

# Revealing Documents from the Watergate Prosecutions

PART I, SEPTEMBER 15, 2022

THE FEDERALIST SOCIETY  
WASHINGTON, DC

# Panelists

- ❖ Honorable Paul Diamond, United States District Court Judge, Moderator
- ❖ Theodore Olson, Gibson, Dunn & Crutcher
- ❖ GW University Professor Stephen Saltzburg
- ❖ Geoff Shepard, Watergate author
- ❖ Honorable Laurence Silberman, Senior Judge, DC Circuit Court of Appeals



# Principal Watergate Defendants

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**John H. Mitchell**  
Justice Department / CRP



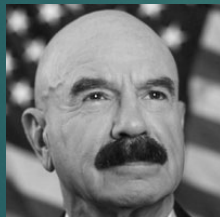
**H.R. "Bob" Haldeman**  
White House



**John D. Ehrlichman**  
White House



**G. Gordon Liddy**  
White House / CRP



**Jeb S. Magruder**  
White House / CRP



**John W. Dean**  
White House



## Critical Watergate Dates

Liddy's Intel Plan Reviewed: 1/27, 2/4, 3/30/72

Actual Break-ins: May 28 and June 17, 1972 ←



Break-in Trial ← 3 CRP Officials/4 Cubans Convicted January 30, 1973  
(Gordon Liddy, Howard Hunt and James McCord)

Senate Watergate Committee created February 7, 1973 →



Cover-Up  
Collapses

March 23,  
1973

Special Prosecutor  
Appointed

May 25,  
1973

President Nixon  
Resigns

August 9,  
1974

Cover-Up Trial  
Convictions

January 1,  
1975



# Secret Meetings, Secret Memos Secret Coordination

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## Executive Branch

Special Prosecutor Archibald Cox  
Special Prosecutor Leon Jaworski  
WSPF Attorneys



## Legislative Branch

Senate Judiciary Committee  
Senate Ervin Committee  
House Judiciary Committee

## Judicial Branch

Chief Circuit Judge David Bazelon  
Chief District Judge John Sirica  
District Judge Gerhard Gesell

ROGER J. WHITEFORD 1966-1968  
 RINGGOLD HART 1966-1968  
 JOHN J. CARMODY 1969-1972  
 JOHN J. WILSON  
 HARRY L. RYAN, JR.  
 JO V. MORGAN, JR.  
 FRANK H. STRICKLER  
 WILLIAM E. ROLLO  
 CHARLES J. STEELE  
 JOHN J. CARMODY, JR.  
 JAMES EDWARD ABLARD  
 KEVIN W. CARMODY  
 COUNSEL  
 DONALD L. HERSKOVITZ

LAW OFFICES  
 WHITEFORD, HART, CARMODY & WILSON

815 FIFTEENTH STREET, NORTHWEST  
 WASHINGTON, D. C. 20005

202-638-0465  
 CABLE ADDRESS  
 WHITEHART WASHINGTON

March 12, 1974

MARYLAND OFFICE  
 7401 WISCONSIN AVENUE  
 BETHESDA, MARYLAND 20014  
 301-656-5700

JO V. MORGAN, JR.  
 FRANK H. STRICKLER  
 WILLIAM E. ROLLO  
 CHARLES J. STEELE

EXHIBIT E

Honorable John J. Sirica  
 Chief Judge  
 United States District Court  
 United States Court House  
 Washington, D.C. 20001

Dear Chief Judge Sirica:

Would you be willing to inform us whether you were consulted by or whether you conferred with the prosecutors, the Grand Jury, or the foreman or other member thereof, regarding the report which the Grand Jury presented to you in open court on March 1, 1974, before such report was actually presented; or that you had notice of the Grand Jury's intention to present such a report prior to its actually doing so?

Respectfully,

  
 JOHN J. WILSON

JJW:hie

cc: All Counsel

## Wilson Letter to Chief Judge Sirica

cc: All Counsel  
 March 12, 1974

"Would you be willing to inform us whether you were contacted by or whether you conferred with the prosecutors, the Grand Jury, or the foreman or other member thereof, regarding the report which the Grand Jury presented to you in open court on March 1, 1974...?"



# ABA Code DR 7-110(B)-- Lawyers (circa 1970s)

In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending . . . .

# 1972 ABA Code of Judicial Conduct Canon (3)(A)(4)

[E]xcept as authorized by law, [the judge shall] neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.



