

Nova Law Review

Volume 18, Issue 3

1994

Article 7

Why Didn't Nixon Burn the Tapes and Other Questions About Watergate

Stephen E. Ambrose*

*

Copyright ©1994 by the authors. *Nova Law Review* is produced by The Berkeley Electronic Press (bepress). <https://nsuworks.nova.edu/nlr>

Why Didn't Nixon Burn the Tapes and Other Questions About Watergate

Stephen E. Ambrose*

TABLE OF CONTENTS

I. INTRODUCTION	1775
II. WHY DID THEY BREAK IN?	1776
III. WHO WAS DEEP THROAT?	1777
IV. WHY DIDN'T NIXON BURN THE TAPES?	1778
V. VICE PRESIDENT FORD AND THE PARDON	1780

I. INTRODUCTION

For almost two years, from early 1973 to September, 1974, Watergate dominated the nation's consciousness. On a daily basis it was on the front pages—usually the headline; in the news magazines—usually the cover story; on the television news—usually the lead. Washington, D.C., a town that ordinarily is obsessed by the future and dominated by predictions about what the President and Congress will do next, was obsessed by the past and dominated by questions about what Richard Nixon had done and why he had done it. Small wonder: Watergate was the political story of the century.

Since 1974, Watergate has been studied and commented on by reporters, television documentary makers, historians, and others. These commentators have had an unprecedented amount of material with which to work, starting with the tapes, the documentary record of the Nixon Administration, other material in the Nixon Presidential Materials Project, plus the transcripts of the various congressional hearings, the courtroom testimony of the principal actors, and the memoirs of the participants. But despite the billions of words that have been written and said about

* Stephen Ambrose is Boyd Professor of History and Director of the Eisenhower Center at the University of New Orleans. He is an editor of the Eisenhower papers and has authored more than a dozen books on history and political affairs, including *NIXON: THE TRIUMPH OF A POLITICIAN 1962-1972*.

This essay comprises the edited remarks of Professor Ambrose delivered at the Watergate Era Symposium held at Nova University Shepard Broad Law Center in Fort Lauderdale, Florida on March 25-26, 1993.

Watergate, fundamental questions about the scandal remain. These questions include: Why did the burglars break into the offices of the Democratic National Committee (“DNC”)? Who was Deep Throat? Why didn’t Nixon burn the tapes once Alexander Butterfield had revealed their existence? Did Nixon cut a deal with Vice President Gerald Ford—a resignation for a pardon? These are the questions I will take up in this essay.

II. WHY DID THEY BREAK IN?

The day after the arrest of the burglars in the offices of the DNC, Nixon scribbled some comments on a Ron Ziegler memo that characterized the break-in as a “third-rate burglary.” Nixon wrote, “He [Ziegler] understated. *Attempt* at burglary. Bizarre business. There was no involvement whatsoever by W[hite] H[ouse] personnel.”

Thus did the cover-up begin, and to this day those words constitute Nixon’s basic defense; *he* knew nothing about it and he could not for the life of him figure out why anyone would want to break into the DNC.

In a lifetime of bold and brazen acts, this was the boldest and most brazen, as well as the most successful. Two decades later, Nixon’s query still dominates discussion and investigation of Watergate. Why break into the DNC? Who on earth ordered such a foolish thing?

The answer revolves around the strange relationship between Howard Hughes, Larry O’Brien and Richard Nixon. Hughes gave money to both the Democratic and Republican parties and, Nixon believed, had paid off a nine million dollar debt from Hubert Humphrey’s 1968 campaign. Nixon knew that Hughes had O’Brien on his payroll. Nixon also knew that Hughes had, at various times over the preceding twenty-five years, given money to him [Nixon]—often large amounts, in cash. Further, Nixon had made some big money from Florida real estate investments made with Bebe Rebozo—and evidently Hughes was in on the operation, and Nixon was afraid that O’Brien knew about the whole scheme.

