

Who Are the Good Guys?

The Legacy of Watergate, and the Tangled Webs We Weave

by Jeff Breinholt¹

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I. Introduction: The Legacy Question

Hundreds of gallons of ink that have been spilled over the last three decades trying to answer the era's prime political mystery. It came to an end on May 31, 2005. Deep Throat, it turns out, was Mark Felt, the person who, according to historical consensus, ran the FBI during the two-year period between the Watergate burglary and Richard Nixon's resignation. This revelation terminated an entire industry of amateur sleuths and historians. It hit me particularly close to home.

Bob Woodward's book about his relationship with Mark Felt, *The Secret Man: The Story of Watergate's Deep Throat*,² answers many of the questions scores of Americans like me have been pondering since childhood. It also places many pet theories into perspective and causes many of us to reexamine our beliefs about public service.

Watergate was the defining story of my professional life. When Mark Felt was exposed, I was in the middle of my second decade with the Department of Justice.

It all started 33 years earlier, when I was nine years old. My father, a business school professor then involved in industrial seminars around the country, is about the same age as John Dean, and at the time bore an uncanny resemblance to him. He was frequently accosted by mistaken well-wishers at airports and hotels on the trips I took with him during the summer when Dean was testifying on television before the Senate committee investigating the Watergate abuses. The unfolding scandal was the first time I had heard the word "subpoena," a term that would be a prominent part of my future lexicon.

A dozen years later, when I was in law school at UCLA, it appeared that another Republican president would be brought down by a scandal that came to be known as Iran-Contra. By that time, I was clerking at the U.S. Attorney's Office in Los Angeles, the city where, as I will explain, the Watergate scandal began. I had started to plan my entry into federal law enforcement.

Shortly after joining Justice in the fall of 1990, I took it upon myself to read every Watergate book I could find. I avidly watched the CBS documentary commemorating the 20th anniversary of the break-in, went to book signings and lectures, and followed with great interest the various historical theories and the news that accompanied the gradual opening of archives. Living in Washington, I visited the locations where certain Watergate-related events occurred. I now know far more trivia about 1970s-era government misdeeds than is good for me.

²Bob Woodward, *The Secret Man: The Story of Watergate's Deep Throat* (Simon & Schuster 2005) (hereinafter *The Secret Man*)

Mark Felt's exposure as Deep Throat requires people like me to reexamine long-held beliefs about what it means to be a public servant. This is because Mark Felt was one of my kind - a career law enforcement officer who presumably survives from year to year irrespective of which political party happens to be in power. For us, one way of assuring this survival is strict adherence to the standards of what we proudly call the "career professional." This means being loyal to whoever is in charge, respecting the position even if not the persons who occupies it, not getting too close to either political party, and certainly not jeopardizing sensitive, ongoing investigations with loose talk. It is something that is seared into our conscience from the day we take the oath of office. What does the exposure of Mark Felt say about this ethos, and our legacy?

My current work involves counterterrorism. I have been involved with the USA PATRIOT Act, and law enforcement efforts to explain to the public, from a careerist perspective, why it contains tools that are key to our meeting the modern national security challenge. Several months ago, I published an article in the *Texas Review of Law & Politics*, arguing that history is important to those who are arguing about whether we have struck the proper balance between national security and civil liberties.³

I had modest hopes that the article would be by a rallying cry for fellow lawyers to more fully read and appreciate modern history, and to incorporate it more generously into their legal arguments. I argued that history cannot be separated from the practice of law, because it is a respect for our past - the doctrine of *stare decisis* - that is the currency of American judicial decisionmaking. In legal debates over the War on Terror, history must be considered, for if you claim to be a lawyer, you are bound by the rules of legal reasoning, including the obligation to understand precedent and either follow it or distinguish it. The examination of national security and law enforcement history shows that, when the government goes too far, there will be corrective action. The bad guys masquerading as good guys get exposed, and the good guys wrongfully accused of being bad guys are rehabilitated. As a society that operates under the rule of law, we learn from our mistakes. In the United States, tyranny is impossible because the courts and Congress have never been reluctant to interpose their judgments when faced with claims that federal law enforcement has gone too far in the name of national security. That is comforting. At least that is what I thought.

Mark Felt's exposure threw a wrench into my theory, for I am legitimately confused about his historical legacy and where he falls on the hero/villain continuum. In my article, I referred to him by name as an example how the Department of Justice can be trusted to clean house when they discover misconduct that rises to constitutional proportions. The misconduct I was referring to, of course, was not leaking information to Bob Woodward. It involved

³Jeff Breinholt, "How About a Little Perspective: The USA PATRIOT Act and the Uses and Abuses of History," 9 *Texas Review of Law & Politics* 226 (Fall 2004).

unconstitutional searches of private dwellings. Categorizing Mark Felt, it turns out, is not such an easy task.

A question is now reverberating: was Mark Felt a good guy? In public lore, he is an honest G-Man who became disgusted at the Nixon Administration's unscrupulous exploitation of law enforcement means to monitor and disrupt people who disagreed with them. The problem was, after playing the role of Bob Woodward's famous confidential source, Felt himself was indicted and convicted of violating the civil rights of members of a domestic terrorist group and their families. His co-defendant was former FBI Director Patrick Gray, who Felt apparently resented.

The fact that Felt and Gray were in the dock together is, in retrospect, a rather cruel irony. People examining Felt's motives for cooperating with Woodward speculate that he was gravely disappointed when Gray was chosen as J. Edgar Hoover's successor. Felt, it seemed, was a Hoover loyalist, who wanted to continue the founding Director's legacy. What exactly was that legacy? Most historians agree that Hoover's record on civil rights was less than stellar. He was not afraid to cut corners, to use pernicious means to attack his political enemies like Martin Luther King, Jr. If Felt's loyalty to Hoover meant deep distrust of the henchmen in the Nixon White House, what side of civil liberties was he on?