WATERGATE SPECIAL PROSECUTION FORCE

*W. J. Sirica*  
DEPARTMENT OF JUSTICE

## Memorandum

TO : Richard Ben-Veniste

DATE: Jan. 2, 1974

FROM : Philip A. Lacovara *PL*

SUBJECT: Earl J. Silbert/Alex Butterfield

At approximately 10 p.m. on Tuesday, January 1, 1974, I received a telephone call at my home from Todd Christofferson, law clerk to Judge Sirica, who stated that the Judge wanted to see Mr. Jaworski and me in his chambers as early as possible the next morning. When I replied that Mr. Jaworski was not expected back in Washington until noon, Todd stated that I at least should come to chambers.

At 9:30 a.m. on January 2, accompanied by Peter Kreindler, I went to meet with Judge Sirica and his law clerk in chambers. The Judge began by stating that the swearing in of Earl J. Silbert to be the interim U.S. Attorney was scheduled for 12 noon and that he had just come upon some information that caused him to be somewhat concerned about the proposed court-appointment. The Judge explained that at a party the previous evening at the home of a Washington lawyer, a present or former member of the firm of Hogan and Hartson (the Judge's former firm) had told him that he had heard some things about Silbert that might cause the court some embarrassment. As described by the Judge, the story was that Alex Butterfield, formerly of H.R. Haldeman's staff and now FAA Administrator, had confided to a close friend that, before he was questioned, he was called into Haldeman's office and told about ten or twelve questions he would be asked and was told what answers to give. It is unclear whether the person to whom Butterfield allegedly told this story was the same person as related it to Judge Sirica but it is more likely the immediate source of the story (referred to only as "Paul") heard about it secondhand.

Judge Sirica asked whether we knew of anything that would indicate that Earl Silbert had been the source of any leaks or had otherwise behaved in an inappropriate way in conducting the original Watergate investigation. Repeating the assurance that I had given the Judge when he telephoned me at my home on Sunday, December 29, 1973, to "clear" the proposed appointment of Silbert, I told him that I had discussed Silbert's role in the case both with the Special Prosecutor and with others in this office who were most familiar with the Watergate cover-up.

Lacovara Memo to Ben-Veniste  
Regarding Sirica Meeting  
cc: Jaworski, Ruth, Kreindler  
January 2, 1974

"At approximately 10 p.m. on Tuesday, January 1, 1974, I received a telephone call at my home from Todd Christofferson, law clerk to Judge Sirica."

"Judge Sirica asked whether we knew of anything that would indicate the Earl Silbert had been the source of any leaks. . ."



and with the Justice Department's handling of it and that we knew of nothing to indicate bad faith or impropriety on Silbert's part. The Judge asked whether Butterfield had testified before the original grand jury and both Peter Kreindler and I expressed our doubts that he had been interrogated.

The Judge asked for recommendations and I told him that we would look into the matter but that the likelihood that this report would lead to any heretofore unsuspected disclosures about involvement by Silbert in misconduct was so slight that I saw no reason for delaying the appointment. When the Judge asked whether he should step aside and allow Judge Hart to administer the oath or should at least discuss these matters with the Board of Judges, I told him that I was in no position to advise him on whether to avoid administering the oath to Silbert himself and I said he could feel free to advise the Board of Judges that we did not regard Earl Silbert's role in the case as in any way censurable. I promised that I would promptly ascertain whether we had anything on the Butterfield angle of this story.

After checking with you, Henry Ruth, George Frampton, and Gerry Goldman, I ascertained that neither Watergate files nor central files has any record that Butterfield was ever questioned by anyone prior to his appearance before the Senate Select Committee in July, 1973, I called back the Judge and told him of this conclusion. I stated that the most likely explanation was that prior to his Senate testimony, some Committee source had indicated to the White House what the likely questions would be to present or former White House staffmembers. Even though Haldeman was not on the staff at that time, he apparently stayed closely in touch with matters and had been Butterfield's superior. I told the Judge that we would try to track down any basis for the story.

The Judge thanked me for this information. He stated that he had just received a telephone call from Sam Dash of the Ervin Committee who had telephoned him about the remand of the Committee's subpoena enforcement suit. The Judge told me that he had indicated to Dash, a good friend, basically what he had told us, and apparently also indicated that he had given us this information.

He said Dash told him that the Committee had nothing adverse about Silbert and that its final report would not contain any derogatory information about him. On this basis, Judge Sirica indicated to me that since both the Committee and we had "cleared" Silbert, he would proceed to swear him in as United States Attorney as scheduled.

"I told the Judge that we would try to track down any basis for the story.

He stated that he had just received a telephone call from Sam Dash of the Ervin Committee. . . The Judge told me that he had indicated to Dash, a good friend, basically what he had told us, . . .

Judge Sirica indicated to me that since both the Committee and we had "cleared" Silbert, he would proceed to swear him in as United States Attorney as scheduled."



