

**Total Collapse**  
**The Inside Story of How the Smoking Gun Tape Ended the Nixon**  
**Presidency**

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I was there, in the room, at the moment the presidency ended. Forget what you've been told by those who've gleefully chronicled Nixon's demise or even Nixon own re-telling in his 1978 autobiography. What actually happened that day inside the White House is as said by Lao Tzu in the 6<sup>th</sup> century, BC: "Those who say do not know; those who know do not say."

The moment occurred in the early afternoon of Wednesday, July 24, 1974, when the President's top Watergate lawyer first heard the smoking gun tape and concluded that he could no longer defend the President. Nixon announced his resignation but three days after that tape was made public, faced with the inescapable fact that his support had totally collapsed.

What is so ironic in retrospect, is that it was all a mistake, a misunderstanding that occurred in the heat of battle, but it cost Nixon his presidency.

You don't have to take my word for it; you can take John Dean's. Overlooked in all of the reviews of Dean's new book, *The President's Defense, What He Knew and When He Knew It*, is the most startling of statements:

When revealed by order of the U.S. Supreme Court in late July 1974, this became known as the "smoking gun" conversation, because it was viewed as hard evidence, demonstrating beyond question, that Nixon's final defense about the Watergate break-in in his April 30, 1973 speech, followed by his May 22<sup>nd</sup> statement, was bogus, which doomed the Nixon presidency. Ironically, this conversation has been mistakenly understood as an effort by Nixon and Haldeman to shut down the FBI's entire Watergate investigation. This appears to be the case only when viewed out of context. In August 1974, when the conversation was revealed, and Nixon and his lawyers had to focus on this conversation, he had

long forgotten what was actually involved; they assumed it had the same meaning as everyone else. In reality, it was only an effort by Haldeman to stop the FBI from investigating an anonymous campaign contribution from Mexico that the Justice Department prosecutors had already agreed was outside the scope of the Watergate investigation. In fact, this conversation did not put the lie to Nixon's April 30 and May 22, 1973, statements, and had Nixon known that he might have survived its disclosure to fight another day." (Footnote at pp. 55-56)

This is an astonishing assertion – that Nixon (while under considerable siege on all fronts) need not have resigned over the smoking gun tape. What is equally startling is that Dean's assertion is correct, at least as far as his own understanding of that conversation is concerned. After all, he was its instigator, the author of the recommendation that Haldeman made to the President on that fateful day in 1972. But Dean was long gone as the President's counsel when his replacement, Fred Buzhardt, first listened to that tape. What really happened inside the White House at that point is a story that's never been told. I should know; I was Buzhardt's deputy and a principle member of the President's Watergate defense team.

Let me relate the story in reverse order: First, what happened within the legal staff as the existence of that taped conversation became known, and second, the real context of that conversation and why Nixon's lawyers were so wrong in their interpretation.

## **The Word Spreads**

### The Supreme Court Decision on the Tapes

The Supreme Court issued its 8-0 ruling in *U.S. v Nixon* on July 24, 1974, upholding the Special Prosecutor's subpoena for tapes of sixty-four additional presidential conversations. Reduced to its essence, the Court's holding was that it was appropriate for a Federal Judge to review these tapes in private, enabling him to decide whether any contained evidence sufficiently relevant to the criminal proceeding then before him that it would overcome a more general interest in keeping presidential conversations private (*ie*: executive privilege).

Stated in this way – that is, having a judge listen to the tapes in order to make an informed decision on the basis of what they actually contained -- and given the accusations being made by former members of Nixon's own staff (particularly John Dean) – it is difficult to see how the Court could have ruled otherwise.

But this was not apparent from the oral argument which had occurred before the Court on July 8<sup>th</sup>. That is because James St. Clair, arguing on behalf of the President, had advanced two challenging assertions. First, that as a lesser officer within the Executive Branch, the Special Prosecutor had no authority to question the President's desire to protect Oval Office conversations. Second, that the Special Prosecutor was really conducting discovery, not for his own office (which had already secured the cover-up indictments, but on behalf of the House of Representatives (which had its own Impeachment Inquiry underway), which could not obtain the tapes directly due to the separation of powers structure of our Constitution.

Adding to the pressure, the White House had consistently refused to provide any assurance that the President would adhere to the Court's decision—whatever it might be. Commentators were breathlessly predicting a constitutional crisis if the Court were to rule against the President. And, once the Court had ruled, it was no longer a hypothetical question: Would the President adhere to the unanimous decision of the Supreme Court? There was silence from the President and his staff, who were at the Western White House in San Clemente, California. For a full eight hours following the Court's announcement, there was no comment at all. Finally, late that afternoon, St. Clair stepped out on the grass, with the setting sun at his back, and announced the President would comply with the Court's order.

What really transpired during those eight critical hours has never been revealed. Were they trying to get their wording just right—or was there an epic battle within the White House—sort of a whole end-of-game review, that's been kept under wraps?

I wasn't even in San Clemente at the time—I was with Fred Buzhardt, President Nixon's lead inside defense strategist, and the object of the

subpoena, the tapes themselves, in the Old Executive Office Building (EOB) across from the West Wing of the White House.

### Conflicting Legal Advice

The eight hour delay was due to the fact that the President was confronted with conflicting legal advice from his two top lawyers.

