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SENATOR ROBERT C. BYRD, THE “UNsung HERO” OF WATERGATE

David A. Corbin*

"The Senate and the country owe Senator Byrd a vote of thanks. In fairness to him and to the history of this affair [Watergate], his role in bringing this sordid mess to light justly deserves both to be noted and praised."

Senator William Proxmire

May 3, 1973

Senator Robert C. Byrd was the “unsung hero of [the] Watergate investigation,” proclaimed Senator William Proxmire (D-WI) on the floor of the U.S. Senate on May 3, 1973.¹ “[F]or months the Watergate scandal was swept under the rug,” he charged: “It was referred to as a ‘caper.’ It had little effect on the election. The American people were bored with reports of it.”² But, Proxmire explained, “three significant actions [brought] the immense proportions of the scandal” into the open.³ Two of the forces, Judge John Sirica and the *Washington Post*, he said, were widely recognized. “[T]here was a third event,” he pointed out, that “essentially broke open the Watergate case,” and that was Senator Byrd’s questioning of the President’s nominee to head the FBI, Mr. L. Patrick Gray.⁴ Byrd’s “doggedness and persistence in questioning brought the admission from Mr. Gray that Mr. Dean of the White House had lied . . . [and this] broke open the case. It started an avalanche.”⁵

Other observers at the time acknowledged the importance of Byrd’s questioning of Gray in uncovering the Watergate scandal. The veteran reporter

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¹ 119 CONG. REC. S14098 (daily ed. May 3, 1973) (statement of Sen. Proxmire).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Clark Mollenhoff, also called Byrd the “unsung hero” of Watergate, and wrote that the people of the United States “owe a special debt to Sen. Bob Byrd for saving the nation from ‘four more years’ of Watergate tactics or worse.”⁶ It was Byrd, wrote the columnist Carl T. Rowan, who “flushed out the first hints of the Watergate cover-up.”⁷

Senator Byrd “deserves great credit for making certain that the Watergate scandal will ultimately be revealed in all its dimensions,” concluded Proxmire in his May 3 remarks, but he “has never received appropriate recognition for his part.”⁸

Three decades later, Byrd still has not received the attention to which he is entitled for breaking open the Watergate investigation. Although Byrd has held more Senate leadership positions than any other person, is the second-longest serving member in Senate history, has cast more roll-call votes than any other Senator in history, and has two offices full of honors, awards, and various other forms of recognition, he has never received historical recognition “for making certain” that the Watergate scandal was “revealed in all its dimensions.”⁹ Or, as Mollenhoff wrote, “for saving the nation from four more years’ of Watergate tactics or worse.”¹⁰ Byrd, along with Judge Sirica and *Washington Post* reporters Bob Woodward and Carl Bernstein, played a crucial role in bringing down a corrupt presidential administration that threatened the American political process and the constitutional foundations of the United States.

Byrd’s role in uncovering the Watergate scandal is also crucial to understanding his political career. By enabling him to solidify his support among the different factions of the Senate Democratic Conference, it proved to be a major stepping stone on his path to becoming Majority Leader of the United States Senate.

It all began on June 17, 1972, with the break-in at the headquarters of the Democratic National Committee in the Washington, D.C., apartment-office complex named Watergate. Five men, James W. McCord, Bernard Barker, Virgilio Gonzalez, Eugenio R. Martinez, and Frank Sturgis were arrested for burglarizing and bugging the office. The men were an assortment of former FBI and CIA operatives, and anti-Castro Cubans. One of them, McCord, was chief

⁶ Clark R. Mollenhoff, *Sen. R.C. Byrd, ‘Unsung Hero,’* RICHMOND TIMES-DISPATCH, June, 24, 1973, at A20.

⁷ Carl T. Rowan, *Byrd’s Metamorphosis*, WASH. STAR, Jan. 12 1977, at A17.

⁸ 119 CONG. REC. S14098 (daily ed. May 3, 1973) (statement of Sen. Proxmire).

⁹ For a compilation of Byrd’s achievements, see Senate Minority Leader Tom Daschle’s (D-SD) remarks when Byrd cast his unprecedented 14,000th vote. U.S. Congress, Senate, *Congressional Record*, 104th Cong., 1st Sess., 27 July 1995, 20639-40. For Byrd’s election to Senate Leadership positions, see ROBERT C. BYRD, ROBERT C. BYRD: CHILD OF THE APPALACHIAN COALFIELDS 194-95 (West Virginia University Press 2005) (Secretary of Senate Democratic Conference), 294-7 (Senate Democratic Whip), and 377-9 (Senate Majority Leader).

¹⁰ Mollenhoff, *supra* note 6, at 24.

of security for the Republican National Committee as well as the Committee to Reelect the President (CRP).¹¹

Because of the burglars' various connections to the CRP, Nixon's campaign manager, former Attorney General John Mitchell, quickly moved to disassociate both the Republican Party and the Presidential campaign from the break-in.¹² He declared that none of the accused were "operating on our behalf or with our [CRP] consent."¹³ Likewise, on June 22, President Nixon attempted to separate the Administration from Watergate when he issued a statement saying that "White House had no involvement whatsoever."¹⁴

On September 15, a grand jury indicted the five men and two others for conspiracy, burglary, and violation of federal wiretapping laws.¹⁵ The two additional men were Gordon Liddy (counsel to the Committee to Re-elect the President) and E. Howard Hunt (a White House consultant and former CIA employee).¹⁶

During the 1972 presidential campaign, Democrats tried unsuccessfully to make the break-in at the DNC headquarters a political campaign issue.¹⁷ They alleged that the Nixon Administration surely was behind the scandal and was out to subvert the American political process.¹⁸

Two young, low-level metro reporters for the *Washington Post*, Bob Woodward and Carl Bernstein, became interested in the story and began to investigate it. Outside those two reporters, the national media ignored the event. Like the American people, the nation's newspapers and magazines could not see any possible larger dimension to the Watergate break-in. Polls showed Nixon leading every potential Democratic challenger by at least nineteen points,¹⁹ therefore, few Americans could believe that the Nixon Administration or the Republican party would have any reason to be involved in such a stupid, poorly planned and inept operation. Nixon's Press Secretary Ron Ziegler dismissed the

¹¹ Watergate Scandal: A Senate Search for the Truth, in *Congressional Quarterly, Watergate: Chronology of a Crisis* (Washington, D.C.: CQ Press, 1973) 1-2; KEITH W. OLSON, WATERGATE: THE PRESIDENTIAL SCANDAL THAT SHOOK AMERICA 38-9 (University of Kansas 2003).

¹² PHILIP B. KURLAND, *The Watergate Inquiry 1973*, in CONGRESS INVESTIGATES: A DOCUMENTED HISTORY, 1792-1974 3921, 3926 (Roger Bruns & Arthur M. Schlesinger, Jr. eds., Chelsae House Publishers 1975).

¹³ *Id.* at 3926.

¹⁴ *Id.* at 3925-6.

¹⁵ OLSON, *supra* note 11, at 67-8.

¹⁶ *Watergate Scandal: A Senate Search for the Truth*, 31 CONGRESSIONAL QUARTERLY 835 (April 14, 1973).

¹⁷ OLSON, *supra* note 11, at 177.

¹⁸ CARL BERNSTEIN & BOB WOODWARD, *ALL THE PRESIDENT'S MEN* 21 (Simon and Schuster 1974).

