

Four Cover-Up Conversations

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White House recordings of four conversations during the critical week of March 19th, the week that culminated with Judge Sirica's reading the letter from James McCord on sentencing day for the Watergate burglars, appear to undermine the idea that a comprehensive criminal cover-up existed from the outset of the Watergate scandal—at least one that included Nixon, Haldeman and Ehrlichman.

Background

The Watergate break-in took place on June 16th 1972; the burglars were indicted on September 15th; the trial began on January 8th of the following year.

Shortly thereafter, in Judge Sirica's courtroom, E. Howard Hunt and the four Cubans pled guilty. McCord and Liddy were the only ones to go to trial and were found guilty by the jury on January 23rd. Sirica set March 23rd as the sentencing date for all defendants.

The prosecutors, well aware that some kind of cover-up was in effect, adopted the standard approach of counting on the prospect of spending considerable time in prison to start changing minds and loosening tongues. The fact that Judge Sirica was nicknamed "Maximum John" because of the severity of his sentences could only help in this regard.

From the time the burglars were arrested, the Committee to Re-elect the President (CRP) had arranged to pay their attorneys' fees and to provide support for their families. The lawyers were paid directly and the amount of family assistance was relatively modest. In the two months following the guilty verdicts, however, Howard Hunt's demands increased beyond reimbursement for these items and were seen by some as blackmail.

Watergate burglar James McCord, having been convicted on all counts, was facing a substantial prison sentence. With his CIA and law enforcement background, he was worried about how he would fare on the wrong side of prison bars. So he drafted a letter to Judge Sirica. This was exactly the kind of break that the prosecutors had been counting on.

McCord wrote:

- There was political pressure applied to the defendants to plead guilty and remain silent.
- Perjury occurred during the trial in matters highly material to the very structure, orientation, and impact of the government's case and to the motivation and intent of the defendants.
- Others involved in the Watergate operation were not identified during the trial, when they could have been by those testifying.
- The Watergate operation was not a CIA operation. Others may have misled the Cubans into believing it was a CIA operation. I know for a fact that it was not.

On Monday morning, March 19th, the letter was delivered to Judge Sirica, who chose not to make it public until the end of that week.

It is conventional wisdom that Sirica's reading of this letter in open court on Friday, March 23rd, led directly to the collapse of the cover-up. Haldeman, Ehrlichman and Mitchell were later indicted and convicted of conspiracy to obstruct justice—with Dean as the principle government witness testifying to the existence of such a conspiracy. It is conventional wisdom that all of them were in a conspiracy that included President Nixon that began immediately after the break-in arrests.

If such a conspiracy existed, it should certainly have been evident from conversations that were taped in the critical week before its collapse. Yet in the only meetings involving all five principal parties (Nixon, Haldeman, Ehrlichman, Mitchell and Dean), neither their words nor their demeanor suggest such a conspiracy even existed.

Four Key Conversations

MONDAY, MARCH 19, 1973. PRESIDENT NIXON AND JOHN EHRLICHMAN

The evening of the same day that McCord's letter was delivered, and unaware of that ticking time bomb, Richard Nixon and John Ehrlichman sat down for a discussion about where the Watergate matter currently stood. Their conversation lasted over an hour and several things are clear from listening to it today. They were both aware of the impending sentencing at the end of the week, and of John Dean's concerns, expressed earlier to Ehrlichman, that something might "blow" because of it. They speculate on whether McCord will be the one to blow, because Dean has characterized him as out of touch with the defense team and absolutely terrified of going to prison. Nixon and Ehrlichman are more curious than concerned about this question, because they are confident that whatever McCord does, it can only impact officials at the CRP.

The president says that he can't be seen as supporting any "stonewalling"— his role must be one of wanting full disclosure.

They are clearly unaware of Dean's own vulnerability—or of the multitude of criminal acts that Dean has committed in his desperate attempt to orchestrate the cover-up. They certainly believe he has been acting as their legal representative in protecting White House interests, but they are blissfully unaware of his specific actions. They know he is concerned, but they have no idea that his concern stems from fear of being prosecuted for his own criminal conduct.

Yet, Dean's increasingly desperate attempts to keep Watergate under control behind the scenes had not been successful; and his ability to remain out of the public eye was about to come to an end. He had to do something. What he did was ask for a private meeting with President Nixon.