From there, it gets even weirder. Gray originally got into trouble because of his involvement in the Watergate cover-up, although he avoided indictment. A few years after Nixon's resignation, Jimmy Carter was elected, and Gray was indicted with Felt for civil rights violations committed while Gray was FBI Director and Felt was his deputy. The fact that prominent federal law enforcement officials were charged with crimes was hardly unprecedented. In the preceding years, across the street from FBI Headquarters at Main Justice, two consecutive Attorneys General - John Mitchell and Richard Kleindist – were both indicted and convicted of Watergate-related felonies. No shock here. This was the 1970s. Americans had grown accustomed to it.

Gray managed to get himself severed from the Felt indictment, and charges against him were eventually dropped. Felt went to trial and was convicted, although he was later pardoned by President Reagan. In what was truly a strange twist, Gray then turned around and filed a lawsuit against the Carter Administration and various government officials involved in his prosecution, arguing that *his* constitutional rights were violated.

So we have this situation: a President of the United States is driven from office because of certain steps taken by aides who felt that their intrusive investigative actions were, according to them, somehow justified by national security and the need to disrupt their political opposition. As the plot unravels, and federal law enforcement begins to close in on the conspirators, a senior FBI agent leaks details of the investigation to an enterprising young reporter. The motive for the leaks is loyalty to the legacy of a former FBI Director, and disgust

that his beloved Bureau is being manipulated, plus perhaps some disappointment that he had been passed over for the agency's top job in favor of an interloper. The leaks result in news stories, prompting a Congressional investigation. The leaker's rival at the FBI, the interloper, is ultimately implicated in the cover-up, though he escapes indictment, and resigns in disgrace.

A few years later, the leaker and the interloper are indicted *together*, accused of engaging in the same type of civil rights violations that brought down the President, presumably justified by *their* concerns over the threat of political violence. The leaker is convicted, but his rival is exonerated, only to turn around and sue the various federal law enforcement officials who were responsible for the prosecution. Keep in mind that all occurred in less than a decade!

What does this portend for those of us in federal law enforcement caught up in renewed efforts to keep American safe from political violence? If these kinds of unexpected twists are possible, questions abound. Ten years from now, will the War on Terror be over? Could the United States be an Islamic fundamentalist country, or led by people who now argue that the Department of Justice of today is a monolithic and tyrannical? What about careerists who have no political agenda or ambition? Will we be accused of being enemies of the state if there is a massive reevaluation of our methods and the investigations and prosecutions we helped develop in these perilous times? These are not easy answers. Who exactly are the good guys? How can we be sure, when history changes so quickly?

Bob Woodward's book does not answer these questions, but it does provide details that make new assessment about Deep Throat possible. Even without intending to shed light on the larger issue of counterterrorism, the book provides evidence that should be welcomed by those lawyers who accept the notion that history is relevant. To fully appreciate it, one needs to understand what happened in Watergate, and how the case of players – including Mark Felt and Bob Woodward - reacted to those events.

II. The Watergate Break-In and Cover-Up

There have been several dozen books written about the Watergate scandal, from a variety of viewpoints. As a lawyer, I prefer the accounts from the judicial opinions in which the role of the various players is analyzed for criminal culpability, since facts do not find their way into casebooks, particularly appellate opinions, unless they are subject to the cauldron of the adversarial process. The following chronology comes from some of those cases.⁴

A. September 1971: The Ellsberg Break-in

⁴The best sources are *United States v. Haldeman*, 559 F.2d 31 (D.C. Cir. 1977) and *United States v. Ehrlichman*, 546 F.2d 910, 914 (D.C. Cir. 1977).

In the summer of 1971, President Nixon and Henry Kissinger were apoplectic. The country had seen a spate of politically-inspired bombings. Many of these represent protests against the American involvement in Vietnam.⁵

That summer, a Los Angeles-based RAND Corporation analyst named Daniel Ellsberg and his friend Anthony Russo, leaked a classified, multi-volume history of the American involvement in Indochina to the *New York Times*. Infuriated, the White House formed a "Special Investigations," or "Room 16" unit, to investigate the theft of the Pentagon Papers and prevent other such security leaks. The unit was overseen by John Ehrlichman, who was the Assistant to the President for Domestic Affairs, and operated by two White House staffers, Egil Krogh and David Young. Ehrlichman approved the hiring of G. Gordon Liddy, a former FBI agent, and E. Howard Hunt, a former CIA agent, to the unit.⁶

The main goal of the unit was to obtain information on Ellsberg to allow the CIA to do a psychological profile on him. Ellsberg's psychiatrist, Dr. Fielding, had refused an interview by the FBI, claiming doctor/patient privilege. To gain enough information to do a psychological profile of Ellsberg, Hunt suggested a "black bag job" (surreptitious entry) into Dr. Fielding's medical office, noting that the FBI no longer engaged in such activities. When Young reviewed the psychological assessment on Ellsberg prepared by the CIA, he determined that it was superficial and recommended Hunt's covert operation. Ehrlichman approved, on the condition that the operation "not [be] traceable back to the White House."⁷

Hunt had been involved in the CIA's 1960 Bay of Pigs Operation, and had contacts in Miami. He traveled there in mid-August 1971 to enlist the assistance of Bernard Barker, another Bay of Pigs veteran. Hunt told Barker that the operation involved a "traitor" who had been passing information to the Soviet Embassy. Barker recruited two men, Eugenio Martinez

⁵According to figures contained in a 1972 Supreme Court brief submitted by the Attorney General, there were 1,562 bombing incidents – most of which involved Government-related facilities – in the United States *in the first six months* of 1971. *Keith*, 407 U.S. 297, 311 n. 12 (1972).

⁶*Ehrlichman* at 914.

⁷*Ehrlichman* at 914-915.

and Felipe de Diego, for the burglary. They met with Hunt and Liddy on September 2, 1971, in Los Angeles.