J. Fred Buzhardt, who had been General Counsel of the Department of Defense and brought to the staff by Alexander Haig, when he replaced Bob Haldeman as the President's Chief of Staff. Introverted, soft spoken and a teetotaling Baptist, Buzhardt was the ultimate insider. His father had been Strom Thurmond's law partner in South Carolina and Fred had been raised at the Senator's knee. He was Thurmond's legislative assistant and on the Senate floor during his infamous 1957 filibuster against the Civil Rights Act. Some fifteen years later, Buzhardt's presence at the White House was like a canary in the mine shaft. As a trusted and true son of the South, the Southern Democrats would stand with President Nixon, no matter what the pressures of the Watergate scandal, just as long as Buzhardt could assure them that the tapes contained no unambiguous indication of Presidential culpability.

Arriving shortly before public disclosure of the White House taping system, Buzhardt had become consumed by their minutiae, particularly because Nixon trusted no one else to provide legal analysis of their content. Worried about what might be on the few tapes that Nixon had chosen not to share with him, Buzhardt was the one who had insisted the White House not commit to adhering to any Supreme Court decision in advance.

Buzhardt's counterpart, the President's top trial advocate, was James D. St Clair, a gregarious and affable man, who was a senior partner at Boston's top litigation firm of Hale and Dorr and taught trial practice at Harvard Law School. His joining Nixon's defense team at the beginning of 1974 had marked a positive change in the President's defense efforts. There was one thing that St. Clair refused to do – and that was to devote hours and hours sitting next to Buzhardt, pondering over the complexities of the taped conversations. While an exceptional trial advocate, St. Clair was new to the national stage and quickly became enamored of his time in the spotlight.

Nixon himself, of course, was the most difficult of clients. Feeling cornered and betrayed by others, and worried about what might be on the tapes, he had kept information from his new legal team that made their representation most challenging.

When informed of the Court's ruling, Nixon had instructed Buzhardt to listen to the June 23<sup>rd</sup> tape, which he alone had previously reviewed, and to report back. Listening to that conversation, Buzhardt's heart froze. Here was Nixon concurring with Haldeman in Dean's recommendation that they direct the CIA to tell the FBI to limit its Watergate investigation – a clear and unambiguous obstruction of justice. Two things were immediately clear to Buzhardt: He could no longer provide the assurance to the Southern Democrats that was key to Nixon's political survival and (almost regardless of this), once the June 23<sup>rd</sup> conversation became public as a result of the Court's decision, Nixon's public disgrace would be overwhelming.

But Buzhardt had feared something like this might be on one of the tapes and had developed an alternative plan, which I term the Principled Resignation. Fred shared his idea with me, when he invited me into his office that afternoon to witness his report on the tape to Haig and the President. Instead of handing this tape over to Judge Sirica, which meant disclosure, disgrace and certain impeachment, Buzhardt urged that the President exercise his constitutional right to pardon everyone involved in Watergate. Buzhardt argued that this would end any function for the Special Prosecutor, moot the pending case, and render the Court's decision irrelevant. Nixon could then destroy all of the tapes (apparently a rather simple feat with an electro-magnet bulk eraser), claiming he was defending the higher principle of protecting the confidentiality of Oval Office conversations. The last act in Buzhardt's proposal was that Nixon would resign. But, by resigning over the principle of executive privilege, he would also keep the proof of his own wrongdoing from ever coming out.

But Buzhardt and I were back in Washington. St. Clair, who had not yet heard the June 23<sup>rd</sup> tape, was with Haig and the President on the West Coast. Based on their sanitized description of its contents, St. Clair assured them that he was not concerned and there was no reason to fear its disclosure. He had handled problems like this before and believed it would just be another bump in the road. Faced with this conflict between his lawyers, it should come as no surprise that Nixon chose to follow St. Clair's

advice – and hence dispatched him to announce the President’s intent to comply – and to do so in a manner that was dismissive of those who might have thought there was ever consideration of any alternative.

I was directed to prepare a written transcript of that tape. After Nixon and Buzhardt, I was the third person to hear it and, keying off Buzhardt’s reaction, was the one who first characterized it as the smoking gun. Buzhardt kept my transcript in his breast pocket, but from that time forward, I could discern whether others knew of Nixon’s pending demise just by the look in their eyes.

Fred was furious in losing this battle, telling me that St. Clair had become too attached to his emerging stardom from defending Nixon before Judge Sirica and the House Judiciary Committee, as well as arguing the tapes case before the Supreme Court. What neither of us knew at the time was that Nixon had offered to make St. Clair his Attorney General, just as soon as their Watergate challenges were behind them.

No wonder Washington’s heady atmosphere had clouded St. Clair’s legal judgment. He sobered up rather quickly, however, once Buzhardt forced him to listen to the actual tape upon his return to Washington. St. Clair’s about face is best described in Nixon’s own autobiography:

His breezy optimism disappeared. He not only agreed with Buzhardt that this was the smoking gun, but said it so contradicted the arguments he had made before the House Judiciary Committee that he would become party to an obstruction of justice unless it was made public. [Memoirs, p. 1055]

Buzhardt and St. Clair now shared the same problem: It appeared that the President had known of the existence of this damaging evidence for months—and kept silent—while allowing his counsel to make representations that were untrue. Given the times and the atmosphere, both Buzhardt and St. Clair had reason to be concerned about the effect the release the smoking gun tape could have on their own reputations and legal careers. Compounding this, Buzhardt felt St. Clair’s uninformed advice in San Clemente had closed the window on the best possible outcome: a principled resignation over the issue of executive privilege.