MARCH 21, 1973, OVAL OFFICE MEETING BETWEEN PRESIDENT NIXON AND JOHN DEAN. (10:12-11:55am)

JUST AFTER TEN O'CLOCK ON WEDNESDAY MORNING—MARCH 21ST 1973, a fateful day in any Watergate chronology—Nixon met alone with John Dean. Dean opened the meeting, which had been arranged at his request, by saying that he thinks it's important for Nixon to learn about some things that he clearly doesn't know. He outlines some aspects of the cover-up and tells the President that Howard Hunt's recent demands for money can only be described as blackmail.

Here's the opening excerpt:

DEAN: Uh, the reason I thought we ought to talk this morning is because in, in our conversations, uh, uh, I have, I have the impression that you don't know everything I know

PRESIDENT: That's right.

DEAN: ...and it makes it very difficult for you to make judgments that, uh, that only you can make...

PRESIDENT: That's right.

DEAN: ...on some of these things and I thought that—

PRESIDENT: You've got, in other words, I've got to know why you feel that, uh, that something...

DEAN: Well, let me...

PRESIDENT: ...that, that we shouldn't unravel something.

DEAN: ...let me give you my overall first.

PRESIDENT: In other words, you, your judgment as to where it stands, and where we go now—

DEAN: I think, I think that, uh, there's no doubt about the seriousness of the problem we're, we've got. We have a cancer—within, close to the Presidency, that's growing. It's growing daily. It's compounding, it grows geometrically now because it compounds itself. Uh, that'll be clear as I explain you know, some of the details, uh, of why it is, and It basically is because (1) we're being blackmailed; (2) uh, people are going to start perjuring themselves [sic] very quickly that have not had to perjure themselves to protect other people and the like. And that is just—and there is no assurance—

PRESIDENT: That It won't bust.

DEAN: That, that won't bust.

PRESIDENT: True.

This is John Dean's pivotal "cancer on the presidency" speech, in which he claimed to have made a full disclosure of all wrongdoing—but it was hardly the comprehensive review he later would claim. In fact, it was a highly selective account. And, as we have seen, far from being motivated by a guilty conscience and the desire to make a clean breast of things, the meeting was triggered by Senator Edward Kennedy's Subcommittee's investigations and by Pat Gray's disastrous confirmation hearings to become permanent Director of the FBI—two events that had suddenly threatened to put John Dean directly in the firing line for disclosures that would lead to criminal prosecution.

Dean's purpose, now that he could no longer keep all the balls in the air on his own, was to bring the President at least partially into the loop. He had no intention whatever of fessing up and informing Nixon that he had been running the cover-up out of the White House Counsel's office. He only went as far as describing how the break-in came about. It was too little and too

late, but for the very first time he revealed that *he* had been present with Mitchell when Liddy's plan was first presented. It was almost as if he were rehearsing his story for the prosecutors he would meet with less than three weeks later.

What he chose to tell Nixon, he soon realized, hadn't been enough for the President to grasp the immensity and complexity Watergate had by now assumed. When Dean later described the March 21st conversation to federal prosecutors, he told them that "Nixon just didn't get it."

One thing Nixon got very clearly was the concept of blackmail. He is riveted by that news and clearly toys with the idea of meeting Hunt's latest demands, but only to buy time to control how the story will get out. Ultimately, Nixon decides that Hunt's demands would never end and the discussion moves on. It concludes with the understanding that Dean will get together with Haldeman and Ehrlichman to decide, along with John Mitchell, what they are going to do. The principal question is how to influence the manner in which these unpleasant disclosures will now have to be made.

MARCH 21, 1973, EOB OFFICE MEETING BETWEEN PRESIDENT NIXON, H.R. HALDEMAN, JOHN EHRLICHMAN AND JOHN DEAN. (5:20-6:01PM)

A couple of hours later, at five o'clock on the afternoon of the 21st, the President met with Dean, Haldeman, and Ehrlichman. The three advisors have hashed the situation out and are now making recommendations about what to do. The idea of meeting Hunt's blackmail demands never even mentioned; the issue now is how the White House can trigger a renewed investigation of CRP wrongdoing. Thus, even before they are aware of McCord's letter, Nixon is determined to call for another grand jury to initiate further investigation of Watergate.

The real question is how to handle John Mitchell, whom they have asked to come down from New York the next day. They clearly believe that calling for a new Watergate grand jury—along with the President's waiving of any claim of executive privilege—will amount to forcing his best friend, the former Attorney General, to walk the plank.