*Mr. Ben-Veniste*

WATERGATE SPECIAL PROSECUTION FORCE  
United States Department of Justice  
1425 K Street, N.W.  
Washington, D.C. 20005  
December 27, 1973

PAL:sek

Honorable John J. Sirica  
Chief Judge  
United States District Court  
for the District of Columbia  
Washington, D. C. 20001

Dear Chief Judge Sirica:

When Messrs. Ruth, Lacovara, Ben-Veniste and I met with you and Judge Gesell at your request on Friday, December 14, you suggested that it would be helpful if we could provide you with some sense of the caseload that we would be generating for the Court over the next several months. I have reviewed the status of the investigations currently under way with my task force leaders, and have put together what I believe is a reasonable projection of the scale of indictments that may be returned between the beginning of the new year and the end of April.

In January and February, I foresee the possibility that the grand juries may return three multi-defendant indictments that would take approximately a week each to try. During that time I can calculate approximately three additional indictments that might consume two weeks each of trial. Another case might last for three weeks. I also anticipate that, should an indictment be voted in another area actively under investigation at the present, it would take from four to six weeks to try the case. And finally, I believe that by the end of January or the beginning of February we may have an indictment in a case that could well take three months to try.

Looking ahead to March and April, I have reason to anticipate two or three indictments that may involve one-week trials, one involving a two-week trial, and another possibly leading to a three-week trial. Of course, there are a number of other matters currently at the preliminary stages of investigation which might be ready for indictment during March and April as well. Added to the cases referred

## Jaworski Letter to Chief Judge Sirica

cc: Ruth, Lacovara  
December 27, 1973

“When Messrs. Ruth, Lacovara, Ben-Veniste and I met with you and Judge Gesell at your request on Friday, December 14 . . . .”

“I believe that by the end of January or the beginning of February we may have an indictment in a case that could well take three months to try.”

# James Vorenberg Staff Meeting Notes

Early February 1974

1-25-74 - Monday 2. memo

1. President - Feldbaum plan to see me in the future -  
cause of frustration in staff because I have not  
reached agreement with Sirica several weeks prior  
w/ disclosure + some staff already agree w memo

2. Kirkpatrick 14-24 offer to her lawyer - see  
memo from J to staff - notes of meeting

3. closer to decision - on Butman + Parkinson  
see column 10/10/74

4. Most of staff agree early in March 1974

5. Letter to Sirica - see memo 2-11-74

6. - per Joe - decision to proceed is what  
see meeting memo 2-13-74

7. Through memo to Sirica - 126 pp

8. Handle handling - see Vorenberg memo 1/25/74

In genl, staff extremely edgy re non-partis in decisions  
re handling of mem re pres. Tishman had seen J - J resume of  
hostility - declined to leave staff w/ help in future effort - disc.  
possible large w/ J next day as to contact - smaller in at-  
V + others used smaller app reviewed w J - no public discussion  
issue - not clear to me that issue was substantive - discuss  
w Benk re avoiding conflict + contact w J -  
- w/ w J - urged that he try to work out ways of  
- subs. J + Sirica re reas. agree on method of trial  
- tele - w Hank + Joe to urge "best effort" approach  
before comm. + sp.

"President—The memo written by Carl Feldbaum, et al., recommending President Nixon be indicted, is a cause of frustration in the staff because Jaworski told them that he'd already reached an agreement with Sirica, several weeks prior and without disclosure, that Nixon would not be named. One problem is that some (and maybe most) of the staff agree with Feldbaum's memo."



WATERGATE SPECIAL PROSECUTION FORCE

DEPARTMENT OF JUSTICE

### *Memorandum*

TO : Leon Jaworski  
Special Prosecutor

DATE: January 21, 1974

FROM : Philip A. Lacovara  
Counsel to the Special  
Prosecutor

SUBJECT: Presentment by Watergate Grand Jury Concerning  
the President

As part of our consideration of the most appropriate way of dealing with evidence tending to implicate the President in the Watergate cover-up, we have discussed the possibility of advising the grand jury that it may return a presentment setting forth its views of the President's complicity even though it might be determined as a matter of law or policy that the President should not be indicted. Peter Kreindler was asked to prepare a memorandum on this subject and he has reached the conclusion, reflected in the attached memorandum, that submission of such a presentment by the grand jury would be constitutional. I have been discussing this subject with him since the beginning of his research and am familiar with the authorities. I agree with his analysis and conclusions in all respects.