The Miamians were told their mission was to enter Dr. Fielding's Beverly Hills office and photograph Ellsberg's file. On September 3, 1971, Barker and de Diego, dressed as deliverymen, delivered a valise containing photographic equipment to Dr. Fielding's office, enabling them at the same time to unlock the door to facilitate later entry. Later that evening they and Martinez inexplicably found both the building and Dr. Fielding's office locked. The Miamians forced their way into the building, broke the lock on the office door, and used a crowbar on Dr. Fielding's file cabinets. They spilled pills and materials about the office to make it appear that the break-in was the work of a drug addict. They could not locate Ellsberg's records.⁸

After relating the details of the entry and their lack of success to Hunt, Barker, Martinez, and de Diego returned to Miami. Hunt and Liddy returned to Washington, where they reported the failure of the operation to Krogh and Young. Krogh relayed that information to Ehrlichman.

B. January 1972: The Emergence of Operation Gemstone

G. Gordon Liddy was not yet done. He had been hired to develop plans for gathering political intelligence and for countering oppositional demonstrations in President Nixon's upcoming reelection campaign. Working with Hunt, he developed a plan known as Operation Gemstone. In two meetings held during January and February 1972, Liddy presented his initial Gemstone plan and budget to John Mitchell, at that time Attorney General but even then the functional head of the Nixon re-election effort which ultimately became known as the Committee to Reelect the President (CREEP). These meetings were attended by Jeb Stuart Magruder, CREEP's Deputy Director, and John W. Dean, III, White House Counsel. Liddy's initial pitch failed, Mitchell rejecting the plan's million-dollar budget as too steep.⁹

By March 30, 1972, Liddy had pared his budget to \$250,000. By then, Mitchell had resigned his duties as Attorney General to become head of CREEP. On that date, in Key Biscayne, Florida, Magruder obtained Mitchell's approval for Gemstone in a meeting attended only by Mitchell, Magruder, and Fred LaRue, a close personal friend to Mitchell then serving as a top campaign aide.¹⁰

Magruder, who had once served on Haldeman's staff, was keeping the White House

⁸*Ehrlichman* at 915.

⁹*Haldeman* at 52.

¹⁰*Id.* at 53.

informed of campaign developments, including Gemstone plans and operations, by regularly transmitting documents and information to Gordon Strachan, Haldeman's assistant.

C. June 17, 1972: The Watergate Break-In

In the early morning hours of June 17, 1972, about five months before the presidential election, police arrested five men inside the Democratic National Committee (DNC) offices. The five men - James McCord, Bernard Barker, Eugenio Martinez, Virgilio Gonzalez, and Frank Sturgis- were carrying electronic equipment, cameras, and large sums of cash. They had been hired as part of Gemstone, and had been in the DNC offices once before, in late May 1972. Their mission this time was to fix a defective bugging device, placed during the prior break-in, on the telephone of DNC chairman Lawrence O'Brien.¹¹

All five gave aliases to the D.C. police. Liddy, who had been monitoring the operation from a motel across the street from the Watergate, reported the capture to CREEP's highest officials, then in California. Liddy told them that one of the captured burglars was James McCord, on CREEP's payroll as chief of security. In an effort to avoid the appearance of any link between CREEP and the burglars, Mitchell, Mardian, LaRue, and Magruder met and decided to contact the new Attorney General, Richard Kleindienst, urging him to have McCord released from jail before the police penetrated his alias. Mardian placed the call but ultimately sent Liddy to find the Attorney General when Kleindienst could not be reached directly. Kleindienst insisted that the burglars receive no special treatment. If Mitchell wanted to talk to him about it, Kleindienst told Liddy, Mitchell should contact him directly.¹²

Mardian, Magruder, and LaRue drafted a press release which denied any CREEP tie to the break-in. It suggested instead that McCord might have been working for clients of his private security firm. The fabrication, approved by Haldeman, was issued by CREEP on June 18, 1972 under Mitchell's name and with his approval.¹³

Meanwhile, White House and CREEP files regarding Gemstone were being destroyed. Gordon Strachan performed this function at the White House, at the behest of Haldeman. He destroyed DNC wiretap reports and a memorandum from Haldeman to Magruder urging that Gemstone targets shift from Senator Muskie to Senator McGovern, the emerging Democratic front-runner. Magruder ordered removal of all Gemstone materials from the files at CREEP and took them to his home upon his return from California on June 19. A meeting that night was

¹¹*Haldeman* at 52.

¹²*Id.* at 53.

¹³*Id.*

attended by Mitchell, Magruder, LaRue, and Dean. There, Magruder asked Mitchell what he should do with the papers. Mitchell suggested that he "have a fire." Magruder obliged, destroying the Gemstone documents in his home fireplace.¹⁴

D. The Cover-Up Takes Off

The early damage-control efforts took off from there. John Dean's monitored the burglary investigation and prosecution to make sure that it did not implicate anyone beyond the five burglars. He was moderately successful. On September 15, 1972, the grand jury handed up indictments against the five burglars, plus Hunt and Liddy.¹⁵ Unfortunately for the White House, their plans to keep the burglars silent were frustrated when they began to break under the pressure of the criminal proceedings. Meanwhile, Bob Woodward and Carl Bernstein of the *Washington Post* kept the story alive through their reporting.

What Dean and others did during this period eventually led to the March 1, 1974 indictment of seven additional men: Mitchell, Haldeman, Ehrlichman, Mardian, Strachan, CREEP lawyer Kenneth W. Parkinson and White House aide Charles Colson.¹⁶ They were charged and with conspiracy to obstruct justice, to make false statements to a government agency, and to defraud the United States by corrupting the operation of the CIA, FBI, and

¹⁴*Id.*

¹⁵*Haldeman* at 56.

¹⁶ By the time of this indictment, the government was represented by lawyers from the Special Counsel's Office. The original burglary prosecution was handled by the U.S. Attorney's Office for the District of Columbia.

Department of Justice.¹⁷ Dean, LaRue and Magruder were not named as defendants because, by the time of the indictment, they were cooperating with prosecutors. President Nixon was referred to as an unindicted co-conspirator. (Four months after the cover-up indictment, when the secret Watergate taping system showed that Nixon was directly involved in the obstruction of justice, he resigned as President.)