In 1972, H.R. “Bob” Haldeman talked with White House aide Jeb Magruder about the puzzle of who ordered the break-in and why. Haldeman’s handwritten notes of the conversation read: “Plan hatched here—Hunt, Liddy & Colson. Colson called Jeb twice—to get going on this thing. Specifically L. O’Brien info re Fla. dealings.”

Another Nixon defense is his question: Why should I have taken chances when I knew I was a sure-thing winner in the 1972 election? The effectiveness of the argument relies on the public’s short and faulty memory.

In early 1972 Nixon was trailing Senator Edmond Muskie in the polls. His big lead did not come until after the Democrats nominated George McGovern—by which time he had already put the pressure on CREEP Chairman John Mitchell to get more intelligence on what O'Brien knew. Also remember, in 1968, Nixon had a twenty-eight point lead over Humphrey, but almost got beat. He was ahead of John Kennedy in 1960, too, only to lose. To sum up, in the spring of 1972, Nixon was by no means a certain winner and he wanted every edge he could get.

"To this day," Haldeman said at a 1987 conference at Hofstra University, "no one knows who ordered the break-in." That is true in the strictest sense—no one has ever found an order reading, "break into the DNC, signed RN." Nixon and his associates and defenders have raised all sorts of dark possibilities: that it was a CIA or JCS plot, or a John Dean/Al Haig plot, or that the Democrats set it up themselves.

In my opinion, John Mitchell ordered the operation; his principal agent was Jeb Magruder; the operatives were men hired by Chuck Colson, G. Gordon Liddy and H. Howard Hunt; all these men were responding to unrelenting pressure from Nixon to find out what O'Brien knew.

III. WHO WAS DEEP THROAT?

Next question: Who was Deep Throat? Once again, I don't have an answer, only an opinion. Deep Throat was a composite character made up by Carl Bernstein and Bob Woodward for dramatic purposes (and it surely worked). Their information came from a variety of sources, none of whom met them in underground garages in the middle of the night. This is based on my judgment that no one person in the Administration knew as much as Deep Throat supposedly knew.

A more substantial question is: What was the role of the press in general, and Woodward and Bernstein in particular, in forcing Nixon's resignation? The media, naturally enough, thought that it was central, critical, and the *sine qua non* of the entire Watergate story. In my view, the press played a peripheral role. Had there been no press coverage, or no *Washington Post* investigative reporting, there still would have been a trial in Judge John Sirica's court, there still would have been the Ervin Committee Hearings, and there still would have been impeachment proceedings. What brought Nixon to resignation was not the press but his own conduct, as revealed by the constitutional process that was based on the separation of powers. The courts and the Congress did their jobs. The system worked.

IV. WHY DIDN'T NIXON BURN THE TAPES?

What many people believe to be the most puzzling question of all is actually the easiest to answer. The question is: When Butterfield revealed the existence of the tapes, why didn't Nixon pile them up on the White House lawn, call in the reporters, pour some gasoline over the tapes, say, "watch, you bastards!" and toss a match on the pile?

John Connally urged him to do just that. Connally sent a message to Haldeman: "Please, Bob, use your influence to convince the President to burn the tapes Say they must be destroyed now that their existence has been made public."

There was a perfect cover. Nixon could say that the conversations dealt with national security affairs and matters highly embarrassing to politicians from both parties. Since that was true, and since every politician who had been in the Oval Office since 1971 was at that moment racking his brain to remember what he had said there, a bonfire would have elicited protest and criticism, but it would not have destroyed the President. Nor would it have been illegal. Nixon regarded the tapes as his personal property, a position upheld by the precedent that any President's papers are his personal property, and a position upheld by the courts in 1992. As the tapes had not been subpoenaed, burning them would not be destroying evidence in a criminal case.

Still, a bonfire would have raised another storm. Leonard Garment warned that it would forever seal an impression of guilt in the public mind. Spiro Agnew agreed with Garment.

Haldeman also opposed destroying the tapes, but his reason had nothing to do with public opinion. Rather, it got straight to the heart of the matter. As Nixon later put it, "Haldeman said that the tapes were still our best defense, and he recommended that they not be destroyed."

Later, Nixon's standard response to the question, what is the lesson of Watergate? became, "burn the tapes." But at the time, in 1973, that was the last thing he would do.