Their wrangling also became very heated over roll out issues: St. Clair already had gotten to bask in the spotlight when he assured the media that the White House would comply with the Supreme Court's order. But now, really knowing about the smoking gun, they were forced to make a series of decisions about: *When* that tape would actually be turned over to Judge Sirica; *What* would be said about it when it was turned over; *Who* would make those statements—not only to the judge, but also to the public—and especially to the President's supporters; and the *Context* in which that transcript would be released.

No one was going to speak for the President this time. What St. Clair now wanted most of all was not the opportunity *to defend the President*, but for the President *to defend him*.

In his *Memoirs*, Nixon claimed to have made his fateful decision to resign in late July, when the House Judiciary Committee voted to recommend his impeachment, and had so informed Haig on Thursday, August 1<sup>st</sup>. Perhaps so, but no one in the counsel's office thought this to be the case, nor were they willing to stake their careers on it.

The wrangling over release of the tape continued for days. When no final decisions had been made by the end of the second week, Buzhardt and St. Clair took out a little insurance on their future and, without informing the President, deposited the reel containing the smoking gun conversation with Sirica on Friday, August 2<sup>nd</sup>. They certainly did not identify it as such, nor did they provide any transcript or analysis, as had been their custom when handing over previous tapes. They were confident that Sirica would not happen across that particular conversation over the weekend, but having the original tape in his possession might help assure that the planned roll out for Monday, August 5<sup>th</sup> would actually occur—and without any further surprises.

#### Monday, August 5, 1974: Release of the Smoking Gun

The President's statement was to be released at 4:00 pm on Monday afternoon, along with copies of relevant transcripts of several subpoenaed conversations. We were not going to say, "Look, here's what you all have been hoping for—it's a smoking gun!" Instead, we were going to release a batch of transcripts and let the President's statement speak for itself.

The struggles over the precise wording of the President's statement consumed the morning. The lawyers wanted their disclaimers up front and very clear. The drafts had to be cleared through Haig, the only one now seeing the President, but the lawyers made it clear that—unless their demands were met—they could not continue as counsel.

At 3:30 pm, I was directed to take Buzhardt's copy of the tape transcript to the West Wing, and to read an abbreviated version to the President's senior staff. There were about a half dozen people in the room, including Dean Burch, Bill Timmons, Pat Buchanan, Ken Clawson and Richard Moore, all of whom had been staunch supporters through the long, painful journey. They had been told that the news was bad, but did not know any particulars. There was a sort of gallows humor in the room. I read the key portion, but there was silence when I finished—and I felt compelled to explain the context of the conversation, its proximity to the Watergate break-in itself, and the implications of obstruction of justice (just as they had been explained to me by Buzhardt).

Nonetheless, the effect was surreal--and you could feel it in the room. After all we have been through, after all we have withstood on behalf of this man, it came down to this: He'd agreed to someone's suggestion to ask the CIA to get the FBI to back off part of an investigation—and this small act constituted an obstruction of justice that was going to cost us the presidency?

I left the West Wing and made my way back to return the transcript to Buzhardt before going to the EOB Theater for the larger gathering. I told him that they didn't really understand the significance of what was on the tape. He assured me that once Nixon's detractors got a hold of the transcript, they would make the implications clear enough for even Nixon's most ardent supporters to understand.

The statement's final language, released precisely at 4:00 pm, included the following language—right up front, just as his lawyers had demanded: [My annotations are in brackets]

On April 29 [in an address to the entire nation], in announcing my decision to make public the original set of White House transcripts, I stated that “as far as what the President personally knew and did with regard to Watergate and the cover-up is concerned, these materials—together with those already made available—will tell it all.

Shortly after that, in May, I made a preliminary review of some of the 64 taped conversations subpoenaed by the Special Prosecutor.

Among the conversations I listened to at that time were two of those of June 23. Although I recognized that these presented potential problems, I did not inform my staff [Al Haig] or my counsel [Fred Buzhardt] of it, or those arguing my case [James St. Clair], nor did I amend my submission to the Judiciary Committee in order to include and reflect it [me, in assembling the Blue Book]. At the time, I did not realize the extent of the implications which those conversations might now appear to have [*ie*: a clear cut case of obstruction of justice]. As a result, those arguing my case [St Clair, *again*], as well as those passing judgment on the case [all my supporters in Congress and across the nation that I have misled], did so with information that was incomplete and in some respects erroneous. This was a serious act of omission for which I take full responsibility and which I deeply regret.

Since the Supreme Court’s decision twelve days ago, I have ordered my counsel [Buzhardt, *again*] to analyze the 64 tapes, and I have listened to a number of them myself. This process [arguments with my lawyers] has made it clear that portions of the tapes of these June 23 conversations are at variance with certain of my previous statements [I lied].