If you agree that presentment in lieu of either indictment or non-action is the proper mode to pursue, there remains the question of procedure. Specifically, the relative rarity with which presentments are filed in federal courts makes it desirable to advise Chief Judge Sirica in advance of this proposed course. It would be most unfortunate, for example, for the grand jury to return a presentment without forewarning and then have the judge summarily refuse to receive it because of his lack of awareness of the basis for such a submission. However, it is also questionable whether we should discuss this procedure with the chief judge before the grand jury, whose decision would be involved, has had an opportunity to consider this possible course. Yet there would be some risk in discussing such an approach with the grand jury, and perhaps planting a seed that could not be unsown, before the judge has at least tentatively indicated that he would be prepared to accept such a presentment.

Lacovara Memo to Jaworski  
cc: Ruth, Kreindler, Ben-Veniste  
January 21, 1974

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Counsel to the Special  
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"It would be most unfortunate, for example, for the grand jury to return a presentment without forewarning and then have the judge summarily refuse to receive it because of his lack of awareness of the basis for such a submission."



In light of all of the foregoing factors, I recommend the following course:

1. That you decide formally and as quickly as possible what advice you want given to the grand jury in your capacity as its counsel on the questions of (a) the President's indictability as a matter of law, (b) the policy factors concerning indictment of an incumbent President, and (c) the propriety of the grand jury's submission of a presentment naming the President, either in open court or under seal, with a request that it be forwarded to the House Committee on the Judiciary. My own recommendation is that the grand jury be told (a) we believe that the President can constitutionally be indicted for the crime of obstruction of justice but that the question is subject to considerable doubt, and therefore (b), in light of the severe dislocations that would immediately flow from the naming of a sitting President as a criminal defendant, it would be preferable to leave formal proceedings to the House of Representatives. With regard to (c) the grand jury should be advised that it may return a presentment, which states its conclusions based on the evidence it has heard but which does not initiate a criminal proceeding, and I would propose that the presentment be submitted under seal to the chief judge, with a request that it be forwarded to the House Judiciary Committee after counsel for the President have been given an opportunity to submit any objections, either on the law or the facts, that they may have.

2. After you make the foregoing decisions, I recommend that you or I or both appear before the grand jury, at the conclusion of the presentation of the tapes, to advise them of these determinations. They should candidly be told that it is not certain how the court will respond to the submission of a presentment but should be advised that this matter will be discussed with the chief judge if the grand jury is inclined to return a presentment involving the President.

3. If the grand jury indicates its tendency toward returning a presentment, we should schedule a conference with Chief Judge Sirica to apprise him in advance of this possible development. I would be prepared to submit a memorandum of law to him at such a meeting, if he indicated an interest in receiving it.

“If the grand jury indicates its tendency toward returning a presentment, we should schedule a conference with Chief Judge Sirica to apprise him in advance of this possible development. I would be prepared to submit a memorandum of law to him at such a meeting, if he indicated an interest in receiving it.”



- 3 -

4. At any such meeting we should recommend to Judge Sirica that the presentment be received by him under seal, with disclosure only of the fact that the grand jury has made a submission to him, and that the White House be given ten days to review the presentment and to make objections to its filing and transmission.

Attachment

cc: Mr. Ruth (w/attachment)  
Mr. Kreindler (w/o attachment)  
Mr. Ben-Veniste (w/o attachment)

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### Jaworski Confidential File Memo February 12, 1974

LJ/fac 8-1

February 12/1974

*For conf. Watergate file*  
*my*

C O N F I D E N T I A L

On Monday, February 11, I met with the Judge at which time several matters were covered as we sat alone in the jury room. He again indicated that provided the indictments came down in time he would take the Watergate Case, stating that he had been urged to do so by any number of Judges from across the nation the most recent of them being those who were in attendance with him at a meeting in Atlanta. He expressed the opinion that these indictments should be returned as soon as possible. He also stated that henceforth all guilty pleas would be taken by him. We talked about the Vesco case and he merely expressed the thought that perhaps a sealed indictment might be of some help. He mentioned one or two personal matters such as an effort to smear him because of a completely fabricated tale relating to him and his son, of which he wanted me to be aware. Actually the discussion began with his unburdening himself to me on that particular matter. He also mentioned that he had been urged to speak at the State Bar of Texas in San Antonio and indicated that he would accept this invitation.

"On Monday, February 11, I met with the Judge at which time several matters were covered as we sat alone in the jury room. He again indicated that provided the indictments came down in time he would take the Watergate Case. . . He expressed the opinion that these indictments should be returned as soon as possible."

## FedSoc Document 3 (p. 2)

He sought my reaction and I urged him to do so.