¹⁹ *Id.* at 19.

break-in as a “third rate” burglary and the nation seemed satisfied with that description.²⁰

In November, the American people re-elected Nixon as President, giving him nearly 61 percent of the popular vote, and 97 percent of the electoral vote, making it one of the greatest landslide victories in presidential history.²¹ Two months later, in January of 1973, the trial of seven Watergate burglars quietly ran its course, without any suggestion that higher-ups might have been involved. Hunt, Barker, Gonzalez, Martinez, and Sturgis all entered guilty pleas.²² Liddy and McCord were convicted by the jury.²³ President Nixon and White House Press Secretary Ronald Ziegler continued to insist that no White House people had been involved, and now dismissed the caper, as they called it, as a “bizarre affair.”²⁴

The story of the Watergate break-in seemed destined to be buried as the Nixon Administration now stood at the zenith of its power and prestige. Nixon had just been overwhelmingly re-elected.²⁵ In January, a Gallup poll gave Nixon an extraordinary 68 percent approval rating.²⁶ The Watergate puzzle was unsolved, and looked to remain that way.

There were, however, important skeptics. The man who had presided over the trial of the Watergate burglars, Judge John Sirica, said he suspected that the full truth regarding Watergate was being hidden.²⁷ He publicly complained that he was concerned that all of the pertinent facts that might be available had not been produced before an American jury, and that the trial had not succeeded in bringing out the motive behind the burglary.²⁸ At the *Washington Post*, Woodward and Bernstein, continued to chip away at the White House’s wall of silence.²⁹

²⁰ Walter Pincus, *The Latest Cover-Up*, THE NEW REPUBLIC, 30 June, 1973, 14.

²¹ CONGRESSIONAL QUARTERLY, PRESIDENTIAL ELECTIONS, 1789-2004, at 72-73 (CQ Press 2005) [hereinafter Presidential Elections]; RICHARD M. SCAMMON (Government Affairs Institute), AMERICA VOTES 10: A HANDBOOK OF CONTEMPORARY AMERICAN ELECTION STATISTICS, 1972, at 13 (CQ Press 1973); ALICE V. MCGILLIVRAY, RICHARD M. SCAMMON, & RHODES COOK, AMERICA AT THE POLLS, 1960-2004: A HANDBOOK OF AMERICAN PRESIDENTIAL ELECTIONS STATISTICS, at 19 (CQ Press 2005).

²² OLSON, *supra* note 11, at 69; CLARK R. MOLLENHOFF, GAME PLAN FOR DISASTER: AN OMBUDSMAN’S REPORT ON THE NIXON YEARS 254-256 (W.W. Norton & Co. 1976).

²³ OLSON, *supra* note 11, at 70; MOLLENHOFF, *supra* note 22, at 258.

²⁴ SAM J. ERVIN, PRESERVING THE CONSTITUTION: THE AUTOBIOGRAPHY OF SENATOR SAM J. ERVIN, JR. 319 (Michie Company, Law Publishers 1984); MOLLENHOFF, *supra* note 22, at 259.

²⁵ PRESIDENTIAL ELECTIONS, *supra* note 21, at 72-73; SCAMMON, *supra* note 21, at 13; MCGILLIVRAY, SCAMMON, & COOK, *supra* note 21, at 19.

²⁶ DICK DABNEY, A GOOD MAN: THE LIFE OF SAM J. ERVIN 261-2 (Houghton Mifflin Co. 1976).

²⁷ MOLLENHOFF, *supra* note 22, at 259; ERVIN, *supra* note 24, at 318.

²⁸ MOLLENHOFF, *supra* note 22, at 259; ERVIN, *supra* note 24, at 319.

²⁹ DONALD A. RITCHIE, REPORTING FROM WASHINGTON: THE HISTORY OF THE WASHINGTON PRESS CORPS 218-240 (Oxford University Press, 2005); *Washington Deceit*, 218-40; OLSON,

Another skeptic was the Senate Majority Leader Mike Mansfield (D-MT), who was deeply distressed by the Watergate affair. If the 1972 presidential campaign had been sabotaged, as it appeared to him to have been, Mansfield believed that the entire American political process could be in jeopardy.³⁰ Several times he discussed his concerns with Senator Sam Ervin (D-NC), a brilliant constitutional attorney and member of the Senate Judiciary Committee.³¹ As a result, on February 5, Senator Ervin offered on behalf of himself and Mansfield a resolution:

to establish a select committee of the Senate to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting individually or in combination with others, in the presidential election of 1972, or any campaign, canvass, or other activity related to it.³²

On February 7, 1973, the Senate adopted the resolution by a vote of 77 to 0.³³ Although the select committee would become known as the Senate Watergate Committee, its purpose was, as the resolution stated, to investigate the irregularities in the election, not the break-in at the DNC headquarters.³⁴ Therefore, few of its creators expected anything to come of the Committee. It did not even have its first public hearing until the middle of May, which was more than three months away.³⁵ Through February 1973, the cover-up continued to seem secure.

Then came the Senate Judiciary Committee's confirmation hearings for L. Patrick Gray III, who Nixon had nominated to be Director of the FBI. Gray, a graduate of the U.S. Naval Academy in Annapolis, MD, had served as a captain of a submarine and obtained a law degree. Most importantly, he was Nixon's type of man – a complete Nixon loyalist.³⁶ "Oh, God, I wish we had, I wish we had more Pat Grays," Nixon had commented at one point.³⁷ In 1960,

supra note 11, at 59-65. Woodward and Bernstein also detail their efforts in *ALL THE PRESIDENT'S MEN*, *supra* note 18.

³⁰ DON OBERDORFER, *SENATOR MANSFIELD: THE EXTRAORDINARY LIFE OF A GREAT STATESMAN AND DIPLOMAT* 431-32 (Smithsonian Books 2003).

³¹ DABNEY, *supra* note 26, at 260-62; ERVIN, *supra* note 11, at 318-19.

³² S. Res. 60, 93d Cong., 119 Cong. Rec. 3849 (1973) (enacted).

³³ Bob Woodward & Carl Bernstein, *Senate Votes Watergate Probe*, WASH. POST, Feb. 8, 1973, at A1.

³⁴ *Id.*

³⁵ *Id.*

³⁶ For an example of the loyalty Nixon demanded from his staff, see THEODORE WHITE, *BREACH OF FAITH: THE FALL OF RICHARD NIXON* 176-8 (Atheneum Publishers 1975).

³⁷ FRED EMERY, *WATERGATE: THE CORRUPTION OF AMERICAN POLITICS AND THE FALL OF RICHARD NIXON* 245 (Random House 1994).