The meeting ends with the idea that Dean will prepare a report on everything he has found to have been going on at the CRP. The President can then cite this report as the reason for requesting a renewed investigation—even calling for a new Watergate grand jury. It is quite apparent that Nixon, Haldeman, and Ehrlichman have no qualms about their own involvement—and persist in their belief that any fallout will only affect people from the CRP.

MARCH 22, 1973, BOB OFFICE MEETING BETWEEN PRESIDENT NIXON, H.R. HALDEMAN, JOHN ERHUCHMAN, JOHN MITCHELL AND JOHN DEAN. (1:57-3:43Pm)

John Mitchell flew down on the Shuttle the next morning. At two o'clock that afternoon, Wednesday, March 22nd, he met with the President, Dean, Haldeman, and Ehrlichman. Dean says very little at this meeting other than to confirm that he can and will write a report about what his investigations have uncovered. Strangely, he also urges the President to grant immunity to everyone concerned—he even offers to go with Attorney General Kleindienst to Congress to explain why Presidential grants of immunity have been deemed necessary.

The reaction to Dean's suggestion was immediately and unanimously negative. Granting immunity to White House staff would send exactly the wrong signal; if no one in the White House had been involved, why should everyone in the White House be granted immunity? Because none of the other participants understand Dean's personal stake in gaining immunity, the notion seems to come out of left field and is dismissed completely. History might have been very different if they had agreed to this odd and ostensibly unnecessary proposal.

Dean's report was now central to any further action, and the President suggests that the author retire to the calm and seclusion of Camp David as a way to hasten its completion.

Aftermath

THE NEXT DAY, FRIDAY MARCH 23RD, WAS SENTENCING DAY FOR the Watergate break-in defendants in Judge Sirica's courtroom. Only the Judge knew about the bombshell he would drop by reading McCord's letter.

After flamboyantly unsealing the official envelope into which he had placed McCord's letter after reading it, Judge Sirica proceeded to read it aloud. His dramatic flair was not without effect. There was pandemonium in the courtroom as reporters ran to find the nearest phones.

With order restored, the Judge announced that he would take McCord's letter under advisement and postpone his sentencing for another week. He then proceeded to throw the book at the other defendants: everyone would serve the maximum prison time allowed by law. He sentenced Hunt to up to 35 years and Liddy to a term of 6 to 20 years; the hapless Cubans received only somewhat lesser sentences.

As he had hoped it would, Sirica's disclosure of McCord's letter finally blew the lid off the Watergate cover-up, reinvigorated the prosecutor's investigation, and soon led to almost daily disclosures in the *Washington Post*, as potential targets started scrambling to make their own deals with the prosecutors and to spin the story to their benefit.

Yet, even after the release of the McCord letter, the White House still didn't know any specific details of the cover-up or anything at all of Dean's own criminal involvement. They were still waiting for the report he had promised to write, which they expected to use as the basis for Nixon's own cleansing initiatives.

WHEN THE MCCORD LETTER SUDDENLY BURST ON THE PUBLIC, however, those most intimately involved in illegal acts (especially Dean and Magruder) realized their vulnerability to prosecution far sooner than those not nearly as familiar with what had really been going on (Nixon, Haldeman, Ehrlichman and, perhaps, Mitchell).

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Several overall observations are in order at this point:

First, there is nothing illegal *per se* about a policy of containment—of limiting the political damage from an adverse event, as Haldeman described it—or even of paying defense costs or family support for defendants. Indeed, one is hard pressed to recall any political scandal—including those of President Carter's Bert Lance and President Clinton's Webb Hubbell—where efforts were not undertaken to help with finances. The question is if and when such actions cross the line into criminal acts and paying for support becomes paying for silence.

Second, there's no question that Nixon, Haldeman and Ehrlichman—and everyone else on the White House staff for that matter—did not want to know the details of what their counsel, John Dean, was doing to contain the Watergate problem. They clearly knew that money for legal fees and family expenses was being given to the original Watergate defendants. But it is reasonable to assume that they thought Dean—who was acting in a legal capacity and would be conscious of the kind of conduct expected from the White House Counsel—wouldn't do anything that was actually illegal or even publicly indefensible. Lawyers frequently cut corners; sometimes they look the other way; but they know when a cut corner or an overlooked action crosses the line from omission to commission. Every day, all across America, lawyers defend criminals without themselves becoming guilty of any crime, and this is what his White House colleagues would have expected Dean's role to be in sorting out CRP's responsibility for Watergate.

