watergate defendants, and instructed him to make the payment, which LaRue did that very evening.

What was critical to the prosecutors' case was that this chain of events had to have occurred within the ten-hour window, between the time Nixon learned of Hunt's demand and the actual payment was made. Even if they could not produce any direct testimony as to Nixon's directive, they believed their circumstantial case was unassailable. There was, however, a missing link. Both Mitchell and LaRue had testified before the grand jury. Their testimony agreed they had spoken and that Mitchell had concurred in paying Hunt's outstanding legal bills, but prosecutors could not prove this telephone conversation had occurred *after* Nixon had learned of Hunt's demands. If, for example, Mitchell and LaRue had spoken that Wednesday morning, *before* Dean had informed Nixon of Hunt's demand, then Nixon could not have been involved in the payment decision.

Unable to nail down the timing of the phone call, the evidence suggests prosecutors simply fudged it. This becomes clear from two aspects.

<u>The Road Map Misrepresentation</u>

> Item 7 of the Road Map states "in or about the early afternoon of Wednesday, March 21", citing a portion of LaRue's grand jury testimony of February 14, 1974 as proof (Attachment 7.1)
>
> https://www.archives.gov/files/research/investigations/watergate/roadmap/docid-70105916.pdf

While the cited portion appears somewhat ambiguous, with the word "afternoon" appearing at the beginning and in the middle of the first page, it is clear from LaRue's full testimony that, while LaRue agreed he had spoken with Mitchell, he was never even questioned by prosecutors as to the timing of their call. See Attachment 10.1, which contains the first half of LaRue's grand jury testimony.

https://www.archives.gov/files/research/investigations/watergate/roadmap/docid-70105926.pdf

Upon reflection, there were at least three other problems with the Mitchell/LaRue call being evidence of Nixon's personal involvement: (i) It was LaRue who had called Mitchell to seek his concurrence, and not Mitchell relaying an instruction from Haldeman. (ii) It was LaRue who already knew of Hunt's monetary demand and so informed Mitchell, and not the other way around. (iii) It was LaRue who reduced the amount being paid to just Hunt's legal expenses of $75,000 – and not the full amount of $120,000 Hunt had demanded from Dean. Had Nixon ordered the payment, LaRue would never have taken it upon himself to make such a reduction.

D. Misrepresentations in the Nixon Prosecutive Memorandum

Judge Sirica had conditioned his approval on the Road Map's transmittal to the House Judiciary Committee on it consisting of straight factual assertions, without inclusion of any WSPF opinions or conclusions. One result was that it was not clear enough for HJC staff to follow. Frustrated prosecutors soon began to have secret meetings with HJC staffers to help "clarify" their evidence. Their meetings are described in *Stonewall*, the 1977 book by Ben-Veniste and Frampton.

16. https://shepardonwatergate.com/documents/Book3-DD.pdf

Meeting with HJC staff, in secret, would likely not have been condoned by the Department of Justice, had it known of this activity – and certainly would have been opposed by Nixon's defenders.

It should be added that this was not a Prosecutive Memorandum in the true sense of the word, because prosecutors had already decided to pursue the impeachment route. This memo was mis-labeled, since it had been specifically prepared for sharing with House Judiciary Committee staff.

It is now posted on the National Archive website.

17. https://www.archives.gov/files/research/investigations/watergate/roadmap/docid-70106088.pdf

Note the exchange of cover letters at the beginning, supposedly hand-delivered. This appears to be a ruse, designed to assure the Prosecutive Memorandum was shared in secret with HJC staff, without Nixon's defense team being any the wiser. Had it been formally subpoenaed by HJC, it would have become public and its assertions subject to challenge.

This Memorandum shows the same glaring weaknesses with regard to the timing of LaRue's phone call with Mitchell as with the Road Map, except that it asserts that it is undisputed that their call had occurred during that Wednesday afternoon. [p. 12]

It is important to emphasize that this Memorandum also was deliberately kept secret from Nixon's defense team.