Gray gave up his promising career in the Navy in order to work for Nixon when he was Vice President. In 1968, Gray worked on Nixon's presidential campaign, and after the election, served in several capacities in the Nixon Administration, including a stint at the Department of Health, Education and Welfare, and then at the Justice Department where he served as Deputy Attorney General.³⁸

By 1972, Nixon was considering Gray for several high-level jobs, including an ambassadorship or a federal appeals judgeship.³⁹ Upon the death of J. Edgar Hoover, however, Nixon named Gray acting director of the FBI.⁴⁰ While Gray was serving as acting FBI director, the agency conducted its investigation into the Watergate break-in. Apparently satisfied with the job Gray had done, on February 17, 1973, Nixon named Gray to be the permanent director, and sent his nomination to the Senate Judiciary Committee.⁴¹

White House tapes of conversations between Nixon and Gray indicate that Gray went into the Senate hearings believing that he would have no trouble handling Congress.⁴² Nixon, with his long and hostile relationship with Congress, warned Gray to be careful. But Gray told the President not to worry. "Nixon loyalist... you're goddamn right I am," Gray assured the President.⁴³

The President's counsel, John W. Dean III, was also reassuring. On February 28, the first day of the Judiciary Committee's confirmation hearing, Dean said to Nixon, "I'm convinced we're going to make it the whole road and put this thing [Watergate] in the funny pages of the history books rather than anything serious."⁴⁴

There did not seem to be any reason for Gray to worry. He had been the acting FBI Director for almost a year, since May, 1972.⁴⁵ Furthermore, Gray had received favorable treatment in the nation's media. Lamenting the media's initial lack of interest in Gray, Mollenhoff later wrote, that "large numbers of newspaper editors and columnists bought the line that Gray's appointment

³⁸ *Nomination of Louis Patrick Gray III, of Connecticut, to be Director, Federal Bureau of Investigation: Hearing Before the S. Comm. on the Judiciary 93d Cong. 29 (1973)* (statements of Louis Patrick Gray III, nominee) [hereinafter *Gray Confirmation Hearings*].

³⁹ EMERY, *supra* note 37, at 245.

⁴⁰ *Gray Confirmation Hearings, supra* note 38, at 5-6.

⁴¹ Robert C. Toth & Ronald J. Ostrow, *Nixon to Nominate Gray to Head FBI*, LOS ANGELES TIMES, Feb. 17, 1973, at A1; Philip Warden, *Nixon Nominates Gray as Permanent Director of FBI*, CHICAGO TRIBUNE, 18 February 1973, at 20.

⁴² EMERY, *supra* note 37, at 245.

⁴³ *Id.* at 247.

⁴⁴ J. ANTHONY LUKAS, NIGHTMARE: THE UNDERSIDE OF THE NIXON YEARS 292 (Viking Press 1976).

⁴⁵ In retrospect, several writers have maintained that nominating Gray was Nixon's big mistake. "Amazingly Nixon handed Congress a dagger with which to probe Gray's role in Watergate -- months before Ervin and Baker were ready," wrote Emery. EMERY, *supra* note 37, at 244. This may have been easy to see in retrospect, but it overlooks the initial, overwhelmingly favorable attitudes toward Gray. See also, BERNSTEIN & WOODWARD, *supra* note 18, at 267.

would mean that “a ‘nice guy’ would finally be heading the FBI,” after having to put up with Hoover for a number of years.⁴⁶

Congressional reaction to Nixon’s nominee was also reassuring.⁴⁷ Senate Leader Mansfield (D-MT) had announced his support for confirmation.⁴⁸ The chairman of the Senate Judiciary Committee, Senator James Eastland (D-MS) predicted an easy confirmation.⁴⁹ Gray was considered such a sure thing that the liberals on the Senate Committee were concerned that opposition to him might be politically hazardous. Senator John Tunney (D-CA) acknowledged that he had concerns about Gray, but said he would vote for his confirmation because of the overwhelming public and media support of him.⁵⁰

The two Connecticut Senators who introduced Gray to the Judiciary Committee did so in gushing terms. Democratic Senator Abraham Ribicoff said he had known Gray for “many years,” and had always found him “to be a man of outstanding ability, character, and integrity.”⁵¹ Gray would “perform his tasks” as FBI director, Ribicoff said, “on a completely non-partisan basis.”⁵² The other Connecticut Senator, Lowell Weicker, a Republican, depicted Gray as a “man of absolute integrity.”⁵³

Once the hearings began, they took on an almost casual, light-hearted atmosphere with joking and friendly give-and-takes,⁵⁴ and more accolades from more Senators. Senator Strom Thurmond (R-SC) called Gray a “man of character, . . . a man of ability and dedication.”⁵⁵ He was, said Thurmond, “the type of man we need in government.”⁵⁶

The Senators sat and listened as Gray, in his opening testimony, told them that President Nixon had given him one instruction -- that the “FBI and its Director continue to stay out of politics and to remain free of politics.”⁵⁷ The Senators were pleased to hear Gray tell them of the thorough job the FBI had done in investigating the Watergate break-in. He cited the number of agents that had been assigned to the investigation, the number of man hours they had

⁴⁶ See Mollenhoff, *supra* note 6.

⁴⁷ Warden, *supra* note 41, at 20.

⁴⁸ *Man Overboard*, NEW REPUBLIC, April 21 1973, at 7.

⁴⁹ See *The FBI's Man in a Squeeze*, U.S. NEWS & WORLD REPORT, Mar. 26, 1973 at 33; MOLLENHOFF, *supra* note 22, at 269.

⁵⁰ MOLLENHOFF, *supra* note 22, at 273; Mollenhoff, *supra* note 6.

⁵¹ *Gray Confirmation Hearings*, *supra* note 38, at 1.

⁵² *Id.*

⁵³ *Id.* at 3.

⁵⁴ See, e.g., *id.* at 75, 81-2.

⁵⁵ *Id.* at 82.

⁵⁶ *Id.* For other Senators’ praise of Gray, see, for example, the statement of Senator Roman L. Hruska, (R-NE), see *id.* at 54.

⁵⁷ *Id.* at 8.

put in, and the number of people they had interviewed.⁵⁸ It was a “full court investigation,”⁵⁹ Gray told them, a “no holds barred investigation.”⁶⁰ “There were no restrictions or limitations”⁶¹ placed on the FBI investigation, he declared, “we have done everything that we could possibly do.”⁶² After Gray had finished, Senator John L. McClellan (D-AR) remarked, “on the basis of that statement, of course, he would be entitled to confirmation.”⁶³

In the context of this relaxed atmosphere and friendly exchanges between the nominee and his inquisitors, Gray told the Senators how he had shared FBI investigation files with White House staffers, namely President Nixon’s counsel, John Dean. “The President specifically charged him [Dean] with looking into any involvement on the part of White House staff members,” Gray explained.⁶⁴ According to Gray, it was not unusual for the FBI to share its files with White House on what he called, “major special cases.”⁶⁵ That cooperation with the White House included discussing the investigation with Dean, and allowing the President’s counsel to sit in on FBI interviews with Watergate suspects.⁶⁶ In that atmosphere, Gray offered members of the Judiciary Committee full access to the FBI’s files on its Watergate investigation.⁶⁷

The exception to Gray’s admiring throngs was Senator Robert C. Byrd who had already expressed strong reservations about the FBI Director’s partisan political activities. A few days earlier, in a lengthy floor statement, Byrd had detailed Gray’s work for the Republican Party, especially for Nixon, including his participation in Nixon’s presidential campaigns of 1960 and 1968.⁶⁸ “His background,” said Byrd, “includes a history of Republican Party activities, and this tends to make his appointment appear political.”⁶⁹

The White House recognized Byrd’s possible opposition, but did not seem concerned about it. Judiciary Committee Chairman James Eastland had repeatedly told White House officials that he had the votes for confirmation.⁷⁰ Furthermore, according to White House Domestic Policy Adviser John D. Ehrlichman, although Nixon had once considered Byrd for the Supreme Court, the

⁵⁸ *Id.* at 78.

⁵⁹ *Id.* at 82.

⁶⁰ *Id.* at 83.