Following the botched Watergate burglary, the conspirators decided to cover higher involvement by placing all blame on Liddy, who pledged silence – taking one for the team, so to speak. They agreed to the story that Liddy was off on a frolic of his own, betraying his position of trust within CREEP while spreading around its money.

¹⁷18 U.S.C. § 371. The conspiracy charge in the indictment (Count 1) detailed 45 overt acts allegedly committed in furtherance of the conspiracy by one or more co-conspirators. Count 2 charged all but Mardian with the substantive offense of obstruction of justice. Mitchell was charged in Counts 3 through 6 with making various false statements one to the FBI, on two occasions to the grand jury, and once before the Select Committee. Haldeman was charged with three counts of making false statements before the Select Committee (Counts 7-9), while Ehrlichman was charged in three counts with lying to the FBI and to the Grand Jury (Counts 10-12). Count 13 charged Strachan with making a false statement to the grand jury. *Haldeman* at 51.

Dean met with Liddy on June 19, 1972 and received a full briefing on the background of the break-in.¹⁸ Meeting the next day with Mardian and LaRue, Liddy told them the full story concerning the background of the break-in, confessed his own role in the planning and execution, and explained that all those arrested would remain silent. Liddy claimed that certain "commitments" had been made to provide them with bail, legal fees, and living expenses. LaRue assured him that all commitments would be met. Later LaRue and Mardian met with Mitchell, Dean, and Magruder to tell them of Liddy's revelations and to decide how to raise the funds. Mardian suggested that the CIA might be a source. After all, the burglars had CIA connections.¹⁹

Dean then briefed Ehrlichman, detailing the roles of Hunt and Liddy and mentioning Liddy's pledge to remain silent. Ehrlichman issued, then retracted, an order that Hunt leave the country. He also directed that Hunt's safe, in his office in the Executive Office Building, be opened. Dean retrieved the materials from Hunt's safe, including some electronic equipment related to Watergate along with documents related to other questionable activities. Ehrlichman suggested to Dean that he shred some and "deep six" the rest. Dean refused, fearing that too many White House employees and Secret Service agents knew he had removed materials from the safe. He ultimately turned the items over to the FBI, although the most sensitive went directly to L. Patrick Gray, the Acting Director, with directions from Dean and Ehrlichman that they should never see the light of day. Gray obliged.²⁰

With the approval of Haldeman and Ehrlichman, on June 28, 1972 Dean contacted Herbert Kalmbach, a long-time Nixon fund-raiser, telling him that funds were needed to meet certain CREEP commitments to the burglars, and that absolute secrecy was essential. Kalmbach obtained money from LaRue from excess cash held at the CREEP offices, from the chairman of the CREEP's Finance Committee and from a private contributor. Before he approached the private contributor, however, he checked with Ehrlichman to be sure that Dean was authorized to put this fund-raising in motion. If the operation did not remain secret, Ehrlichman warned, "they would have our heads in their laps."²¹

To distribute the money, Kalmbach, a private attorney, found himself doing some unsavory things. He employed a courier who devised a scheme of leaving the funds in pay telephone booths and airport lockers. He was responsible for delivering \$187,000 to the

¹⁸ *Haldeman* at 53.

¹⁹ *Id.* at 55.

²⁰ *Id.* at 54.

²¹ *Id.* at 56.

burglars through Hunt's lawyer, Hunt's wife, Hunt himself, and Liddy. All this took place between July 1 and mid-September, 1972 when Kalmbach made his final accounting and quit. Dean and LaRue kept Haldeman, Ehrlichman, and Mitchell posted throughout on the "money problem."²²

The conspirators were able to stall the FBI's tracing of the burglar's money for about two weeks by invoking the danger of trespassing on secret CIA projects. The FBI had already traced the funds to two individuals who apparently served as CREEP intermediaries in the "laundering" of certain contributions from former Democratic Party supporters. One of the intermediaries was a Mexican citizen. The FBI was ready to interview these individuals, but was deterred when General Walters, Deputy Director of the CIA, told Gray on June 23, 1972 that such interviews might uncover CIA operations in Mexico. Walters was acting on direct orders from Haldeman, communicated by Ehrlichman. Haldeman, in turn, had acted only after receiving approval for this course from President Nixon in a key meeting earlier that same day, June 23. He had told Nixon that both Dean and Mitchell suggested use of the CIA to contain the FBI investigation. (It was the public disclosure of this tape, now commonly referred to as "the smoking gun tape," that led to the resignation of President Nixon.)

By July 5, 1972, Gray was getting nervous. He informed Walters that the FBI would proceed with the interviews unless the CIA directed otherwise, in writing. Walters delivered instead a memorandum stating that the CIA had no interest in the matter. The interviews proceeded, although they had been successfully delayed.

This delay was made possible because some of the conspirators were carefully monitoring the FBI investigation. Beginning on June 21, at Ehrlichman's direction, Dean established a liaison with the FBI. He sat in on several FBI interviews, received copies of reports and "lead sheets," and finally obtained a memorandum summarizing the investigation and future FBI plans. Dean showed this memorandum to Mitchell, Haldeman, and Ehrlichman.

Like Gray, E. Howard Hunt was getting spooked. He knew that Gemstone had been approved at the highest levels, and he had been involved in the Ellsberg matter. Unlike Liddy, he was not willing to fall on his sword and remain silent. He would do so only if he got paid.²³

How to explain the cash found on the burglars? Blame Liddy. Magruder first suggested that CREEP officials simply say that the \$199,000 had gone to Liddy for security at the Republican nominating convention. He rehearsed this scenario at a meeting attended by Mitchell, Mardian, LaRue, and Dean. Mardian was skeptical because of the large amount.

²²*Id.*

²³*Haldeman* at 54.

