

Watergate Plus Fifty  
NARA's Surprising Documents

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I. 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.

## II. 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 when 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. 2/12/74. 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 meet again, following the indictment presentations, to review how the proceedings went, agreeing to stay in touch.  
<https://shepardonwatergate.com/documents/RN072-G.pdf>

There cannot be a fair trial where judges and prosecutors have gotten together in secret to work out issues in advance.

## III. Mandamus Effort to have Sirica Disqualified as Trial Judge

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

5. ACLU amicus brief in support of defendants' motion.  
<https://shepardonwatergate.com/documents/Book3-Y.pdf>

6. 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).  
<https://casetext.com/case/mitchell-v-sirica>
7. 7/23/74—Lacovara memo both complemented MacKinnon's dissent, while lamenting WSPF decision to allow Sirica to appoint himself as trial judge.  
<https://shepardonwatergate.com/documents/Book3-FF.pdf>

Even the special prosecutors knew Judge Sirica should not have been allowed to appoint himself to preside over the Cover-up Trial.

- IV. Politicized Indictments. 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>

8. Phil Lacovara 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.

<https://shepardonwatergate.com/documents/RN072-L.pdf>

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](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.

9. 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.

<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. But, here, they sought out Republicans and by-passed Democrats.

#### V. Prosecutors Suppression of Exculpatory Evidence.

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

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.

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 formal 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 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

11. 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

<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.

### 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.

Shepard later uncovered confirmation of such concerns in WSPF files in the form of a 45-page guide, cited above, apparently designed for use in conducting Magruder's direct examination in the Cover-up Trial. It seems that Magruder had appeared five times before the grand jury and had been interviewed in depth in fourteen meetings with WSPF prosecutors. Eager for any sort of plea deal, Magruder seemed willing to recall events in ways he hoped would please prosecutors.

The guide, presumably prepared by Jill Wine-Banks, highlights some four dozen instances where Magruder's expected testimony will be inconsistent with his prior sworn testimony or that of other prosecution witnesses.

Wine-Banks echoes these points 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 –

12. <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 you know 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.

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 to the Ninth Circuit by Jimmy Carter) dismissed the charges, due to prosecutorial misconduct: failure to disclose exculpatory evidence. His opinion is startlingly candid.

13. <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.

The same might be said regarding other WSPF prosecutions, especially in light of the materials Shepard has uncovered.

## VI. Secret Misrepresentations to the House Judiciary Committee

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

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. Prosecutors prepared two key documents (i) the Road Map and (ii) the Richard Nixon Prosecutive Memo.

### The Road Map

Prosecutors' recommended approach is described in Lacovara's January 21, 1974 memo to Jaworski discussed at #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. It is now posted on the National Archive website,

14. <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 my 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. Admittedly, 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.

### The Road Map Misrepresentation

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, LaRue’s full testimony shows 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.

<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 informed Mitchell of Hunt’s monetary demand and not the other way around. (iii) It was LaRue who reduce 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.

### The Nixon Prosecutive Memorandum Misrepresentation

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 book by Ben-Veniste and Frampton.

15. <https://shepardonwatergate.com/documents/Book3-DD.pdf>

Meeting with HJC staff, in secret, would not have been condoned by the Department of Justice, had it known of this activity.

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 intentionally mis-labeled and really was specifically prepared for sharing with House Judiciary Committee staff.

It is now posted on the National Archive website, at

16. <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 was a ruse to assure the prosecutive memorandum was shared in secret with HJC staff and 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 uncontroverted that their call had occurred during that Wednesday afternoon. [p. 12]

Yet this Memorandum also was deliberately kept secret from Nixon's defense team.

### LaRue Cover-up Trial Testimony

With all this, 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:

17. <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 21<sup>st</sup>.

Ben-Veniste: Do you know whether you actually spoke with Mr. Mitchell on the morning of the 21<sup>st</sup>?

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 21<sup>st</sup> 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 clearly failed to 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 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.

By this time, 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 – which was the foundation for the grand jury naming Nixon a co-conspirator and for the House Judiciary Committee recommending his impeachment – went totally un-noticed.

VII. Complaint of Attorney Misconduct, now pending before the Department of Justice.

### Background

Shortly after the Watergate scandal, President Ford’s Attorney General, Edward Levi, established an office within the Department of Justice whose only mission is to investigate allegations of misconduct by DOJ 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.

In light of the troublesome documents that Shepard has uncovered in the past fifteen years, he filed a Complaint of Attorney Misconduct with OPR on October 3, 2021, supplemented by nine follow up letters.

His submissions are posted on Home Page of his website at

18. [www.ShepardOnWatergate.com](http://www.ShepardOnWatergate.com)

and remain pending.