⁶¹ *Id.* at 27.

⁶² *Id.* at 27, 82-3.

⁶³ *Id.* at 28.

⁶⁴ *Id.* at 45.

⁶⁵ *Id.* at 45, 61.

⁶⁶ *Id.* at 331.

⁶⁷ *Id.* at 28.

⁶⁸ 119 Cong. Rec. S4349 (daily ed. Feb. 19, 1973).

⁶⁹ *Id.*

⁷⁰ STANLEY I. KUTLER, ABUSE OF POWER: THE NEW NIXON TAPES 219 (The Free Press 1977).

President considered Byrd as a man of “limited ability.”⁷¹ White House Press Secretary Ronald L. Ziegler declined to even comment on Byrd’s concerns about Gray’s political activities.⁷² The White House should have been prepared. Byrd was.

Under Byrd’s instructions, his staff had collected Gray’s speeches and testimonies, and newspaper and magazine articles about him. His staffer on the Judiciary Committee, Tom Hart, had compiled the material into loose-leaf binders, complete with a card index.⁷³ In preparing for the Gray confirmation hearings, Byrd spent hours reading, studying, and memorizing Hart’s notebooks and files.⁷⁴

Although Byrd was the Senate Democratic Whip, he was a latecomer on the Judiciary Committee.⁷⁵ Therefore, his turn to question Gray on the first day of the hearings did not come until late in the afternoon. In fact, the chair of the Committee had actually tried to adjourn the hearings for the day but Byrd asked that they be extended so he could question Gray.⁷⁶ When the Committee chairman agreed, Byrd began hammering away at Gray’s partisan political activities. Once Byrd started his questioning, wrote Mollenhoff, “I was certain the Gray nomination was in trouble.”⁷⁷

Gray had already acknowledged in the hearings that he had made sixteen public speeches during the 1972 presidential election, raising the specter that as acting FBI director, he had continued his partisan political activities.⁷⁸ Gray had tried to dismiss the speeches as nothing more than generic, patriotic, “feel good” about America speeches, while insisting that there was nothing overtly political or partisan in his remarks.⁷⁹

Byrd would have no part of it. He bluntly declared that he still had strong reservations about Gray’s “political activities over a long period of time,” and that the speeches indicated that Gray had continued to be “very active in behalf of the Republican Party.”⁸⁰ Byrd then explained:

If this were a nomination to a Cabinet office, it wouldn’t trouble me at all in that regard, because I would expect the President to name people to Cabinet offices who have been active politically

⁷¹ JOHN EHRLICHMAN, *WITNESS TO POWER: THE NIXON YEARS* 136 (Simon & Schuster 1980).

⁷² BYRD, *supra* note 9, at 328.

⁷³ WOODWARD & BERNSTEIN, *supra* note 18, at 271-2.

⁷⁴ Hart also shared his files with *Washington Post* reporters, Woodward and Bernstein. *Id.* at 271-2.

⁷⁵ Byrd was appointed to the Senate Judiciary Committee on January 14, 1969.

⁷⁶ *Gray Confirmation Hearings*, *supra* note 38, at 99.

⁷⁷ MOLLENHOFF, *supra* note 22, at 270.

⁷⁸ *Gray Confirmation Hearings*, *supra* note 38, at 29.

⁷⁹ *Id.* at 29, 30. For an example of Gray’s speeches, *see id.* at 108-110.

⁸⁰ *Id.* at 100, 103.

on his behalf. But in view of the fact that this is the directorship of the FBI, it does concern me because *I fear that the FBI could, under a politically oriented Director, become the political arm of the White House . . .*⁸¹

"The politicization of the FBI," Byrd charged, would not only be dangerous to the "protection of the constitutional liberties of our people," it would constitute "the first step toward the conversion of the FBI into a sort of American Gestapo."⁸²

Byrd then turned his attention to the ineptness of the FBI's investigation into the Watergate break-in. Having studied the various statements by Judge Sirica, Byrd said he "instinctively surmised" that Gray's investigation of the Watergate break-in should be examined.⁸³ He was impressed, not with what the FBI had done, but what it had failed to do. "The FBI investigation of the Watergate burglary apparently was aimed only at the actual events surrounding the breaking and entering of the National Democratic Committee headquarters and avoided any attempt toward tying together the leads concerning where the plot originated," Byrd had complained on a previous occasion.⁸⁴ Therefore, in the hearings, he raised questions about the FBI's lack of thoroughness in its Watergate investigation.⁸⁵ He wanted to know why Gray, under instructions from Attorney General Kleindienst, had limited the scope of the FBI investigation.⁸⁶ He wanted to know how it was that the FBI could trace delivery of the transcripts of the Watergate buggings all the way to 1701 Pennsylvania Avenue, where the offices of the Committee to Re-elect the President received them, but could trace them no further.⁸⁷

Horrified by the revelations that Gray had turned over FBI files to Dean and had allowed the President's counsel to sit in on FBI interviews, Byrd told reporters that he had concerns that White House staffers may have been using Gray to help cover up the break-in.⁸⁸ Others on the Judiciary Committee apparently felt the same way. Committee members openly talked of having Dean appear before the committee to answer questions about the White House's role in the FBI investigation.⁸⁹

⁸¹ *Id.* at 100 (emphasis added).

⁸² *Id.* at 100.

⁸³ BYRD, *supra* note 9, at 329-30.

⁸⁴ 119 Cong. Rec. S4349 (daily ed. Feb. 19, 1973) (statement of Sen. Byrd).

⁸⁵ *Gray Confirmation Hearings*, *supra* note 38, at 309-311, 316, 317.

⁸⁶ *Id.* at 119-22, 129; MOLLENHOFF, *supra* note 22, at 271-2.

⁸⁷ *Gray Confirmation Hearings*, *supra* note 38, at 141.

⁸⁸ MOLLENHOFF, *supra* note 22, at 272-73.

⁸⁹ Joy Aschenbach, *Snub on Dean Step Up Gray's Foes' Efforts*, WASH. EVENING STAR, Mar. 15, 1973, at A2; John P. MacKenzie, *Nixon Says He Won't Let Aide testify on Gray Appointment*, WASH. POST, Mar. 3 1973, at A3; KURLAND, *supra* note 12, at 3928.

Nixon promptly announced that he would not allow it. Maybe it was Nixon being Nixon. Maybe it was in response to Gray's loose lips about telling the Judiciary Committee how he had shared the FBI files with Dean and allowed him to sit in on interviews. More likely, it was in response to Byrd's pointed questions to Gray. Whatever the reason, two days later, at a March 2 news conference, Nixon declared that he was invoking executive privilege to prevent certain White House aides from testifying before the Senate Judiciary Committee.⁹⁰ Asked about the possibility of White House counsel Dean being summoned to the confirmation hearings, Nixon responded: "No president could ever allow the counsel to the president to go down and testify before a committee."⁹¹

There would be seven more sessions to the Committee's confirmation hearings.⁹² Each time, when it was Byrd's turn to question Gray, Byrd elicited more and more damaging information as he confirmed his suspicions about White House influence over the FBI, especially that Gray, the successor to the throne of the powerful and independent J. Edgar Hoover, had essentially functioned as a valet to the President's counsel.⁹³ Gray had even stored material that Dean had taken from the office of one of the Watergate conspirators, E. Howard Hunt.⁹⁴

Responding to questions from Byrd, Gray acknowledged that a number of the FBI agents who had investigated Watergate had been transferred out of the Washington area.⁹⁵ Under questioning from Byrd, Gray admitted to errors in his previous testimony to the Committee and apologized for them.⁹⁶

Byrd caught Gray in various mistakes and untruths in statements he had made in his testimony about the investigation.⁹⁷ In one instance, Byrd asked Gray if anyone else was present when he interviewed Ehrlichman at the White House. Gray answered, "No, I believe not." In a press release, Byrd pointed out that Dean was present in a White House meeting when Ehrlichman instructed Gray to destroy evidence taken from the safe of E. Howard Hunt.⁹⁸

Gray told Byrd that the FBI files he had sent to Dean included phone wiretaps of the Democratic Party Watergate offices.⁹⁹ After the hearing, Byrd told newsmen that Gray's divulgence of information to high level Administra-

⁹⁰ Carroll Kilpatrick, *Nixon Bars Hill Quizzing of His Aides*, WASH. POST, Mar. 13 1973, at A1.