Magruder offered an alternative false story: that \$100,000 was delivered to Liddy for protection of "surrogate speakers" as they traveled around the country on behalf of the Nixon campaign. Only the remainder was meant for convention security. This story would work, particularly because the CREEP official in charge of the surrogate program would corroborate the story with perjured testimony of his own.²⁴

Magruder reviewed the false story with Mitchell, who urged him to minimize Mitchell's role in running the campaign. Magruder then rehearsed it with Dean, in preparation for his August 16, 1972 appearance before the grand jury. According to Dean's sources, Magruder's testimony allowed him to escape a perjury indictment "by the skin of his teeth." Thereafter, Magruder was recalled before the grand jury in September to explain the January and February 1972 Gemstone meetings that were entered in his calendar. With the assistance of Mitchell and Dean, he had prepared a subsidiary cover story to hide the purposes of these meetings. Meanwhile, Mitchell and Ehrlichman denied to FBI agents that he knew anything about the break-in except what he read in the newspapers. On September 14, 1972 Mitchell falsely told the grand jury that he was not aware of any clandestine CREEP intelligence program, nor did he know of Liddy's illegal activities. The next day, the grand jury handed up indictments against the five burglars, plus Hunt and Liddy. It appeared the the cover-up had worked. Dean was congratulated. However, the burglar's financial demands continued.²⁵

E. The Blackmail Continues

LaRue inherited Kalmbach's role, delivering \$20,000 to Hunt's lawyer immediately. On November 13, a few days after Nixon's landslide defeat of George McGovern, Hunt called Charles Colson at his White House office, complaining that commitments had not been met, and he reminded Colson that loyalty "is a two-way street." Colson taped the full conversation. John Dean made a copy of the tape and took it to Camp David to play it for Haldeman and Ehrlichman. They agreed that the money was Mitchell's responsibility and dispatched the Hunt tape to New York in the possession of Dean, to play for Mitchell.²⁶

Mitchell inquired into the availability of a secret \$350,000 fund under Haldeman's control, transferred to the White House from excess CREEP funds. Haldeman approved use of

²⁴*Haldeman* at 55.

²⁵*Id.*

²⁶*Id.* at 56.

it to meet the burglars' demands. By February 1973, LaRue had dispensed \$167,000.

Hunt had decided to plead guilty and wanted a guarantee that his sentence would be short. Colson checked with the President and then provided some veiled assurances which Hunt took to mean he would be granted clemency at Christmas 1973.²⁷ Hunt and four of the burglars pleaded guilty. Liddy and McCord insisted on going to trial, in January 1973, although neither took the stand. They were found guilty, and sentencing was set for March 23, 1973.²⁸

When McCord began to get restless as his sentencing approached, Mitchell urged that the same veiled assurances of clemency be extended to him. Ehrlichman agreed, and assurances were delivered to McCord. They failed to calm him.²⁹

By this time, the conspirators began to worry about the prospect of hearings before the Senate Select Committee on Presidential Campaign Activities, chaired by Senator Ervin. Dean, Haldeman, and Ehrlichman met at Rancho LaCosta in California in mid-February to plot strategy. They worried most about what the burglars might say before the Committee if granted immunity. They sent a Presidential assistant to New York, in hopes of getting Mitchell to cough up more funds for hush money.

On March 16, 1973, Hunt demanded \$122,000 to fix his financial affairs before his sentencing. By this point, Dean knew that he had to tell President Nixon about what was going on. On March 23, 1973, Dean famously told Nixon that "there was a cancer growing on the Presidency" in the form of seemingly endless demands for money to keep the White House separated from the Watergate burglary. Dean estimated the future demands would total about \$1 million. Nixon replied, "You could get a million dollars. And you could get it in cash. I, I know where it could be gotten."³⁰

The next day, Haldeman, Ehrlichman, and Dean agreed that Mitchell should step forward and take the full blame, thinking the prosecutors and the Senate Committee would thereby be pacified with the scalp of the former Attorney General and would press no further. At Mitchell's request, LaRue then delivered \$75,000 to Hunt. On March 22, Mitchell came to Washington and told the others that the Hunt problem was under control. Despite the previous day's plans, no one had the fortitude to suggest directly to Mitchell that he take the full blame and go to jail to save the Nixon presidency. They decided instead that Dean would generate a

²⁷*Haldeman* at 57.

²⁸*See United States v. Liddy*, 166 U.S.App.D.C. 95, 509 F.2d 428 (1974).

²⁹*Haldeman* at 57.

³⁰*Id.*

report to the President. It would be intentionally general and would indicate that no one from the White House was involved. They would deliver it to the Senate Committee, and it would serve as a safeguard for Nixon. If "some corner of this thing comes unstuck," according to Ehrlichman, Nixon could say he relied on the report.³¹

Dean was nervous. He hired a lawyer and began meeting with prosecutors. He was ultimately fired by Nixon, who on that same day reluctantly "accepted" the resignation of Haldeman and Ehrlichman. In the summer of 1973, Dean appeared before the Senate Select Committee on Watergate, and detailed the cover-up and Nixon's role in it. His testimony, of course, was contradicted by that of Mitchell, Haldeman and Ehrlichman, and the White House issued defiant denials.

Unknown to everyone at the time was that Nixon had been secretly recording his Oval Office meetings, and audio tapes existed that would determine who was lying. Between the exposure of the taping system and the release of recordings that inculpated Nixon in the Watergate cover-up (and that showed Dean to be telling the truth), the White House aggressively litigated its right to refuse to produce the tapes, and tried to stop the investigation by firing special prosecutor Archibald Cox. The public reaction forced Nixon to agree to name his replacement, Leon Jaworski, who picked up where Cox left off, eventually forcing Nixon's hand in a unanimous opinion by the Supreme Court.³² The tapes had to be produced. Nixon's fate was sealed. He resigned on August 8, 1974.

The above account is derived from court opinions that do not mention the role of the *Washington Post* in bringing the Watergate scandal to a head. While historians argue whether McCord and Hunt would have become unglued even with the investigative efforts of Woodward and Bernstein, there is little debate over whether the *Post's* coverage kept the story alive and influenced the decision to hold Congressional hearings. If the story would not have been possible without Deep Throat, as they now claim, we can conclude that Mark Felt - the man who essentially ran the FBI for a few years after Hoover's death - played an instrumental role in bringing down Richard Nixon. Why did he do it?