The President then went on to try to put this omission into context—and to point out, quite correctly, that the CIA ultimately had declined join in the effort to obstruct the FBI investigation. Of course, by this time—after two

years of resistance—it hardly mattered: a straw it might be, but it was decidedly the last one.

Three days later, faced with the total collapse of any remaining support, the President announced his resignation.

I was there in the East Room on August 9th for Nixon's departure speech, along with the rest of his White House staff, and then outside for the helicopter lift-off. We had been through the darkest days of any presidency and were seeing it end with the total surrender and collapse of an entire administration. What a tragic waste: of a presidency, of its people, of its hopes and ideals. In spite of all he had put us through, there wasn't a dry eye in the East Room or on the South Lawn.

## **Part II. The Critical Misunderstanding**

### Following the Money

To appreciate the misunderstanding of the context of the June 23<sup>rd</sup> tape, one has to go back to the early fundraising by the Committee to Re-Elect the President (CRP).

Prior to the April, 1972, effective date of new campaign disclosure legislation — coupled with the nearly certain re-election of Richard Nixon — CRP had raised over \$10 million in campaign funds, much of which had come from businessmen usually thought of as Democratic donors or by other large contributors not eager to have the extent of their financial support for Nixon made public.

Two campaign contributions are the key to understanding the significance of the June 23<sup>rd</sup> tape:

One was a \$25,000 cash contribution from Dwayne Andreas, Chairman of Archer-Daniels-Midland and a long-time supporter of Hubert Humphrey. Humphrey, Johnson's vice-president, had been Nixon's opponent in the 1968 campaign and was still considering a rematch in 1972. Andreas had not only been the finance chairman of Humphrey's '68 campaign, he was sole trustee of Humphrey's blind trust, established when he became vice-president in 1964.

It would be difficult to find any person more closely connected with Democrats in general or with Humphrey in particular. But Andreas was a pragmatist: with Nixon's re-election looking more and more certain, he decided to make a sizable financial contribution, but only under the absolute condition of confidentiality he had been personally assured by Maury Stans, CRP's finance chairman.

For that reason, Andreas made his contribution in cash, through Ken Dahlberg, the Republican National Committee's Midwest regional fund-raising chairman. Andreas left the cash in his Florida apartment, prior to the April 7th effective date of the new campaign financing law. Dahlberg, however, did not actually retrieve the contribution until several days thereafter. Not wanting to carry that much cash around, he purchased a cashier's check, made out to himself, from First Bank and Trust Company of Boca Raton. He then sent the cashier's check to Maury Stans, CRP's finance chairman, April 10th.

The other contribution, four checks totaling \$89,000, represented contributions from certain Texas oil barons, some of whom were Southern Democrats.

Robert Allen, CEO of Gulf Resources and Chemical Corporation, was politically active in Texas. Today, he might be considered a bundler. Allen had convinced several of his colleagues to make sizable contributions to the President's re-election, but all were concerned that their contributions not become publicly known.

Allen hit upon the idea of routing the funds through the law firm for his company's subsidiary in Mexico. Thus, he arranged for four cashier's checks totaling \$89,000, drawn on Banco Internacional of Mexico City, to be issued to Manuel Ogarrio Daguerre, a well-known Mexican lawyer. On April 5th, Allen forwarded these checks, along with some \$21,000 in cash, to CRP.

It was Gordon Liddy, in his new role as counsel to CRP's finance committee, who was providing legal advice concerning the newly-enacted Federal Election Campaign Act of 1971. Since all five cashier's checks raised questions as to disclosure and origin, as well as to whether they had been timely received, they were given to Liddy for legal review.

Liddy concluded that they had been legally received, but that the easiest way to disguise the matter in any event was to launder them by converting

the checks to cash and then dividing that cash among many of the President's re-election committees. To this end, Liddy traveled to Miami and gave the five checks, totaling \$114,000, to Bernard Barker, who he had met through Howard Hunt and their work on the Plumbers break-in into the offices of Dr. Lewis Fielding, Daniel Ellsberg's psychiatrist. Barker, in turn, deposited the checks in his firm's bank account, Bernard Barker Associates, at the Republic National Bank of Miami.

Barker then made cash withdrawals, in hundred dollar bills. Perhaps understandably, the bank did not have that much cash on hand and had to request that some \$50,000 be transferred from the Federal Reserve Bank in Miami, which supplied blocks of newly printed, nicely counted and stacked \$100 bills, all uncirculated and with sequential serial numbers. Barker gave the \$114,000 back to Liddy, who returned it to CRP's treasurer, minus some \$3,000 that he kept for expenses.

A large portion of this cash was kept in CRP's central safe. Six weeks later, when Liddy withdrew substantial funds in connection with his campaign intelligence plan, a portion consisted of these same uncirculated, sequentially numbered \$100 bills.

When Barker and the other Cubans were caught on June 17, 1972, in the Watergate office building, they had almost \$5,000 in crisp, new \$100 bills. The FBI quickly traced these through the Fed to its Miami branch, where they had kept a record of its disbursement to Barker's bank account, into which he had deposited the five cashier's checks, four of which were drawn on a Mexican bank.