⁹¹ John P. MacKenzie, *supra* note 89, at A3.

⁹² The days of the hearings were February 28, March 1, 6, 7, 8, 9, 20, 21, and 22.

⁹³ *Gray Confirmation Hearings*, *supra* note 38, at 123, 309-310, 317, 328, 331.

⁹⁴ *Id.* at 328, 331.

⁹⁵ *Id.* at 123.

⁹⁶ *Id.* at 309-310.

⁹⁷ *See, e.g., id.* at 317.

⁹⁸ Senator Robert Byrd, Press Release, Apr. 27, 1973 (on file with author). *See also Gray Confirmation Hearings*, *supra* note 38, at 309, 317.

⁹⁹ John P. MacKenzie, *Gray Tells of Relaying Data*, WASH. POST, Mar. 8, 1973, at A1.

tion officials “did not square at all” with his testimony that he sought at all times to protect the confidence of bureau sources.¹⁰⁰

That same day, March 7, Byrd, who had taken Gray up on his offer of making the FBI files available to Senators, now made some of those documents available to reporters. This was a crucial move on Byrd’s part. One of these documents, titled, “Interview with Herbert W. Kalmbach,” revealed that Kalmbach (associate finance chairman of CRP), on instructions from the President’s Appointments Secretary Dwight Chapin, had paid Republican party operatives to undermine the efforts of Democratic presidential party candidates.¹⁰¹ In other words, the White House had been directly involved in paying for undercover political activities including sabotage, spying, and harassment of Democrats. This document blew away the Nixon Administration’s assertions of innocence. The document also substantiated some of the most serious claims by Woodward and Bernstein.¹⁰²

Furthermore, with the release of the document, Byrd was bringing the White House more and more into the Watergate cover-up picture. Most importantly, Byrd had turned the Judiciary Committee’s confirmation hearings on Gray into a congressional inquiry into the Watergate scandal!

With Gray’s answers to Byrd, it now seemed that Dean, as the President’s counsel, was an important player in the Watergate cover-up. Led by Byrd, along with Tunney, members of the Senate Judiciary Committee were now insisting that Dean’s appearance before the committee was crucial to Gray’s confirmation.¹⁰³

By now, the White House was getting nervous over Byrd’s interrogation. In private conversations in the Oval Office, Nixon and his staff were discussing Byrd’s “strong anti-Gray position,” as they called it, and how they might deal with his determined opposition.¹⁰⁴ The White House apparently decided to deal with it by bunkering down even further. It countermanded Gray’s offer to make any more FBI files available to Senators. Attorney General Richard Kleindienst prohibited Gray from publicly discussing FBI findings, or giving the committee any more FBI documents.¹⁰⁵ Gray was, however, permitted to discuss FBI procedures, and this would be all the room Byrd needed.

¹⁰⁰ *Id.*

¹⁰¹ WOODWARD & BERNSTEIN, *supra* note 18, at 273.

¹⁰² The previous October, an article by Woodward and Bernstein had accused the Nixon Administration of undermining Democratic primaries. The White House adamantly denied the charge, and denounced the *Post* story as “Hearsay, innuendo, and guilt by association.” DONALD A. RITCHIE, REPORTING FROM WASHINGTON: THE HISTORY OF THE WASHINGTON PRESS CORPS 232-233 (Oxford University Press 2005); EMERY, *supra* note 37, at 257; WOODWARD & BERNSTEIN, *supra* note 18, at 273-74; OLSON, *supra* note 11, at 72-3.

¹⁰³ See Carl Bernstein & Bob Woodward, *Gray Hearing Calls Nixon Aide*, WASH. POST, Mar. 14, 1973, at A1; Joy Aschenbach, *Snub on Dean Steps Up Gray Foes Efforts*, WASH. STAR-NEWS, Mar. 15, 1973, at A2.

¹⁰⁴ See KUTLER, *supra* note 70, at 219, 290.

¹⁰⁵ Joy Aschenbach, *Gray Bars Senate Quiz*, WASH. STAR-NEWS, Mar. 20, 1973, at A1.

Nixon next moved to expand the administration's position on executive privilege. On March 12, five days after Byrd's second interrogation of Gray and his release of the Kalmbach interview, Nixon issued a new directive reaffirming and strengthening his position on executive privilege.¹⁰⁶ Under no circumstance Nixon said, would he permit Dean "to testify in either the Watergate investigation or in the current Judiciary Committee hearings on Gray's nomination to be permanent director of the FBI A President must be able to place absolute confidence in the advice and assistance offered by members of his staff."¹⁰⁷ The possibility that this advice and assistance could one day become public would inhibit candor and weaken "the decision making process at the highest levels of our government."¹⁰⁸ "The President's use of executive privilege [is] to keep Dean from testifying at the Gray hearings," reported the *Washington Star-News* the next day.¹⁰⁹

Nixon's proclamation of executive privilege infuriated the Senate Judiciary Committee. The following day, the committee voted unanimously to call Dean to testify in the Gray hearings.¹¹⁰ The day after the vote, citing the President's position on executive privilege, Dean refused the committee's invitation to appear.¹¹¹ Angered by the refusal, Byrd took to the Senate floor to denounce both the White House and Dean: "Mr. Dean's testimony before the Judiciary Committee is vital to any considered judgment on the proper conduct of the FBI investigation of the Watergate breakin and Mr. Gray's fitness to be director of the bureau."¹¹² Five days later, on March 19, Byrd delivered a powerful, eye-catching floor statement denouncing Nixon's abuse of the executive privilege. "I do not question the application of such a doctrine where sensitive communication between the President himself and a member of his Administration are concerned," he said, but "the President is exerting some very extraordinary claims in connection with an affair that is entirely unworthy of application of the doctrine There is no question involving military security in such an appearance by Mr. Dean. There is no question involving sensitive relations with other countries."¹¹³

¹⁰⁶ Carl Bernstein & Bob Woodward, *Executive Privilege Reaffirmed*, WASH. POST, Mar. 16, 1973, at A1; Carroll Kilpatrick, *Nixon Bars Hill Quizzing of His Aides*, WASH. POST, Mar. 13, 1973, at A1.

¹⁰⁷ Bernstein & Woodward, *supra* note 106; Kilpatrick, *supra* note 106.

¹⁰⁸ Kilpatrick, *supra* note 106.

¹⁰⁹ Bernstein & Woodward, *supra* note 106; Kilpatrick, *supra* note 106.