Third, at the same time, it is quite possible that John Dean felt that he was doing precisely what his White House superiors wanted him to do—including the commission of illegal acts in furtherance of the goal of containing the Watergate problem. He certainly was confident that he was doing the right thing to save John Mitchell, his mentor and father figure, and the others at the CRP with whom he

shared the risk of prosecution for the original Liddy intelligence plan. It also seems reasonable to assume that he deliberately chose not to inform his White House superiors of any specifics so that they would not become tainted with guilty knowledge. This is precisely the approach he had articulated in Mitchell's office during Liddy's second plan presentation: "This needs to be done, but without the specific involvement of higher ups". The approach provides something termed "plausible deniability". It is likely, then, that Dean orchestrated the cover-up under the same premise and felt he knew what "they" wanted and that he was carrying out "their" plan, without ever having discussed any specifics with "them".

This lack of a "meeting of the minds" among the alleged co-conspirators explains some subsequent reactions by all the parties. Haldeman, Ehrlichman and Nixon, for example, were clearly appalled to learn of Dean's conflict of interest and of what Dean had been doing with his White House authority. And Dean was equally appalled—with a fury not unlike like that of a jilted lover—to learn that they now claimed he had been doing everything of his own volition.

Fourth—and perhaps worse from the White House perspective—is that after Dean's departure in late April, no one remaining on the staff, or arriving later, had any idea of the full extent of the cover-up or of the extent of Dean's participation in it. As selective as the information he gave them was, it was, essentially, the only information they were getting. It wasn't until some three months later, in late June, that the President and his new team of senior advisers (Al Haig, Fred Buzhardt, Mel Laird, Bryce Harlow, Dean Burch, etc.), along with the rest of the nation began to learn from the newspapers, the TV, and the Ervin hearings, specific details of John Dean's handiwork.

Finally, and most importantly of all, it is clear that these four conversation—occurring at the very height of the alleged cover-up—completely undermine the conventional wisdom that President Nixon and his top lieutenants were in on the cover-up from the outset: Nixon didn't know the specifics of what had been going on—and when informed of Hunt's blackmail demands, Nixon immediately determined that he needed to get out front of the coming disclosures and to call for a renewed investigation and a new grand jury—and so instructed his staff.

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Why didn't this come to pass? Why didn't the matter end then and there? Let's go back to our story:

JOHN DEAN TOOK THE PRESIDENT'S SUGGESTION AND —ACCOMPANIED BY HIS WIFE MAUREEN— went to Camp David to draft his promised report. Nixon's idea in offering the bucolic retreat was to get Dean's report completed as quickly as possible. That report, after all, was to be the basis--the action-forcing event—for Nixon's call for reinvestigation and for another grand jury.

But after a few days it was clear that no "Dean Report" was going to be forthcoming. Haldeman recalled him Washington on Tuesday; on Thursday Dean was relieved of responsibility for overseeing the White House response to the Watergate situation and replaced by John Ehrlichman. In between, Dean had his first secret meeting with criminal defense counsel.

Now, after all the months of scrambling and dissembling—and just plain hoping that somehow things would work out—John Dean saw his cover-up crashing down around him. Nothing if not a survivor, he now fixed his eye firmly on one single overriding goal: To avoid prosecution for his criminal misdeeds by obtaining personal immunity.

As we have seen he had already raised the possibility of immunity—for everyone—on March 22nd, before agreeing—or pretending to agree—to go to Camp David to write his long-awaited and much-promised Report. Not realizing that Dean's reason for raising the notion of immunity, it was quickly passed over as irrelevant and inappropriate. Dean also raised it in several subsequent phone calls to Haldeman—who, still steeped in Dean's earlier assurances that no one on the White House staff had been involved in the planning for the break-in and unaware of what had really been going on during Dean's cover-up, continued to be puzzled as to why the President's own Counsel was so concerned about his personal exposure.

We don't know precisely when, or the process by which, Dean decided to switch sides. But his options were clearly narrowing. He realized that his own potential criminality would soon be discovered; and Magruder had told him that he had already decided to retain a lawyer—even asking Dean for a recommendation. On March 28th, the same day that he was recalled—report less—from Camp David, John Dean formally retained Charles Shaffer as his criminal defense attorney.

JOHN DEAN WASNT PARTICULARLY SMART; BUT HE WAS PLENTY bright. And whether or not he knew it (and after his too-close-for-comfort brush with Senator Kennedy with the Subcommittee subpoenas and the Gray hearings it's hard to believe he didn't know it full well) in Charles Shaffer he had retained one of the Kennedy family's most tried and trusted insiders. In a conversation with Nixon just before he retained Shaffer, Dean describes Howard Hunt's lawyer as "an excellent criminal lawyer from the Democratic era of Bobby Kennedy". It would only make sense that he would look for just such qualities in his own lawyer.