To understand why, it is first necessary to point out that only two men in the Oval Office knew that a tape recorder was running. They were Richard Nixon and H.R. Haldeman. That makes everything they said suspicious—were they speaking spontaneously and truthfully, or were they speaking for the record? It is impossible to tell. Listening to the tapes today, when you hear Nixon tell John Dean, "but that would be wrong," you just can't tell if he means wrong in a political sense, or a moral sense, or a constitutional sense, or a legal sense—or if he just wants to get that sentence on the tape, just in case.

Now flash forward to Nixon's situation had it come to an impeachment and a trial before the Senate. Nixon's lawyer walks into the Senate chamber with a tape recorder, and delivers the following speech: "Senators, you have heard Mr. Dean accuse the President of paying blackmail money, hush money, to Howard Hunt. Now, Senators, I want you to hear the President himself, to hear his response when Dean told him the money had to be paid." And with that, the lawyer hits the start button on the tape recorder, and the Senate hears Nixon say, "but that would be wrong." The lawyer hits the stop button. "Senators, you heard it yourselves. I rest my case."

There are two basic factors at work here. First, the tapes *were* Nixon's best defense, just as Haldeman said, for the obvious reason that they contained so many exculpatory statements by Nixon; statements that he had made in his own transparent way whenever he remembered that the recorder was running. Nixon had already drawn on that asset in the preparation of a summary he had given Fred Buzhardt, which Buzhardt in turn had given to the Republican staff members of the Ervin Committee. This summary was what led to the Butterfield admission that a taping system existed in the White House (Butterfield was responding to a question about how the President could have such a good memory as to quote directly from conversations more than a year old; in other words, as so often, Nixon had no one to blame but himself for his problems).

The second factor was explained by Haldeman, who pointed out that Nixon "just never dreamed it was possible that the tapes would ever be heard by anyone other than himself." They were his property. They were protected by executive privilege. Everything Nixon had said in his July 7, 1973 letter to Ervin ("I shall not permit access to Presidential papers") applied equally to the tapes.

Nixon did not destroy the tapes because they constituted his best defense, if used selectively, and because he was certain he could command complete control of them. What Nixon failed to anticipate was the persistence with which Ervin, the Special Prosecutor, and Judge Sirica would demand access to the tapes, or the power of public opinion that would muster behind that demand, or the independence of the Supreme Court.

The Supreme Court was critical. Right up to the end of July, 1974, Nixon was fairly confident the Court would rule that the tapes were his to do with as he saw fit, or at least that the Court would divide, with two, three, or possibly four votes upholding executive privilege, which would allow him to defy an order to yield up the tapes. It was the unanimous Court ruling that forced him to release the smoking gun tape of June 23, 1972.

On July 21, 1973, Nixon wrote a private note on the subject: "If I had discussed illegal action, I would not have taped. If I had discussed illegal action and had taped, I would have destroyed the tapes once the investigation began."

Whether this was self-deception or pure cynicism, or something in between, is impossible to say. He certainly had discussed illegal action on March 21, 1973, with John Dean; indeed he had ordered illegal action (the payment to Hunt) and it had been carried out. The attempt to use the CIA to turn off the FBI back in June 1972, the break-in to Daniel Ellsberg's psychiatrist's office, and other Nixon Administration actions had some cover of national security, but the Hunt payment was in direct response to blackmail.

With regard to Nixon's second sentence, he explained in his memoirs that he decided the tapes were "my best insurance." If other aides turned against him, as Dean had done, "the tapes would give me at least some protection." They would provide a defense to sum up, so long as Nixon could make selective use of the tapes. His greatest fear, repeated innumerable times to Haldeman, was that Dean had his own tape, made on a machine hidden in his lapel.

V. VICE PRESIDENT FORD AND THE PARDON

Before beginning my discussion of the pardon, I want to take this opportunity to quote Richard Nixon on the subject of pardon and forgiveness.

At a news conference on January 31, 1973, Courtney Sheldon of the *Christian Science Monitor* asked Nixon if, now that the war was over, he had given any thought to amnesty for draft evaders.