III. Woodward's *Secret Man*

One of the more useful features of Woodward's book is that it includes references to what Mark Felt himself wrote in his memoirs, *The FBI Pyramid*.³³ This is important, because

³¹*Haldeman* at 58.

³²*United States v. Nixon*, 418 U.S. 683, 94 S. Ct. 3090, 41 L.Ed.2d 1039 (1974).

³³W. Mark Felt, *The FBI Pyramid* (Putnam, 1979).

Felt's book is long out-of-print and difficult to find today, even in libraries. From Woodward, we now have a better sense of what motivated Felt, because we now know more about what he was saying at the time and can compare it to what Felt wrote not long thereafter. The fascinating thing is that Woodward's account suggests some motivational conclusions different from those offered by Woodward himself, when considered in tandem with the court opinions that describe Felt's own legal troubles. Some additional twists emerge.

A. What Felt Did

First, it is important to examine what Felt did. Now unencumbered by the need to disguise Deep Throat's identity, Woodward offers more detail about the help the secret source provided during the pivotal moments of the investigation.

On September 15, 1972, it appeared that the cover-up had worked, and John Dean at the White House was congratulated on a job well done. The grand jury had handed up an indictment of the five burglars and Hunt and Liddy. No one in the White House or CREEP had been publicly implicated in the break-in. Woodward and Bernstein were convinced the plot went higher. They were crestfallen, but not ready to throw in the towel. Woodward called Felt and described the reporter's plan to publish a story that high officials in the Nixon campaign had been involved in the funding of the burglary.

"Too soft," Felt replied, "'You can go much stronger.'"³⁴

Felt knew about the money allocated for the larger Gemstone operation, and the payments from the secret fund to Magruder and campaign aide Bart Porter. Although he did not give much detail to Woodward that day, he said "Let's just say I'll be willing to put the blossoming situation in perspective for you when the time comes," and told him (though not in so many words), to "follow the money."³⁵

A few weeks later, Felt delivered on his commitment. As Woodward describes it, Felt

³⁴*The Secret Man* at 69.

³⁵*Id.* at 69-70. One of the myths of Watergate was that Deep Throat (Mark Felt) counseled Bob Woodward to "follow the money." This expression was included in the movie, "All the President's Men," but, according to Woodward, based on a review of his notes, was probably never uttered by Felt, at least not in those exact words. *Id.* at 71.

was having a particularly bad week in early October 1972, dealing with White House attempts to obstruct and thwart the growing FBI investigation into the financing of the Watergate break-in. He was disgusted that his new boss, Acting FBI Director Patrick Gray, had acquiesced in John Dean's demands and had turned over copies of FBI interview summaries - referred to as FD 302s - to one of the ostensible co-conspirators. Woodward, who did not know this at the time, made an appointment with Felt. The FBI agent was waiting at the designated garage, smoking a cigarette.

There is a way to untie the Watergate knot. I can't and I won't give you any names, but everything points in the direction of what was called "Offensive Security." Remember, you don't do those 1,500 interviews and not have something in our hands other than a single break-in. Mitchell was involved.³⁶

Felt was referring to the thoroughness of the FBI's investigation. He detailed how Ehrlichman had ordered Hunt to leave town. He described how there were 50 people in the White House assigned to spy and sabotage the political opposition, and operations in Illinois, New York, New Hampshire, Massachusetts, California, Texas, Florida and D.C.

"You could write stories from now until Christmas or well beyond that. Just remember what I'm saying. Everything was part of it ... I know what I'm talking about."

Then Felt said something that was significant to Woodward, even at the time:

"It's all in the files. Justice and the Bureau know about it, even if it wasn't followed-up."

Here, Felt was confirming his own source: undisclosed information in law enforcement sensitive files, which every agent and prosecutor is taught are sacrosanct.³⁷

It is one thing to give information on background. It is quite another to confirm specific facts contained in law enforcement files. In judging the legality of Felt's actions, not to mention the ethics of his choice, this represented a crossing of the Rubicon. It was a bold, irreversible step.

³⁶*Id.* at 75-76.

³⁷*Id.* at 75-78.

B. Why Felt Did It: Some Theories

Woodward's is known for his highly detailed factual narratives. In *The Secret Man*, he goes beyond the narrative style to offer his own ideas on Deep Throat's motivation. What is Bob Woodward's theory for why Felt did it? He did not consider this question much before Watergate played out:

It was only after Nixon resigned that I began to swim up that stream seriously. Why had Felt talked when it carried substantial risks for himself and for the institution of the FBI? Had he been exposed early on, Felt would have been no hero. Technically, it was illegal to talk about grand jury information or FBI files; or it could have been made to look illegal. In retrospect, Felt had believed he was protecting the Bureau by finding a way, clandestine as it was, to push some of the information from the FBI interviews and files out to the public, to help build public and political pressure to make the president and his men answerable. The FBI findings that Watergate had many tentacles has been ignored and buried.³⁸

This characterization is undoubtedly true, but only goes so far. If one believes that a decorated, 30-year veteran FBI veteran would be motivated to protect the institution that employs him (hardly a novel idea), one can easily attribute all of Felt's professional actions to that motive. Wherever you work, you are expected to act in your employer's interests. Saying that Felt's actions as Deep Throat resulted from his loyalty to the FBI stating the obvious, like saying a cat eats because she is hungry. Government agencies are filled with loyalists, yet few choose to publicly disclose sensitive information to reporters, even if it would have the impact of making themselves or their agencies look good. The secondary question is far more elusive: what was it about Felt's make-up that led to his decision to cooperate with the scrambling *Washington Post* reporters, at that moment in history?

Woodward tackles this one as well, and offers some theories that come close to the public commentary that followed Felt's recent exposure.

- Felt was contemptuous of the efforts to manipulate the FBI for political reasons;³⁹
- Felt became disgruntled with the Administration when he got passed over for the directorship of the FBI in favor of Patrick L. Gray, and was motivated by

³⁸*Id.* at 104.