A brilliant and feisty New Yorker, a graduate of Fordham University's Law School, Charles Shaffer had been personally recruited for the "Get Hoffa" Squad by Robert Kennedy. In short order, working with fellow Squad member James Neal, Shaffer captured the Holy Grail that had evaded so many for so long when he obtained a conviction against Jimmy Hoffa in a Tennessee trial for jury tampering.

The degree of Robert Kennedy's trust in Shaffer was indicated by his subsequent choice of the young New Yorker for a truly unique and sensitive assignment. Almost from the minute he learned about his brother's assassination, Robert Kennedy was

convinced that organized crime in general and Jimmy Hoffa in particular, had played some part in it. This concern was not very farfetched. The Kennedy Justice Department had been leaning hard on the Mob; Jack Ruby, Oswald's assassin, had organized crime connections; there were phone calls to known Hoffa associates during the critical period before Oswald's assassination of JFK; and among the many wiretaps on Hoffa, there were at least two serious discussions of the methods and benefits of a mob "hit" on Bobby or Jack. The technique for the discussed hit on Bobby—a single assassin shooting into an open car proceeding along a known parade route—bore an eerie similarity to Oswald's actual MO.

For all its distinguished members and large staff, Robert Kennedy didn't trust the Warren Commission—the official investigative group appointed by President Johnson—to operate aggressively enough. He needed to know for himself whether there was any evidence, no matter how remote, connecting the Mafia or Hoffa to that moment in Dealey Plaza. Receiving such information from a trusted source was particularly important because J. Edgar Hoover had specifically directed the FBI to cut the Attorney General off from any reports it supplied to the Warren Commission.

So Bobby decided to infiltrate one of his most trusted people onto the Warren Commission staff, with the specific assignment of ferreting out any Mob or Hoffa connection. The man Robert Kennedy chose for this most delicate and vital mission was Charles Shaffer. Shaffer's loyalty was unquestioned; and his toughness on the Get Hoffa Squad demonstrated that he could be counted on to get the job done. The Commission never learned that it had been infiltrated, but fifteen years later when the House of Representatives reviewed the Commission's findings, it considered the incident sufficiently important to be mentioned in its final Report:

The committee learned that Attorney General Kennedy and his aides arranged for the appointment of Charles Shaffer, a Justice Department attorney, to the Warren Commission staff in order that the possibility of Teamster involvement be watched. Shaffer confirmed to the committee that looking into Hoffa was one purpose of his appointment.

Here's how Richard Ben-Veniste, Neal's second-in-command of the Watergate Task Force, subsequently described the Shaffer-Dean relationship:

For his attorney Dean chose a brilliant, aggressive criminal lawyer names Charles N. Shaffer. Shaffer was a liberal Democrat and former Kennedy Justice Department prosecutor who had previously worked with Jim Neal on a prosecution of James Hoffa. Ben-Veniste had also dealt with Shaffer in connection with Shaffer's representation of an important witness in the Volshen-Sweig case. When Shaffer debriefed Dean, he was stunned to learn the extent of the information Dean stood to provide the prosecutors.
TBen-Veniste, pp 101-102]

A few pages later, Ben-Veniste describes Shaffer's influence on Dean's own testimony:

Shaffer played a critical role in assisting Dean's preparation of a written opening statement for the Ervin Committee. Shaffer debriefed Dean, drove him, harangued him, subjected him to hours of mock cross-examination. . . . Shaffer reached in to the corners of Dean's recollection and pulled chunks out... The result, a 245 page typewritten statement, was a testimonial to the touch of a fine criminal lawyer. [Ben-Veniste, p. 104.]

There is no question that Charles Shaffer, the ultimate Kennedy-insider, helped shape all of John Dean's recollections and testimony.

From the moment John Dean retained Shaffer, everything changed and the circumstances were ripe for a dramatically different outcome: the skillful and successful exploitation of the Watergate scandal for partisan political purposes. Senator Kennedy and his fellow Democrats on Senate Judiciary now had the President's own lawyer in their thrall, very much panicked and willing to tell them what he knew in exchange for personal immunity. When that immunity proved hard to obtain, it didn't take them long to learn that Dean was willing to alter his recollections of events in ways that could help him get what he so desperately wanted.