It is little wonder then, that the FBI wanted to question Dahlberg and Ogarrio about the origins of these checks — and little wonder that John Mitchell and Maury Stans at CRP quickly became very concerned about possible leaks concerning the origins of these monies. There was no question but that the money could be traced CRP, but that was not their concern. It was the possibility of tracing the money in the other direction: to its origins, which would be embarrassing to prominent contributors — and devastating to Dwayne Andreas.

#### Accuracy of Initial Recollections

In pondering Watergate's intricacies in the years since Nixon's resignation, I was always troubled with the anomaly of the smoking gun. It had occurred

far too soon after the break-in arrests for there to have been a real cover-up plan in place, and those of us on Nixon's defense team had no real indication of his appreciation of the cover-up's significance until his March 21, 1973 meeting, when Dean informed him of Hunt's blackmail demands. In my own research, I came to the same conclusion as Dean, that the smoking gun conversation had been totally misunderstood, about ten years ago. The moving force was reading, and then reconstructing, the above version of events, in Maury Stans 1978 book, *The Terrors of Justice*. With the benefit of his insights, it was relatively easy to confirm this version of events, with great consistency among those Watergate players who had been involved.

John Dean, for example, testified to this effect before the Ervin Committee:

To the best of my recollection, it was during this June twenty-first meeting, with Gray, that he informed me that the FBI had uncovered a number of major banking transactions that had transpired in the account of one of the arrested Cubans, Mr. Barker. He informed me that they had traced a \$25,000 check to Mr. Kenneth Dahlberg, and four checks totaling \$89,000 to a bank in Mexico City.

I do not recall whether I first learned about the Dahlberg check from Mr. Gray, or whether I learned about it in a meeting in Mitchell's office, by reason of the fact that the FBI was trying to contact Mr. Dahlberg about the matter, and Mr. Dahlberg had called Mr. Stans. At any rate, the fact that the FBI was investigating these matters was of utmost concern to Mr. Stans when he learned of it. Stans was concerned about the Dahlberg check, I was informed, because it was in fact a contribution from Mr. Dwayne Andreas, whom I did not know, but I was told was a long-time backer of Senator Hubert Humphrey. Neither Stans nor Mitchell wanted Mr. Andreas to be embarrassed by disclosure of the contribution. The concern about the Mexican checks was made a little less clear to me. I was told it was a contribution from a group of Texans who had used an intermediary in Mexico to make the contribution.

Mr. Stans also explained that he had checked with Sloan to find out how this money had ended up in Mr. Barker's bank account, and Sloan reported that he had given the checks to Liddy and requested that he cash them. He said he had no idea how Liddy had cashed them, but surmised that he had obviously used Barker to cash them. I was also

told — and I do not recall specifically who told me this — that the money had nothing to do with the Watergate; it was unrelated and it was merely a coincidence of fact that Liddy had used Barker to cash the checks and Liddy had returned the money to Sloan.

I was told that the investigation of this matter, which appeared to be connected to Watergate but wasn't, was unfounded, and would merely result in an unnecessary embarrassment to the contributors. Accordingly, Mitchell and Stans asked me to see if there was anything the White House could do to prevent this unnecessary embarrassment.

I, in turn, relayed these facts to both Haldeman and Ehrlichman. On June twenty-second, at the request of Ehrlichman and Haldeman, I went to see Mr. Gray at his office in the early evening, to discuss the Dahlberg and Mexican checks, and determine how the FBI was proceeding in these matters. Mr. Gray told me that they were pursuing it by seeking to interview the persons who had drawn the checks. It was during my meeting with Mr. Gray on June twenty-second that we also talked about his theories of the case, as it was beginning to unfold. I remember well that he drew a diagram for me, showing his theories. At that time, Mr. Gray had the following theories: It was a set-up job by a double agent; it was a CIA operation because of the number of former CIA people involved; or it was someone in the reelection committee who was responsible.

It is significant that Dean never alluded to any possibility that Mitchell, Stans, Haldeman or Ehrlichman were concerned about the money being traced back to CRP. Their sole concern was that the money could be traced to Democratic donors who had been promised confidentiality.

Keep in mind that Dean's Senate testimony occurred before the existence of the White House taping system became publicly known, and certainly before Dean had any inkling that Haldeman had discussed his idea of involving the CIA directly with the President.

All Dean knew was that he had been presented with the problem of possible disclosure of Democratic donors, discussed it with Gray, and had come up with something of a solution. His proposed initiative — getting the CIA to ask the FBI to back off these interviews — seemed easily accomplished,

especially since Gray already suspected that his FBI had stumbled into a CIA operation.

### The Smoking Gun Conversation Itself

In the first week following the burglars' arrests, neither President Nixon nor his top two aides (Haldeman and Ehrlichman) had any real grasp of the reasons for the Watergate break-in, but they were certainly astute enough to realize that they could not stop the FBI's investigation into the burglary — or to prevent its connections to CRP. After all, Dean had confirmed with Liddy earlier that week that it was his operation that had gone sour.