³⁹*Id.* at 105.

personal pique;⁴⁰ and

- Felt liked the game, and it was merely a covert operation he was running through Woodward.⁴¹

To these three, I would add a fourth, something that is suggested by some of the new details Woodward provides, and which is by far the most charitable towards Felt's legacy: that he was a civil libertarian who was rightly shocked by the Nixon Administration's attempts to trample on the rights of dissidents and political enemies. Under this theory, his outrage was prescient and ultimately affirmed by history. He was a hero.

Rarely do the motives of historical figures fit so easily into such clear-cut categories, and the notion that Felt's decision to become Deep Throat was driven solely by any one of these to the exclusion of the others would be naive. In reality, historical figures are rarely all good or all bad. Individuals – especially successful public officials - are conflicted, always a combination of their best and worse attributes. This is not to say that we should not debate such issues as an individual legacy in Felt's case. These debates are healthy and represent an application of history to what public servants should aspire to today.

Where Mark Felt falls on the good guy/bad guy continuum can only be answered by considering a number of theories and the circumstances that support the notion that there was a single force that motivated him (something we acknowledge is impossible in reality). We can gain insight by marshaling and considering the factual support for each theory. My nominee theories correspond to those Woodward raised in *The Secret Man*, plus the one I mentioned. They are, in order of how negative the implication of them are for Felt's legacy, as (1) the gamesman, (2) the disgruntled bureaucrat, (3) the apolitical cop, (4) the civil libertarian.

1. The Gamesman

This explanation is probably the worst for those arguing that Felt was one of the good guys. Although it might not be more negative than the "disgruntled bureaucrat" theory, it probably gets the nod because it is so nihilistic. After all, who would leak classified and law enforcement information that brings down a Presidency just for kicks? Who would go through such cloak-and-dagger steps such as meeting in underground parking garages, throwing a country into a Constitutional crisis, merely to avoid boredom? Here is how Woodward describes the "gamesman" theory of Felt's actions:

⁴⁰*Id.* at 106.

⁴¹*Id.*

[Perhaps] Felt liked the game. His first real Bureau expertise was as a World War II spy hunter. Converting all that knowledge and tradecraft to become an agent runner was perhaps natural. I suspect that in his mind I was his agent. He beat it into my head: secrecy at all cost, no loose talk, no talk about him at all, no indication to anyone that such a secret source exists.⁴²

Woodward describes how, in *All the President's Men*, he and Bernstein had speculated on Deep Throat's piecemeal approach to providing information to them. They thought that, by raising the stakes gradually, he was simply making the game more interesting for himself. They ultimately rejected this as a primary motivator, in part because it would be so nihilistic as to be unfathomable. They doubted someone in Felt's position would be so cavalier towards matters affecting Richard Nixon and the American Presidency itself. Felt's insistence that his cooperation be done in his way could not have been motivated by such glandular reasons, lest he be a sociopath. This assessment is logical. Few of Felt's even harshest critics advance the gamesman theory.

2. The Disgruntled Bureaucrat

If Felt were motivated purely by personal pique, it would not speak well of his legacy. Few people have the luxury of being able to take out their frustrations on a sitting President who refused to give them a promotion. We like to think that whistleblowers are motivated by more than just a desire simply to get even. Some support for the disgruntled bureaucrat theory comes the words in Felt's own book, *The FBI Pyramid*, as excerpted by Woodward:

⁴²*Id.*

It did not cross my mind that the President would appoint an outsider to replace Hoover ... My own record was good and I allowed myself to think I had an excellent chance... I was resentful that an outsider was taking over, yet at the same time I was impressed with the strength and sincerity of this man [Gray].⁴³

This quote (with the exception of the last clause) may explain part of the reason Felt began cooperating with Woodward. The truth of the last clause is questionable, and the words might be attributable to Felt's attempt to be kind to Gray, particularly since his graciousness towards Gray is belied by how he depicted him to Woodward. In reality, Felt desperately wanted to succeed J. Edgar Hoover, and was crushed when Gray was chosen. His resentment simmered as Gray proceeded to mishandle the FBI's proper role in the Watergate investigation.

For example, Felt told Woodward that Gray had pressured the White House to name him to the post.⁴⁴ He also said he lost respect for Gray over the handling of a document in a growing scandal arising out of an antitrust matter. The White House asked the FBI to examine for authenticity and then tried to bury it when the results were inconvenient.⁴⁵

The "disgruntled bureaucrat" theory might also explain the Felt's role (and apparent glee) in pushing Gray out of the FBI. Woodward recounts how, on April 26, 1973, Woodward uncharacteristically received a call from Felt while at his desk at the *Washington Post*.

"Give me a number to call you on," Felt said.

Woodward gave him the number of his direct line. Felt called a few minutes later

"You've heard the Gray story? Well, it's true."

⁴³*Id.* at 46.

⁴⁴*Id.* at 13.

⁴⁵*Id.* at 38.

Felt was referring to the revelation that, in a meeting with Dean and Ehrlichman, Gray was told that the files taken out of E. Howard Hunt's safe after the burglary were "political dynamite" that "could do more damage to the White House than the Watergate bugging." Gray took the files to his home in Connecticut and burned them with the Christmas trash in December 1972. The acting director of the FBI had destroyed evidence. He was history. Woodward described how he could hear a certain joy in Felt's voice over the phone. Felt reportedly spent that afternoon having his secretary compile his biographical information and photographs for what he thought would be his appointment as FBI Director.⁴⁶ He was once again deflated when the White House chose William Ruckelshaus instead. In his own book, Felt's described Ruckelshaus' arrival at the FBI as "blue Monday." A few weeks later, Woodward arranged to see Felt, once again in the underground garage. As Woodward describes it:

I expected to see him happy that Watergate was unraveling. But I also knew that he would be distressed that he had not been appointed, even temporarily, to take Gray's place. That was probably Mark Felt's last shot.