Nixon replied that "it takes two to heal wounds," and, in view of the criticism he was getting over the settlement, "it makes one [wonder] whether some want the wounds healed." He said he had achieved "peace with honor," even though "I know it gags some of you to write that phrase." As to "healing the wounds . . . certainly I have sympathy for any individual who has made a mistake. We have all made mistakes. But also, it is a rule of life, we all have to pay for our mistakes."

He went on:

Amnesty means forgiveness. We cannot provide forgiveness. . . . Those who served paid their price. Those who deserted must pay their price, and the price is not a junket in the Peace Corps, or something like

that, as some have suggested. The price is a criminal penalty for disobeying the laws of the United States.

Now, why did Nixon choose Ford for his Vice President, and why did Ford pardon Nixon? Spiro Agnew's resignation in October 1973, triggered the Twenty-fifth Amendment, which required Nixon to select a new Vice President, subject to confirmation by a majority of both Houses of Congress.

Who can say what went through Nixon's mind? As Ford aide Robert Hartmann has commented, "no man living can outguess Richard Nixon when it comes to figuring things out to the third, fourth, and fifth degree of indirection." Certainly, there were a lot of nuances and complexities—much to think about.

The terms of the Twenty-fifth Amendment gave Nixon an invaluable asset; in the event of his resignation, impeachment, or death, it was nothing less than the ultimate prize in American politics. He was sure to spend it in such a way as to do himself the most good. But because the wording of the Twenty-fifth Amendment was mandatory, he had to spend it quickly. Nor could he spend it freely, as his selection was subject to congressional confirmation.

Under ordinary circumstances, Nixon would have given his full attention to his momentous decision, but October 10, 1973, was not an ordinary occasion. Nixon's biggest problem was not selecting a replacement for Agnew, but finding some way to avoid the demands of Special Prosecutor Archibald Cox for Watergate related tapes. The case was before the United States Court of Appeals, which was scheduled to hand down its ruling in a day or two.

When Nixon saw Attorney General Richardson on the afternoon of October 10, his first words were, "now that we have disposed of that matter [Agnew's resignation], we can go ahead and get rid of Cox."

But if the ruling of the court of appeals went against him on the tapes, even getting rid of Cox would not solve his problems. If he refused to comply, he would set off a major constitutional crisis. Uppermost in his mind, then, was not the Twenty-fifth Amendment, but Section 2 of Article I of the Constitution, which states that the House of Representatives "shall have the sole Power of Impeachment." In short, if the firing of Cox and the defiance of a court order set off a serious impeachment proceeding, Nixon's fate would rest, first of all, with the Republican members of the House.

Nixon could not count on their unquestioning support. Aside from his Watergate problems, there was the Christmas bombing. Coming immediately after Henry Kissinger's election-eve claim that "peace is at hand," the bombing had led to widespread criticism of the President, from Republicans

as well as Democrats. There was a further cause for worry, one that was expressed by Nixon's Congressional liaison aide, William Timmons, in a post-election memorandum: "Unfortunately, many GOP members feel the President was interested in his own reelection and didn't do enough to help them in their campaigns. This could result in an independent attitude toward the President." Worst of all, in part because of Nixon's single-minded concentration on his own reelection, the Democrats controlled the House.

To sum up the situation on the afternoon of October 10, what Nixon most needed to buy with the asset the Twenty-fifth Amendment gave him was some Republican support in the House of Representatives.

Immediately after receiving Agnew's resignation, Nixon began conferring with congressional leaders, cabinet members, and his aides. Washington was agog; the atmosphere was likened to a political convention. In the midst of intense speculation, the names most often mentioned were Governors Nelson Rockefeller and Ronald Reagan, along with John Connally, Elliot Richardson, and Barry Goldwater. Gerald Ford's name, however, was not mentioned.

Nixon's most important conference on October 10 was with presidential advisors Bryce Harlow and Mel Laird. Between them, they knew the House as well as any two men in the country. Laird had been a congressman for sixteen years; Harlow had been President Dwight Eisenhower's liaison with Congress for eight years and Nixon's for two years. They told the President he had but one choice, Gerald Ford.