¹¹⁰ See Byrd's statement to the Senate Judiciary Committee, 119 CONG. REC. 7873 (1973).

¹¹¹ See Letter from John W. Dean III, to James Eastland (Mar. 14, 1973), reprinted in 119 CONG. REC. 7873 (1973).

¹¹² 119 CONG. REC. 7873 (1973); Carl Bernstein & Bob Woodward, *Hearing Shunned By Dean*, WASH. POST, Mar. 15, 1973, at A1. See also Carl Bernstein & Bob Woodward, *Gray Hearing Calls Nixon Aide*, WASH. POST, Mar. 14, 1973, at A1.

¹¹³ 119 Cong. Rec. 8352 (1973).

To Byrd, Nixon's use of executive privilege was the latest phase of the White House effort to keep the cover on the Watergate scandal. "[I]t is almost impossible to avoid the suspicion that someone at the White House, in preparing the statement for Mr. Nixon, was trying to cover up White House involvement in the ugly campaign of political sabotage and espionage which climaxed in the Watergate raid."¹¹⁴ Byrd had made clear that he believed the White House was involved in the Watergate cover-up.

Byrd proceeded to warn the administration of the serious consequences of pursuing its stone walling. "If the Senate expects to fulfill its constitutional role in a system of checks and balances," Byrd charged, "it will do its duty by refusing to confirm the President's nomination under the circumstances that surround this case If the President wants to close the door on the supply of information, the Senate ought to close the door on the President's nominee."¹¹⁵

Byrd was certainly speaking in concert with Senators Ervin, Tunney, and Edward Kennedy (D-MA) who were also insisting that Dean testify. On "Face the Nation," Ervin, who had previously threatened to issue contempt citations for White House officials if they refused to testify before the committee, declared that the Judiciary Committee would not only hold up action on Gray, but also send the Senate's Sergeant-At-Arms to arrest Dean or any other White House aide who refused to testify.¹¹⁶ The threat of non-confirmation, however, was not enough to persuade the White House to let Dean testify. Determined to protect Dean, the White House was prepared to sacrifice Gray. Ehrlichman told Dean, "Let him [Gray] hang there; let him twist slowly, slowly in the wind."¹¹⁷

Dean was seeing for himself that once a person was no longer useful to the Nixon White House, despite past service to Nixon, and regardless of present loyalties, that person became dispensable.¹¹⁸

On the eighth and final day of the hearing, Byrd's resumed his intense grilling of Gray. This time the interrogation lasted for more than two hours.¹¹⁹ By now, Byrd was coming to everyone's attention. He was even being recognized by liberals who once thought of him as a conservative, pro-Nixon Democrat. "In the course of the hearings, he [Byrd] has shown that Mr. Gray was very solicitous of the White House," wrote Joseph Kraft.¹²⁰

Byrd, however, was onto a more important point. He had already transformed the confirmation hearings into a congressional inquiry into the FBI's

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 8353.

¹¹⁶ See MOLLENHOFF, *supra* note 22, at 282.

¹¹⁷ EMERY, *supra* note 37, at 247.

¹¹⁸ See KURLAND, *supra* note 12, at 3928.

¹¹⁹ Spencer Rich, *Gray Concedes Dean 'Probably' Lied to FBI*, WASH. POST, Mar. 23, 1973, at A1; William Ringle, *Gray Admits to Byrd Watergate Lie Possible*, HERALD DISPATCH, Mar. 23, 1973, at A1; Joy Ashenbach, *Senate Panel May Call Dean*, Wash. Star, Mar. 11, 1973, at A19.

¹²⁰ Joseph Kraft, *Outflanking the President on the Right*, WASH. POST, Mar. 20, 1973, at A19.

failure to fully investigate the Watergate break-in. Now Byrd was about to take it a step further.

In questioning Gray, Byrd recounted that on June 19 and 20, under Dean's instructions, two White House aides had searched the safe in Hunt's office in the Executive Office Building.¹²¹

Then Byrd carefully recounted that on June 22, during the FBI interview with White House Special Counsel Charles Colson, which Dean attended, in a reply to a remark by one of the FBI agents, Dean said that he did not know if Hunt had an office in the White House. Gray quoted Dean as saying that he "would have to check it out."¹²²

A few minutes later, with his chin resting on the tips of his hands, Byrd zeroed in on a fundamental question; how could Dean have gotten into Hunt's safe in the Executive Office Building, if he did not know that Hunt had an office there?¹²³ What happened next is worth recalling verbatim:

Byrd: "Going back to Mr. Dean, when he [Dean] indicated that he would have to check to see if Mr. Hunt had an office in the Old Executive Office Building, he *lied* to the agents; didn't he?"

Gray: ". . . I would have to conclude that *that probably is correct*, yes, sir."¹²⁴

"Jaws dropped open" at Gray's admission, reported a Gannett News Service wire story.¹²⁵

Gray's admission that Dean was lying was momentous! According to the acting director of the FBI, Dean had definitely and deliberately misled the FBI. That is, the President's own legal counsel was involved in the cover-up. Byrd's interrogation of Gray had taken the investigation of the Watergate cover-up not only inside the White House gates, but also into the Oval office.

The White House grasped the possible ramifications. It quickly issued a statement defending Dean, and denouncing Byrd's line of questioning as "reprehensible, unfortunate, unfair, and incorrect."¹²⁶ The truth was, as Nixon's chief of staff, H.R. Haldeman, wrote in his diary that night, "Gray has sort of screwed us."¹²⁷

¹²¹ *Gray Confirmation Hearings*, *supra* note 38, at 666-67.

¹²² *Id.*

¹²³ *Id.* at 666-671.

¹²⁴ *Id.* at 671 (emphasis added).

¹²⁵ William Ringle, *Jaws Drop As Gray Agrees Dean Lied*, HERALD DISPATCH, Mar. 23, 1973, at A1.

¹²⁶ Rich, *supra* note 119, at 671.

¹²⁷ H.R. HALDEMAN, *THE HALDEMAN DIARIES: INSIDE THE NIXON WHITE HOUSE* (entry of Mar. 22, 1973) 595 (G.P. Putnam's Sons, 1994).

Gray's admission that Dean lied, as Senator Proxmire said, "broke open the case," it "started an avalanche."¹²⁸ For one thing, it doomed his nomination to be director of the FBI.¹²⁹ As Byrd asked: "Why would you continue to send raw FBI files to a man who, to use your words, 'probably lied,' to an FBI agent."¹³⁰ When Gray answered: "that man is counsel to the president of the United States," Byrd delivered the knock out punch by asking: "Where does your first duty lie, to the President or to the FBI?"¹³¹ It was "amazing and incredible," Byrd told a reporter, that Gray provided Dean with FBI investigation files on Watergate after realizing that he had lied to his agents.¹³²

On April 5, with no chance of the nomination coming out of the Judiciary Committee, Nixon withdrew Gray's nomination.¹³³ Nixon praised him as an "able, honest, and dedicated American" who had been exposed to "totally unfair innuendo and suspicion" because he had cooperated with Dean.¹³⁴ With the defeat of Gray's nomination, the Nixon Administration was denied the ability to continue using the FBI in the Watergate cover-up.¹³⁵

Byrd's questioning of Gray started the avalanche that led to Dean becoming the person who would personally and directly connect President Nixon to the Watergate cover-up. Gray's admission that Dean "probably lied," had made the President's counsel, heretofore, an obscure, little known White House staffer, headline news -- the focal point of the investigation into the Watergate cover-up. When Dean awoke the next morning, he found his house surrounded by television cameras, news reporters, and a "whole army" of media people.¹³⁶ Besieged by reporters, Dean pulled the curtains, drew the blinds, and stayed in his house.¹³⁷

President Nixon called Dean at home later that morning and urged him to go to Camp David for a few days.¹³⁸ Dean's four-day stay at the presidential retreat, according to Ehrlichman, proved to be a "turning point" for him.¹³⁹

¹²⁸ 119 CONG. REC. 14098 (1973).