But their intent in putting off FBI interviews of these two people was not to interfere with the Watergate investigation; it was to prevent disclosing the contributor's names. This is clear now from re-reading the transcript itself [emphasis added]:

H. Now, on the investigation, you know the Democratic break-in thing, we're back in the problem area because the FBI is not under control, because Gray doesn't exactly know how to control it and they have — their investigation is now leading into some productive areas — because they've been able to trace the money — not through the money itself — but through the bank sources — the banker. And, and it goes in some directions we don't want it to go. . . Mitchell came up with yesterday, and John Dean concludes, concurs now with Mitchell's recommendation that the only way to solve this, and we're set up beautifully to do it, ah, in that and that — the only network that paid any attention to it last night was NBC — they did a massive story on the Cuban thing.

P. That's right.

H. That the way to handle this now is for us to have [CIA Deputy Director Vernon] Walters call Pat Gray and just say, "Stay the hell out of this — this is, ah, business here we don't want you go to any further on it." That's not an unusual development, and ah, that would take care of it.

P. What about Pat Gray — you mean Pat Gray doesn't want to?

H. Pat does want to. He doesn't know how to, and he doesn't have, he doesn't have any basis for doing it. Given this, he will then have the basis. He'll call Mark Felt [Deputy FBI Director, later identified as Deep Throat] and the two of them – and Mark Felt wants to cooperate because he's ambitious –

P. Yeah.

H. He'll call him in and say, "We've got the signal from across the river to put the hold on this." And that will fit rather well because the FBI agents who are working the case, at this point, feel that's what it is.

P. This is CIA? They've traced the money? Who'd they trace it to?

H. Well they've traced it to a name, but they haven't gotten to the guy yet.

P. Would it be somebody here?

H. Ken Dahlberg.

P. Who the hell is Ken Dahlberg?

H. He gave \$25,000 in Minnesota and, ah, the check went directly to this guy Barker.

P. It isn't from the Committee, though, from Stans?

H. Yeah. It is. It's directly traceable and there's some more through some Texas people that went to the Mexican bank – they'll get their names today.

H. And (pause)

P. Well, I mean, there's no way – I'm just thinking if they don't cooperate, what do they say? That they were approached by the Cubans. That's what Dahlberg has to say, the Texans too, that they –

H. Well, if they will. But then we're relying on more and more people all the time. That's the problem and they'll stop if we could take this other route.

P. All right.

H. And you seem to think the thing to do is get them to stop?

P. Right, fine.

H. They say the only way to do that is from White House instructions. And it's got to be to Helms and to – ah, what's his name – Walters.

P. Walters.

H. And the proposal would be that Ehrlichman and I call them in, and say, ah –

P. All right, fine. How do you call him in – I mean you just – well, we protected Helms from one hell of a lot of things.

H. That's what Ehrlichman says.

### Dean's Follow Through

The next thing that Dean knew, Haldeman and Ehrlichman had met with CIA officials and had made his recommended request that they contact the FBI. Dean also followed through on his own assignment: Gray's book confirms Dean's follow-up call to be sure these two — but only these two -- were not being interviewed.

At 10:30 the next morning [June 28th], John Dean called. Again it was about leaks. Again I told him the leaks had to be coming from somewhere else. He then wanted to be sure we were still holding off interviewing Ogarrio and Dahlberg. . . .

This again confirms there was no wider instruction or obstruction from this one incident – it was just to head off interviewing two people who had forwarded contributions from Democratic donors.

The CIA soon thought better of their involvement, withdraw their concerns, and the FBI proceeded with the interviews. They had been delayed for only two weeks. Once the interviews had been completed, federal prosecutors concluded that no crimes had been committed by these two individuals or by the donors in question.

That Dean's recommendation might constitute an obstruction of justice does not appear to have even occurred to him — or to anyone else at the White

House. And this is fully understandable, since there was no intent to interfere with the FBI's Watergate investigation itself. The only goal was to prevent several major Democrat donors from being embarrassed — which was in no sense a criminal act.

### Earl Silbert's Analysis

In anticipation of indicting the Watergate burglars, Earl Silbert, the principal assistant U.S. Attorney for Washington, DC and the initial lead Watergate prosecutor, sent a memo to Henry Petersen, head of DOJ's Criminal Division, describing the case. In it, he dismissed any concern about illegality regarding these contributions, saying:

The press has seized on these facts [the cashier's checks going through Bernard Barker's bank account] to show an official link between the Committee as recipient of these campaign contributions and Barker. There is no evidence known to us to support this.

The only significance it has with respect to Watergate is as follows: a number of the bills given Barker by his bank late in April and early May were 100 dollar bills. On April 19, his bank received \$50,000 in 100 bills from the local Federal Reserve Bank. The latter recorded the serial numbers, but Barker's bank did not. Subsequently, Barker gave the money to Liddy, who gave it to [CRP's Treasurer Hugh] Sloan, who put it in the safe at the Finance Committee. Liddy received from Sloan two disbursements of \$12,000 in cash, in \$100 bills, from the office safe. Sloan recalls this in late May or early June.

Although this investigation centered on the Watergate break-in, the passage of the Dahlberg and Mexican checks through the bank accounts of Barker Associates, Inc. and the appearance to the public of that money as a payoff to Barker, necessitated our tracing the source and path of that money to determine if there were any connections between contributors, the Finance Committee and the Watergate. This we did in the Grand Jury and succeeded in tracing the money to its source and found no connection other than the coincidental one of Liddy using Barker to change checks to cash at the same time he was associating with Barker on "intelligence activities." The Watergate Five had the \$100 bills with the traceable numbers only because of the coincidence that after the money was put into the Finance Committee

safe with other money, Liddy received in cash from the safe the two \$12,000 disbursements previously mentioned, part of which he gave to the Watergate Five and which must have been some of the very same bills he had earlier turned over to Sloan.