The Speaker of the House, Carl Albert, told the President bluntly that Ford was the only Republican who could be quickly confirmed. Late that evening, Laird made a telephone call to Ford. "Jerry," he said, "if you were asked, would you accept the Vice Presidential nomination?" Laird did not say that he was inquiring for Nixon, but as Ford noted, "someone had told him to call."

In short, Nixon had made up his mind before he saw the results of his poll. The poll itself (recently released by the National Archives) showed how popular Ford was in the House, as well as how little support he had outside that body. In the House, there were eighty votes for Ford, thirty-five for Rockefeller, twenty-three for Reagan, and sixteen for Connally.

Nixon could hardly have been surprised by the results of his poll. He was one of the best at counting votes in the Congress, almost as good as Laird and Harlow. That was why he had picked Ford even before he opened a single ballot.

Figuring out Nixon's motives for his decisions is a popular, if not frustrating, political parlor game. With regard to his selection of Ford, H.

R. Haldeman told me once that Nixon picked Ford because he reasoned that as the members of the House knew Ford so intimately, they would never impeach Nixon if it meant Ford would become President. Haldeman's interpretation is that Ford was Nixon's insurance policy. Others have adopted the same view.

If true, Nixon had made a fatal blunder. As the poll showed, Ford was widely popular among the Republicans in the House; as the event showed in August of 1974, republican congressmen could hardly wait to substitute Ford for Nixon as President. If Nixon wanted an insurance policy, he should have supported Agnew's demand for an impeachment inquiry, as a way of keeping Agnew in office. How many Democrats would have been willing to vote to impeach Nixon if Agnew had been Vice President?

It is always dangerous to ascribe to Nixon a single, simple motive, but in this case it seems too clear that he selected Ford as a way of appeasing Republican members of the House of Representatives; with Cox, the tapes, and the defiance of a court order uppermost in his mind. Others would argue that what Nixon had in mind was further down the road; his own resignation, and consequent need for a pardon. In this interpretation, he felt he could count on "good old Jerry" more than anyone else.

On August 1, 1974, Haig met with Ford. Haig's purpose, he later testified, was to tell Ford that Nixon was close to resigning and "to emphasize to him [Ford] that he had to be prepared to assume the presidency within a very short time." But there was more to it than that. As Ford later testified, "it was his [Haig's] understanding from a White House lawyer that a President did have the authority to grant a pardon even before any criminal action had been taken against an individual." It was a private meeting. It inevitably raises suspicion that a deal was cut between Haig and Ford; a pardon for a resignation.

The only two men who know for certain, both vehemently deny that a deal was made. Judging by the extensive written commentary, much of which was by men close to Nixon or Ford, their denials are hard to believe. But unless a tape recording emerges, or unless either Haig or Ford say something different from what they have already testified, no one will ever be able to prove that a deal was cut.

I cannot resist the temptation to do some speculation of my own. I begin with some observations. First, while Nixon and Ford were close professional associates, they were not intimate friends who trusted each other. At their October 10, 1973 meeting, Ford noticed that Nixon was relaxed, that he was wearing a sports jacket and slacks, and that he was smoking a pipe. Ford had never before seen Nixon relaxed, casually

dressed, or smoking. The fact that all this was new to Ford tells a great deal about how close their quarter-century old relationship was.

Second, Nixon owed Ford far more than Ford owed Nixon. It was characteristic of Nixon that he got more loyalty than he ever gave, and that was certainly true in this case. Ford had staunchly supported Nixon throughout his career, from the fund crisis of 1952 to the Watergate crisis of 1972-74, while Nixon had double-crossed Ford in the Douglas affair, and throughout his first term treated Ford with disdain that bordered on contempt. Nixon had lied to Ford from January of 1973 to August of 1974 when he insisted that he had no involvement in the Watergate cover-up. Nixon not only allowed, but encouraged Ford to make himself vulnerable by forthrightly and indignantly defending the President.