¹²⁹ *Man Overboard*, *supra* note 48, at 7.

¹³⁰ *Gray Confirmation Hearings*, *supra* note 38, at 671.

¹³¹ *Id.* at 671-2.

¹³² Joy Aschenbach, *Did John Dean Mislead the FBI?*, WASH. STAR-NEWS, Mar. 23, 1973, at A4; John W. Crewdson, *Gray Testifies That Dean 'Probably' Lied, to F.B.I.*, N. Y. TIMES, Mar. 23, 1973, at 1.

¹³³ Rowland Evans & Robert Novak, *They've Given Up on Mr. Gray*, WASH. POST, Mar. 25, 1973, at C7; Sanford Unger, *The Abandoned Nominee*, WASH. POST, Mar. 20, 1973, at A1; George Lardner, Jr., *President Quickly Consents*, WASH. POST, Apr. 6, 1973, at A1.

¹³⁴ 1973 CONG. QUARTERLY ALMANAC 1013 (Mary Wilson Cohn, ed., Congressional Quarterly 1974).

¹³⁵ This point is well made by Mollenhoff, *supra* note 6.

¹³⁶ JOHN W. DEAN III, *BLIND AMBITION: THE WHITE HOUSE YEARS* 212 (Simon & Schuster 1976).

¹³⁷ *Id.*

¹³⁸ *Id.* at 213.

Nixon's purpose in inviting Dean to Camp David was probably two-fold. First, no doubt, he wanted Dean out of Washington and out of the spotlight of the media that had besieged his house after Gray had accused him of lying to FBI agents.¹⁴⁰ More importantly, Nixon also wanted Dean to finish the report that he, Haldeman, and Ehrlichman had been pushing for several weeks. As the President's counsel, Dean had been given the assignment to write the report stating there had been no White House involvement in Watergate, and, in effect, absolving Nixon, Haldeman, and Ehrlichman from the break-in and the cover-up.¹⁴¹

At Camp David, Dean came to understand his own vulnerability in the mess, and that he might be facing jail time.¹⁴² And he began to believe that he was being set up. The phony report that he was supposed to write would be the President's insurance policy. If and when disclosures about the break-in and the cover-up came to surface, Nixon would hold up Dean's report and assert that his staff had misinformed him.¹⁴³ In his book, *Blind Ambition*, Dean wrote:

With my report in hand, he [President Nixon] would go before the cameras to report that his counsel [Dean] had given him all this information, that he had believed him, and trusted his investigation, but that obviously he had lied, had misled and deceived him. Only Haldeman, Ehrlichman, Mitchell and the President would know I was making a sacrifice to keep the Nixon presidency from being consumed by Watergate, and I would go to jail a disgraced scoundrel.¹⁴⁴

Dean now became concerned that once he had written the report, he would become expendable and could be cut loose.¹⁴⁵ He had seen, as in the cases of Magruder, Mitchell and Gray, that when it came to protecting Nixon, everyone was expendable.¹⁴⁶

For weeks, while he had remained loyal to Nixon, Dean had seen other Nixon staffers scramble to hire attorneys in order to protect themselves.¹⁴⁷ He was now determined to protect himself. When he returned home from Camp

¹³⁹ EHRlichman, *supra* note 71, at 371-72.

¹⁴⁰ Haldeman testimony to Watergate Committee, Aug. 4, 1974, *reprinted in*, WATERGATE: CHRONOLOGY OF A CRISIS 251 (William B. Dickinson, ed., Congressional Quarterly 1974).

¹⁴¹ DEAN, *supra* note 136, at 214; EMERY, *supra* note 37, at 276; OLSON, *supra* note 11, at 75.

¹⁴² See EHRlichman, *supra* note 71, at 371-72.

¹⁴³ EMERY, *supra* note 37, at 254, 276.

¹⁴⁴ DEAN, *supra* note 136, at 214.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

David, Dean decided "I was not going to lie for anybody, even the President."¹⁴⁸ He would not write "the phony report." And he issued a statement asserting that he would not be made a "scapegoat" in the affair.¹⁴⁹

Dean contacted his own lawyer about what course of action he should take.¹⁵⁰ Dean told his attorney, "The shit is about to hit the fan, and the whole town is going to smell bad very soon."¹⁵¹ By mid-April, Dean was talking to the grand jury and negotiating deals with lawyers and prosecutors for immunity.¹⁵² The cover-up, as Dean later said, was now "unraveling."¹⁵³

Later that month, Byrd and other Senate Democratic leaders began demanding the appointment of a Special Prosecutor to investigate the Watergate cover-up.¹⁵⁴ Byrd, not satisfied with letting Gray take the fall, while speaking to the National Press Club, called for the immediate firing of John Dean.¹⁵⁵

On May, 17, the Senate Watergate public hearings began. The next day, May 18, Attorney General Elliot Richardson announced the appointment of former Solicitor General and Harvard law professor Archibald Cox as special prosecutor to investigate the Watergate case.¹⁵⁶ On June 25, in testimony to the Senate Watergate Committee, Dean directly implicated the President in the Watergate cover-up, leading to the downfall of the Nixon Administration.¹⁵⁷

Nothing in this article should be taken or used to dismiss, denigrate, or even slight the important roles of the *Washington Post* reporters, Woodward and Bernstein or Judge Sirica in uncovering the Watergate scandal. Woodward and Bernstein were certainly deserving of their Pulitzer Prize, not only for their investigative reporting, but for simply keeping the story alive when no one else was even interested in it.

The role of Judge Sirica was enormous; convinced that there was a larger dimension to the break-in at the Watergate, Sirica kept the pressure on the original defendants hoping that one of them would start talking.¹⁵⁸ His strategy

¹⁴⁸ *Id.* at 218.

¹⁴⁹ KURLAND, *supra* note 12, at 3929.

¹⁵⁰ EHRLICHMAN, *supra* note 71, 371-72.

¹⁵¹ DEAN, *supra* note 136, at 217-19; EHRLICHMAN, *supra* note 71, 371-2.

¹⁵² KURLAND, *supra* note 12, at 3929.

¹⁵³ Dean used the expression "unraveling" in his opening statement to the Senate Watergate Committee. A transcript of his statement is in, *Excerpts of Fired Counsel's Statement to Bug Committee*, CHICAGO TRIBUNE, June 26, 1973, at 4.

¹⁵⁴ 1973 CONG. QUARTERLY ALMANAC 1016 (Mary Wilson Cohn, ed., Congressional Quarterly 1974); Spencer Rich & Richard Lyons, *Special Prosecutor Asked*, WASH. POST, May 2 1973, at A1, A10.

¹⁵⁵ *Byrd Asks Immediate Firing of Dean*, HUNTINGTON ADVERTISER, Apr. 20, 1973, at 14; *Byrd Calls for Firing of Dean*, WHEELING INTELLIGENCE, Apr. 20 1973, at 1.