E. LaRue Cover-up Trial Testimony

With all this build-up, it should come as no surprise that Fred LaRue, when questioned under oath and subject to cross-examination in the later Cover-up Trial, coming two months after Nixon's resignation, testified that – to the best of his recollection – he had spoken with Mitchell on Wednesday *morning* and not in the *afternoon*, as so confidently asserted by prosecutors. According to the trial transcript:

18. https://shepardonwatergate.com/wp-content/uploads/2022/06/LaRue-Trial-Testimony.pdf

LaRue: I told Mr. Dean that I would not undertake to make any payments unless I had some authorization from someone. He said: Why don't you call Mr. Mitchell.
Ben-Veniste: Did you call Mr. Mitchell?
LaRue: Yes, I did
Ben-Veniste: Can you fix the time of day?
LaRue: Again, the best of my recollection, it would be the morning of the 21st.
Ben-Veniste: Do you know whether you actually spoke with Mr. Mitchell on the morning of the 21st?
LaRue: I know I placed the call, whether I talked to him at the time I placed the call or he called me back, I don't know.
Ben-Veniste: Can you say with any certainty whether it was morning or afternoon that you spoke with Mr. Mitchell?
LaRue: I cannot say with any certainty, no.

LaRue's best recollection of a morning call is again confirmed on cross-examination by Haldeman's attorney.

Wilson: Going to the March 21st meeting, you said your best recollection was that you called Mr. Mitchell in the morning?
LaRue: That is correct.
Wilson: And you testified that you told Mr. Mitchell that they needed $75,000 is that correct?
LaRue: Yes
Wilson: And you fixed the figure at $75,000?
LaRue: That is correct.
Wilson: And I take it, according to your testimony, that he then asked you what it was for. Is that right?
LaRue: That is correct.
Wilson: And what did you tell him?
LaRue: I told him it was for legal fees.

It was the prosecutors who had the burden of proof on this issue – and they could not meet it. Remember the other problems with their secretly conveyed scenario. Not only did LaRue place their call as having occurred on the morning of March 21, he was the one to call Mitchell to inform him of Hunt's monetary demands – and not the other way around (which would

have better fit prosecutors' scenario of Nixon to Haldeman to Mitchell to LaRue). In addition, LaRue unilaterally reduced the amount paid to just Hunt's legal fees of $75,000, which he would never have done, had Nixon directed Mitchell to see that Hunt's $120,000 demand was met.

Still, it was these misrepresentations, made in secret both to grand jurors and HJC staff, that was the basis for their actions in naming Nixon a co-conspirator and in urging his impeachment by the full House.

By the time of the Cover-up Trial, however, Nixon had been gone for months. Since no one even knew of prosecutors' secret allegations regarding Nixon's own involvement, the demise of their prosecutorial theory went totally un-noticed.

Is it possible that Nixon was driven from office by erroneous allegations, conveyed in secret to grand jurors and House Judiciary members?

V. Media Complacency

One of the fascinating things about the Watergate Scandal is that we need not have waited for over four decades for the events described in these documents to have come to light. Indeed, Jaworski hinted at them in his December 5, 1974, interview with Bob Woodward – the first interview he gave after resigning as special prosecutor.

Woodward's own interview notes are among the papers kept at the University of Texas in Austin. Here is the first page:

19. https://shepardonwatergate.com/documents/Woodward-Jaworski.pdf

Note the second sentence quotes Jaworski: "Says there were a lot of one-on-one conversations that nobody knows about but him and the other party." Had Woodward pursued this clear invitation, it would have led to disclosure of Jaworski's many *ex parte* contacts with Judge Sirica.

Similarly, the second paragraph of Woodward's notes has Jaworski describing how his prosecutors provided the key staffing for the House Judiciary Committee. But Woodward never followed up on either lead, which could well have altered the entire Watergate narrative in a more timely manner.

VI. Complaint of Attorney Misconduct.

So, what is to be done at this point, in light of these revealing documents?

Shortly after the Watergate scandal, President Ford's Attorney General, Edward Levi, established an office within the Department of Justice whose sole mission is to investigate allegations of misconduct by Justice Department attorneys. It is called the Office of Professional Responsibility and is staffed entirely by career attorneys. According to its website, it promises a thorough investigation and written report in response to any such allegations.

Given the documents that have come to light over the past fifteen years, I filed a Complaint of Attorney Misconduct with OPR on October 3, 2021, supplemented by nine follow-up letters.

These submissions are posted on Home Page of his website.

20. www.ShepardOnWatergate.com

They remain pending. Admittedly, the alleged misconduct occurred almost fifty years ago, but there is no statute of limitations on ethical misconduct and, in any event, four of the top prosecutors prevented any knowledge of their wrongdoing by taking internal files with them when leaving office. They first began to surface in 2013.

Perhaps someday the Department of Justice, after full investigation, will conclude they cannot support the Cover-up Trial verdicts and will come into court to ask that they be vacated.