While it is true that Nixon had chosen Ford to become Vice President, both men knew that circumstances rather than admiration, friendship, or trust dictated that choice. Further, there is no evidence that Nixon attempted to get Ford to agree that in return for the Vice Presidency, Ford would grant a pardon if worse came to worst. Nixon did ask Ford to promise that he would not be a candidate for the Presidency in 1976; a promise Ford gave—which in itself is a reminder of how valuable private, personal promises are among American politicians.

Third, it was the Vice President, not the President, who occupied a position of strength at the beginning of August, 1974. Ford enjoyed deep and wide-spread support from the public and from the Congress; Nixon did not. Nixon could not say, “look, either you promise to pardon, or I’ll never resign.” The Presidency was no longer Nixon’s to give or keep.

Fourth, it is necessary to recall what Bryce Harlow said to Ford in a discussion following the August 1st meeting between Haig and Ford. Hartmann had arranged the get-together because he wanted to convince Ford to tell Nixon that there could be no deal, or even the appearance of one. Better the message came from Harlow than from Hartmann. Harlow told Ford,

it is inconceivable that [Haig] was not carrying out a mission for the President, with precise instructions, and that it is the President who wants to hear your recommendations and test your reaction to the pardon question. But the President knows that he must be able to swear under oath that he never discussed this with you and that you must be able to swear that you never discussed it with him.

Ford saw the point. He called Haig to say that he had no intention of recommending whether or not Nixon should resign. Ford added that

nothing he and Haig talked about (meaning the President's pardoning power) should be given any consideration whatsoever as indicating any intent on his part to involve himself in Nixon's resignation decision. Haig said he understood and agreed.

That sounds far more believable than the opposite conclusion, that Haig and Ford entered into a solid deal of pardon for resignation. My own reading of Nixon is that he had thought the whole thing through and concluded that the far greater risk was to have Haig ask straight out for a pardon agreement. That might have caused Ford to bristle, grow indignant, get angry, throw Haig out of his office, and set his feet in cement against a pardon. It is often true in American politics that what is not said, but that both sides can count on as being understood, leads to a more solid agreement than what is promised.

Fifth, Nixon could anticipate political developments accurately. Looking ahead, he knew President Ford's problems in the late summer of 1974 would be many and difficult, and that the last thing the new President would want would be a flood of pre-Nixon trial publicity. For his own good, for the good of the Republican party, for the good of the country, Ford would want to avoid the orgy of Nixon-bashing that would accompany a Nixon indictment and trial.

Nixon could be confident that Ford would both be told and would figure out for himself that picking a jury for a Nixon trial would dominate the headlines for weeks, perhaps months, and still might prove impossible. An actual trial would be even worse. As to what might be revealed in a trial, again Nixon could count on Ford's shuddering at the thought of that.

Nixon knew that Ford was going to have to pardon him, and he did not send Haig to see Ford to extract such a promise. Being Nixon, he could not help himself from meddling, manipulating, and seeking reassurance. So Nixon sent Haig to see Ford, not to make a deal, but to make sure Ford knew that as President he had the right to pardon even before an indictment. When Haig reported that Ford had been so informed, Nixon was satisfied. A week later, he resigned.

One month later, Ford pardoned Nixon for all crimes he may have committed. I confess that at the time I shared the feelings of helpless rage that overcame millions of Americans. My fury knew no bounds. I cursed, I screamed, I swore I'd never forgive Jerry Ford. I was certain Ford had entered into a corrupt bargain with Nixon.

Over the years, however, I have come to realize that Ford was absolutely right to do what he did. It may have been something he had to do, but he still deserves credit for doing it forthrightly, courageously,

quickly, and at his own expense. The last thing this country needed in 1975-76 was to tear itself yet further apart over the fate of Richard Nixon.

My subject has been Nixon's selection of Ford for the Vice Presidency, and Ford's pardon of Nixon. My conclusion is that in October of 1973, Nixon had no choice, and that in September of 1974, Ford had no choice. The circumstances that dictated the developments were the structure of the existing situations, not the personalities of the two men, nor any secret deals.