Silbert's account again confirmed there was nothing to hide about the Dahlberg or Mexican checks, other than the embarrassment of the original donors.

The CIA effort to put off the FBI's questioning had to have been known to Silbert at the time he wrote this memo and indicted the Watergate burglars. The total absence of any mention of this incident in his prosecutive memo is yet another indication that the postponement of the FBI interviews was not seen as anything even worth commenting about.

Thus, the actions and statements of every single participant leading up to and following the smoking gun conversion – at least of those in a position to know its context – are completely consistent. The sole purpose was to prevent disclosure of identities of Democratic donors and not to interfere with the FBI's investigation itself. Critics can quibble over whether even such a limited effort constituted an obstruction of justice, but it was hardly worth losing a presidency.

#### Back to the July 24<sup>th</sup> Internal Debates

But there had been a near-total staff turnover within the Nixon White House and all of this information was unknown to Nixon's new lawyers. Even Nixon himself could not recall the tape's actual context in any helpful fashion. Just as Dean's book states, the lawyers (along with everyone else) took the June 23<sup>rd</sup> conversation at face value and responded accordingly.

It is only in retrospect that we now know the true circumstances.

#### The Aftermath of Nixon's Resignation

But why has it taken four decades for this to be publicly acknowledged? Again, with the benefit of hindsight, the signs were everywhere, they were just not believed.

The reason may have been a phenomenon described by Carl Sagan in his 1997 book, *The Demon-Haunted World: Science as a Candle in the Dark*:

One of the saddest lessons of history is this: If we've been bamboozled long enough, we tend to reject any evidence of the bamboozle. We're no longer interested in finding out the truth. The bamboozle has captured us. It's simply too painful to acknowledge, even to ourselves, that we've been taken. Once you give a charlatan power over you, you almost never get it back.

### Nixon's Own Inability to Explain the Smoking Gun

There is a most interesting paragraph in Woodward and Bernstein's *Final Days* that suggests that Nixon failed even to convince his own staff of the incorrect implications of this tape [emphasis added]:

Shortly after 9:15 am [on August 5th], Burch, Timmons, Buchanan, Lichtenstein, Clawson, and Richard Moore, gathered in Burch's office to be briefed by Buchanan. He described the weekend at Camp David: Price, St. Clair, and he stuck off in one cabin, Nixon in another, and Haig and Ziegler running back and forth with messages; the President saying that the transcript didn't mean what it said; and then the President's senior aides conducting their own "investigation" of the President, to confirm that he had listened to the tape.

One wonders whether this is an inadvertent mis-statement by the authors or whether Nixon really did recall the purpose behind Haldeman's suggestion about the CIA, but by that point could not persuasively articulate it, even to his staff. This, too, may remain one of Watergate's enduring mysteries. Regardless, Nixon never picked up this thread in his 1978 autobiography.

### Treatment at the Cover-up Trial

By the time that the cover-up trial was held in the fall of 1974, however, things were considerably different. Haldeman certainly knew the rationale behind the June 23<sup>rd</sup> conversation and tried to dismiss its significance at his trial. In fact, it was central to his entire defense. Dean however, the principal government witness against him, subtly adjusted his prior Ervin Committee testimony to align his recollections with the needs of the Special Prosecutors. This is best seen in Dean's responses on cross-examination by John Wilson, Haldeman's defense attorney:

Dean: I was reporting the fact that Mr. Gray said the FBI was pursuing several checks, a check for \$25,000 from a Mr. Dahlberg and

another four checks that had come from a Mexican Bank totaling \$89,000, and they were going to interview a Mr. Ogarrio who had drawn these cashier's checks out. And they were going to interview Mr. Dahlberg also.

Wilson: Who was Mr. Dahlberg?

Dean: He was a gentleman who was associated with one of the regional finance committees to re-elect the President.

Wilson: What was the problem regarding these checks?

Dean: The FBI felt that if they could track the checks down because they had gone to Mr. Barker's – one of the men who had been arrested in the Democratic National Committee – they would have been found to have passed through his bank account, and the checks had been converted by Mr. Barker into cash and that the cash had then in turn been given to Mr. Barker to come back to the Re-election Committee. Mr. Liddy had been involved in the process of turning the checks over, and I gather getting possession of the money also.

Wilson: But this problem had nothing to do with the break-in. This was a campaign contribution problem, wasn't it?

Dean: I was told this was a problem that could raise embarrassment, because the individual involved – the fact that Mr. Dahlberg was really representing a Mr. Andreas, who had been a Humphrey supporter, in making contribution to Nixon – I was never told precisely the reason for the transfer of money to a Mexican bank. I only knew that there was a great deal of concern about tracing both of these and the fact that they had been involved with Mr. Liddy.

Wilson: So the problem was one of embarrassment politically, is that so, campaignwise?

Dean: I don't know the full extent of the embarrassment, I know there was a lot of concern about the money.