The Judge commented upon the status of matters before the grand jury which led into further comments on the possibility of the grand jury considering some type of special report or presentment. He considered this a very touchy problem and cautioned as to what the public's reaction would be to a grand jury stepping out with something that was beyond its normal bounds. He cautioned that the whole effort could be tainted by something irresponsibly being done by the grand jury. He stated that the public would rightfully conclude that the entire proceeding had not been judicious but simply one of wanting to hurt the President. He further said that it was not the function of the grand jury but that of the House Impeachment Committee to express itself on that point. He then told me that in the event I observed anything along that line being considered by the grand jury that he thought it would be appropriate for him to meet with the grand jury in camera. I expressed the belief that it was appropriate for the grand jury to refer to having in its possession evidence that it believed to be material and relevant to the impeachment proceedings and to suggest to the Court that it be referred to the House Committee for that purpose. He countered by stating that he believed he should be informed of the discretion that he could exercise in matters of that kind and further requested that I have a memorandum prepared for him that covers this subject. I agreed to have this done.

“The Judge commented upon the status of matters before the grand jury which led to further comments on the possibility of the grand jury considering some type of special report or presentment..

He countered by stating that he believed he should be informed of the discretion that he could exercise in matters of that kind and further requested that I have a memorandum prepared for him that covers this subject. I agreed to have this done.”



Finally, he asked whether there was any indictment contemplated involving present White House aides, inasmuch as he needed to make arrangements to meet the situation. I told him none was contemplated at this time

Twice during the conversation, he said that he really called to tell me that I was a "great American." The second time he mentioned it, I said "Al, I haven't done anything other than what is my duty and I hope to continue to follow that course."

We parted with my again expressing my concern that the President's counsel had not sufficiently and accurately assessed the facts pertaining to the March 21 conference and the events that took place that night. He said it would be again reviewed.

On the morning of March 1, I met with Judge Sirica in chambers at 10:30. We reviewed the agenda consisting of (1) presentation of indictments and sealed special report of the grand jury; (2) unsealing of the special report and reading by Judge Sirica, and the acceptance of the report and its resealing. I told Judge Sirica that I would ask the Court to specially assign the case in view of its length and protracted nature and that I was estimating the case would take three to four months to try. I asked him to tell the grand jury to return in two weeks for further consideration of other matters that had not been disposed of. I had in mind the possibility of perjury indictments. I also asked the Judge for a gag order under Rule 1-27 restraining extra-judicial statements.

Jaworski confidential file memo  
March 1, 1974:

"On the morning of March 1, I met with Judge Sirica in chambers at 10:30. We reviewed the agenda. . .

I told Judge Sirica that I would ask the court to specially assign the case . . ."

## FedSoc Document 4 (p. 4)

Shortly before 11:00, I left Judge Sirica's chambers and went into the courtroom. As I left Judge Sirica's chambers, I heard the Judge tell his marshal not to be nervous. But the Judge showed some signs of nervousness too. He told me that he had not slept since 3:00 that morning. When court opened, Judge Sirica's marshal was so nervous he could hardly speak the ritual followed in opening a court.

After opening, Judge Sirica looked at me, asked if I had anything to take up with the court. I then rose, went to the lectern, and said: "May it please Your Honor, the grand jury has an indictment to return. It also has a sealed report to deliver to the Court." The rest of the agenda was then followed including delivery of a briefcase of material, along with the special report to the Court - also a key to the briefcase. The Judge indicated that he would have an order on the special report by Monday (he told me he would transmit to the counsel for the House Judiciary Committee under rules that would not interfere with the trial of the accused). The Judge in open court asked if I had any further comments, and I stated: "Due to the length of the trial, conceivably three to four months, it is the Prosecution's view that under Rule 3-3(c), this case should be specially assigned, and we so recommend." This meant that Judge Sirica could assign the case to himself, which he did do by order later entered that day.

The Judge then announced his gag rule and then adjourned court.

We met in the Judge's chambers. I told him I thought all went smoothly. He in turn thanked me for my help. The Judge was

"The judge in open court asked if I had any further comments, and I stated: "Due to the length of the trial, conceivably three to four<sup>20</sup> months, it is the prosecution's view that under Rule 3-3 (c), this case should be specially assigned, and we so recommend." This meant that Judge Sirica could assign the case to himself, which he did do by order later entered that day.

We met in the judge's chambers. I told him I thought all went smoothly. He in turn thanked me for my help. The Judge was leaving today to speak at the University of Virginia tomorrow, to be back on Sunday. I told him I was going to Texas to be back on Tuesday. We both agreed we would call each other in the interim, if necessary."





# Revealing Documents from the Watergate Prosecutions

SEPTEMBER 15, 2022

THE FEDERALIST SOCIETY  
WASHINGTON, DC