¹⁵⁶ *Richardson Picks Prosecutor*, L. A. TIMES, May 18, 1973, at 1; Anthony Ripley, *Archibald Cox Appointed Prosecutor for Watergate*, N. Y. TIMES, May 19, 1973, at 77.

¹⁵⁷ *Excerpts of Fired Counsel's Statement to Bug Committee*, CHICAGO TRIBUNE, June 26, 1973.

¹⁵⁸ WHITE, *supra* note 36, at 204-205; MOLLENHOFF, *supra* note 22, at 259, 284-85.

worked. On March 23, the day after Gray had acknowledged to Byrd that “Dean probably lied,” Judge Sirica released a letter from one of the defendants, James McCord, that acknowledged that perjury had been committed at the trial, the burglar’s legal expenses had been paid with CPR funds, a cover-up had been developed to keep the facts behind the burglary secret, and the burglary was a small part of a larger campaign of political sabotage.¹⁵⁹

McCord’s letter was a bombshell, and it was certainly crucial to opening up the Watergate investigation. At the time, no one outside the conspiracy believed the White House would have been so stupid as to have left traces of involvement.¹⁶⁰ It was such a bombshell that, coming the day after Byrd’s questioning of Dean, it may have helped knock Byrd out of the histories of Watergate.

While slighted in the histories of the Watergate scandal, Byrd’s contributions were recognized by a number of his contemporaries who grasped what Byrd had done. “Gray’s reluctant admission that Dean ‘probably lied,’ opened up a whole new range of questions,” wrote Mollenhoff: “Without Byrd’s questioning, Gray wouldn’t have been pushed into the position of admitting that Dean had ‘probably lied’ to the FBI officials.”¹⁶¹

“It was his [Byrd’s] informed, persistent questioning of L. Patrick Gray ... that opened the fissures between the agency and the White House,” wrote Clayton Fritchey in the *Washington Post*.¹⁶² “At the outset of the Senate hearings, Gray seemed assured of confirmation, but not after Byrd adroitly led the director-designate into calling John Dean ... a ‘liar.’”¹⁶³

“In the beginning he was virtually all alone in his opposition to the confirmation of Mr. Gray,” declared Senator Proxmire: “But his instincts and his reasons gained the day because he was both persistent and right.”¹⁶⁴

Calling Byrd the “touchstone” in the Senate because of “his evaluation of Pat Gray’s credentials,” the conservative syndicated columnist Holmes Alexander wrote of the impact of Byrd’s interrogation on the Nixon Administration: “We have come to a time when the President’s bona fides are in dispute.... [T]here is no way to dodge the implication that Richard Nixon, after a long and rewarding stretch of shaming the devil, has suffered a relapse into insincerity.”¹⁶⁵

¹⁵⁹ EMERY, *supra* note 37, at 255, 269-71, 273.

¹⁶⁰ *Id.* at 275.

¹⁶¹ Mollenhoff, *supra* note 6.

¹⁶² Clayton Fritchey, *Sen. Byrd’s Emergence as a Senate Leader*, WASH. POST, June 2, 1973, at A19.

¹⁶³ *Id.*

¹⁶⁴ 119 CONG. REC. 14098 (1973).

¹⁶⁵ Holmes Alexander, *Byrd Makes Sense in Stand on Gray*, MORGANTOWN POST, Mar. 27, 1973, at A6.

For Byrd it was also a personal triumph of enormous dimensions as it proved to be an important step on his path to becoming the Majority Leader of the United States Senate. Byrd had held two Senate leadership positions, Secretary of the Democratic Conference and Senate Whip, and there was little question that he was coveting the Senate Majority Leadership. In 1973, however, the position of Senate Majority Leader looked like it might be beyond Byrd's reach. As the most powerful member of the Senate, it was a position of national importance, and outside the Senate, Byrd had little recognition. Furthermore, Byrd's base in the Senate had always been among the Southern conservatives, but liberals now constituted a majority of the Democratic Party, and they were skeptical of Byrd because of what they considered his conservative voting record in the Senate and his support of Nixon's conservative nominees to the Supreme Court.¹⁶⁶

Byrd's role in skewering Gray and, thus, beginning the unraveling of the Watergate cover-up helped him overcome both of these potential drawbacks. First, it gave him enormous name recognition. Byrd now became a major speaker at political events across the country,¹⁶⁷ and he also became a favorite on talk shows, both locally and nationally. Within the next few months he would appear on *Face the Nation*, *Issues and Answers*, Washington's *Panorama*, and others. "With President Nixon's nomination of Gray" going down in defeat, wrote AP political writer, Carl P. Leubsdorf, "the West Virginia Democrat stands on the verge of a significant triumph in his long-range campaign for his party's top leadership position in the Senate Byrd appears to have a strengthened his position as the eventual successor to Democratic leader Mike Mansfield."¹⁶⁸

His role in bringing down the Nixon Administration also won him the recognition and praise of the nation's liberals. "Liberals have come to respect him," wrote Knight Ridder's Vera Glaser.¹⁶⁹ In the *New Times*, Nina Totenberg reconciled the left wing's new found respect for the Senator that liberals for so long had so castigated.¹⁷⁰ "There are the good ol' boys who sound like empty-headed hicks but are as shrewd as can be," she wrote, but "when Senator Robert Byrd of West Virginia maps out a strategy against you, you are in trouble. During the confirmation hearings of L. Patrick Gray for the directorship of the FBI, the toughest and most brilliant questioning came from Senator Byrd. His ques-

¹⁶⁶ Fritchey, *supra* note 162, at A19; Harry Hoffman, *Self-Made Power*, CHARLESTON GAZETTE, Apr. 12 1974, at A6.

¹⁶⁷ Hoffman, *supra* note 166, at A6.

¹⁶⁸ Carl P. Leubsdorf (AP political writer), *Byrd on Brink of Big Triumph*, CHARLESTON DAILY MAIL, Mar. 23, 1973, at A1.

¹⁶⁹ Vera Glasser, *Sen. Byrd's Political Star Rising*, CHARLESTON DAILY MAIL, Jan. 15 1974, at A5.

¹⁷⁰ Nina Totenberg, *Ten Dumbest Congressmen*, NEW TIMES, May 17, 1974, at 14 (on file with author).

tions were the ones that elicited the most damaging replies – replies that led eventually to the withdrawal of the Gray nomination.”¹⁷¹

“If one Senator is said to have gained something from the [Gray] affair,” noted the *New Republic*, “it has to be Byrd.¹⁷² He spoke out against Gray before the nomination was even submitted He was sophisticated enough to understand that proving Gray’s evasiveness and inconsistencies in his handling of the Watergate investigation was not enough. Gray’s fallibility had to be dramatized to the public and to the Senators.”¹⁷³ “Dean’s ‘lie’ to bureau agents, certified by acting FBI Director Gray, did more than anything else to torpedo the nomination within the White House and on Capitol Hill – and Byrd had fashioned it.”¹⁷⁴

Four years later, with the retirement of Mansfield, the “unsung hero of Watergate” was selected by Senate Democratic liberals as well as Democratic conservatives to be the leader of the Senate as a body as well as of the majority party.¹⁷⁵

¹⁷¹ *Id.*

¹⁷² *Man Overboard*, *supra* note 48, at 7.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