Wilson: Well, it had to do with Mr. Andreas being a backer of Mr. Humphrey, giving money to the Nixon campaign, was it not?

Dean: That was one of the concerns expressed, yes, sir.

Wilson: Was there another concern?

Dean: Well, sir, are you asking me to speculate?

Wilson: From your point of view, did this have anything to do with the cover-up of the Watergate break-in or simply as you said, an embarrassment politically with respect to campaign contributions?

James Neal, Lead Prosecutor: Objection, your Honor. His point of view is not relevant. It is a question of what he was told.

Judge Sirica: I will ask you to rephrase the question if you can.

Wilson: What were you told as to whether or not it had anything to do with the Watergate break-in or whether it had anything to do with embarrassment arising from campaign contributions?

Dean: I was told it had to do with the problem of campaign contributions coming in after April 7th and the fact that Mr. Liddy had handled the money.

Note how subtly Dean's testimony has changed from that which he had provided to the Ervin Committee some fifteen months prior. Now, the Nixon administration's concern was whether the donations were legal at all and their connection with Liddy – and not solely their worry about public disclosure of the names of their Democratic donors.

Dean's coyness certainly avoided undermining the government's contention that the smoking gun tape was precisely what everyone had mistakenly believed – and Haldeman was convicted on all counts.

Judge Sirica, in his later book, was heavily critical of Haldeman – almost mockingly so -- for his insistence that the smoking gun conversation was only about protecting the sources of political contributions.

The most incriminating incident of all, the ordering of Walters of the CIA to call the FBI off its investigation of the money trail to the Miamians, Haldeman tried to explain as stemming from a political concern about the origins of that contribution.

So also were the Watergate prosecutors, seemingly missing the point completely about any lack of criminal intent:

It is extremely rare for a defendant in any type of case to confess guilt under cross-examination. Haldeman did no less than that. Part of the conspiracy charged in the indictment was the defrauding of the United States through the misuse of the CIA and the FBI. In defending his actions, Haldeman admitted that he had sought to manipulate the CIA for "political" reasons (to avoid embarrassment to secret CRP financial contributors, he claimed) in the same breath in which he denied manipulating the CIA to cover up responsibility for the Watergate bugging. However dubious was this explanation, Haldeman could not escape the fact that he was admitting to obstruction of justice.

Maury Stans, in his same 1978 book, after recounting the path of the donations and the concerns about the donors' names becoming public, addressed the misunderstanding that had resulted in Nixon's forced resignation:

[I]t is possible to select the most ironic of all the cynical events of Watergate. The final act of Richard Nixon's downfall came when he was forced to release the White House tape of June 23, 1972, the "smoking gun" which in his own words tied him to the cover-up, something of which he had denied knowledge all along. The specific act was his attempt to thwart the FBI investigation of the Mexican money by directing the CIA to block the path of the probers. We know now that all the FBI could have done, and did do, about the Mexican money was to trace it back to Robert Allen, who had chosen that circuitous route for his own reasons. Allen withstood a long inquiry and a grand jury investigation. Nixon had euchred himself out of the Presidency by the action of trying to prevent, and then denying, a probe of what turned out to be a wholly innocuous transaction, unrelated to the Watergate crime.

Admittedly, disclosure of the June 23<sup>rd</sup> tape was the last straw, the one that broke the camel's back — and it did result in the President's downfall. But it did not remotely prove that Nixon was in on, much less directing, the cover-up from its outset.

#### John Dean's 1995 Deposition

Some twenty years after the cover-up trial, Dean reverted again and testified to Stans' very same innocent interpretation in the course of

depositions taken in connection with the lawsuit he brought following the 1991 publication of *Silent Coup*. He said, under oath:

The whole concern focused not on stopping an investigation by the FBI of Watergate and what had happened at the DNC. The whole concern was focused on contributors who were promised confidentiality, that their confidentiality would be maintained.

Perhaps typically, Dean went even further and claimed, not only was this the sole purpose of CIA involvement, but that he had always maintained this to be true:

Q: Are you saying that the CIA was brought in, in your view, in June of 1972 to try to head off investigations into campaign contribution problems, and it was only that?

A: That is correct.

Q: And so it is your testimony now that the CIA was not brought in to try to curtail the investigation into the Watergate break in?

A: That is correct.

Q: And that is different than what I believe you testified before; is that correct?

A: That is not correct.

Q: You have always testified it was brought in for campaign contribution problems?

A: That's my best recollection.

In spite of this quasi-denial, carefully couched to be sure, it was Dean's refusal to be equally forthright during his testimony at the cover-up trial that was a key factor in perpetuating the smoking gun's misunderstanding – and in sending Haldeman off to prison.

One suspects that Dean has known all along of the total misunderstanding of the June 23<sup>rd</sup> conversation, but has never found it convenient to come forward truthfully to correct the record, since it would undermine what Judge Sirica had characterized as “the most incriminating incident of all.”

After four decades, one is left with the haunting question: If we only now are learning that something as critical to Nixon's forced resignation as the meaning of the smoking gun conversation, what else is still lurking out there, that might change what we thought we knew about the Watergate scandal? My book coming out from Regnery early next year, *The Real Watergate Scandal*, will provide explosive answers to this very question.