The mid-May meeting took place in that context. It was the strangest and most alarming meeting. Felt was nervous, his jaw quivered. He raced through a series of statements and it was clear that a transformation had taken place.

At that meeting, Felt told Woodward that he would be resigning from the FBI the following month.⁴⁷

3. The Apolitical Cop

This theory is not mutually exclusive with that of the "disgruntled bureaucrat," and is the one most often advanced by Felt's supporters. They argue that Felt may have been disgruntled, not because his personal ambition had been thwarted but because he so respected the FBI's tradition of not getting involved in partisan politics. His role as Deep Throat was motivated by his desire to find an alternative way for the results of the FBI's thorough investigation of the Watergate horrors to matter, at a time when it looked like there would otherwise be a whitewash. By doing what he did, he was protecting his troops, people who worked so hard on the lines and, but for his courage, would never see the fruits of their labors. To those who work in hierarchal organizations like law enforcement or the military, this motive would have been laudable.

⁴⁶ *Id.* at 96-97.

⁴⁷ *Id.* at 97-99.

Some of Woodward's descriptions support this theory. He notes that, in Felt's book, the former agent angrily denounces the effort to assert political control of the FBI through what he called a "White House-Justice Department cabal."⁴⁸ According to Woodward, although Felt's fear of FBI politicization surfaced directly in their discussions, "The threat to the integrity and independence of the Bureau was real and uppermost in his mind."⁴⁹ He also describes a war story Felt tells in the *FBI Pyramid* which, even if seen through the lens of a statement likely to be self-serving, at least shows what Felt wants to portray as an important part of the FBI ethos. The story involves a dispute he had with Gray over whether to accede to the CIA's request (at Nixon's instruction) not to pursue an interview with the person who wrote \$89,000 in checks deposited into the bank account of one of the Watergate burglars. According to Felt's account, he told Gray:

Look, the reputation of the FBI is at stake We can't delay the Ogarrio interview any longer! I hate to make this sound like an ultimatum, but unless we get the request in writing from [CIA Director Richard] Helms to forego the Ogarrio interview, we're going ahead anyway!"⁵⁰

One of the problems with the "apolitical cop" theory is that the notion of the independent FBI was neither firmly established nor consistent with the agency's history, at the time Felt was choosing his actions. Felt revered J. Edgar Hoover (a point addressed below). He would have known what we now know: that Hoover was not particularly reluctant to provide derogatory information to Presidents about their political enemies, in order to curry their favor. Presidential attempts to politicize the FBI did not begin with Nixon, although Watergate certainly led to a clean break with that tendency. Presidents today know not to ask the FBI to do political favors for them, but that is a Watergate's legacy. Consider how the public reacted when it was disclosed that the Clinton Administration had requested and received the FBI files of employees of the White House travel office who they wanted to replace. Felt's actions as Deep Throat, however, occurred thirty years ago. It may be too much to believe that Felt adopted this ethos before anyone else did, and was willing to risk his career for it to boot.

⁴⁸*Id.* at 33.

⁴⁹*Id.* at 34.

⁵⁰*Id.* at 60.

There is, however, no question that the FBI as an organization, and Felt as an individual within it, was motivated by microeconomic principles, such as the notion of incentive. People are motivated by rewards, which includes recognition for tasks well done. Within the FBI, there were hackles raised at the prospect that the agency's excellent spade work in uncovering the various Watergate tentacles would go unnoticed. Woodward, for example, described a 1975 internal FBI memorandum which complained that the Washington Post was getting too much credit for the FBI's investigation, and suggested that some of the investigative yield be disclosed to dispel the notion that Woodward and Bernstein solved the Watergate case.⁵¹

The "apolitical cop" theory is an important one for people like me, when it comes to judging Felt's historical legacy. If his actions were explained by this motivation, Felt would have embodied some of the best traits of career law enforcement. If you are a cop or prosecutor, your official actions are supposed to be independent of the vagaries of the political winds. We are trained to be above and separate from partisan politics, and to be blind to the temptation of advancement by getting too close to elected officials. We are, after all occasionally required to ruffle feathers, and go after people in power, and public confidence in us would be jeopardized if it appeared that we were compromised by power. In the ideal world, there is a system that protects us. The same system turns on us if we were to look the other way at crimes or abuses being committed by the political class, even when the abusers are in a position of authority over us. The problem for this theory is that this type of ethos was not well-established at the time, nor practiced by the FBI Director who Felt revered.

4. The Civil Libertarian

Of the four theories, this is the one that speaks the most favorably about Felt. The "civil libertarian" theory holds that Felt was motivated by his respect for the constitutional rights of those whom the Nixon Administration was targeting during this era. This is the theory Felt's strongest supporters would like to see accepted.

This theory finds some support in Woodward's book. In July 1973, a month after his retirement and before Nixon's resignation, Felt told Woodward over the phone. "The problem was that we wouldn't burglarize."⁵² Woodward describes how Felt stopped efforts by the FBI to "identify every member of a hippie commune in Los Angeles," reasoning that "only a small number of members had actually advocated or participated in violence and there was no justification for investigating others."⁵³ In *The FBI Pyramid*, Felt boasts that J. Edgar Hoover

⁵¹*Id.* at 120.

⁵²*Id.* at 107.

⁵³*Id.* at 34.

was the only senior officials after Pearl Harbor to oppose Japanese-American internment.⁵⁴

This theory suffers, however, from two inconveniences that make it almost as much of a stretch as the “gamesman” theory on the opposite end of the continuum. First, Felt was, by all accounts, a Hoover loyalist, very much like the FBI agents I have known who were Hoover hires. (Today, there are only a handful left in the FBI.) Felt’s hero was no poster child for concern over the constitutional rights of political dissidents.

There is, however, an even deeper problem with the “civil libertarian” theory. Felt’s actions at the FBI - for which he was ultimately indicted - showed that he did not fear taking supra-constitutional action when expediency demanded it. This is not to say that Felt was wrong and his Department of Justice accusers were right to seek criminal charges against him. Felt may have been somewhat justified in thinking that right that his actions were necessitated by the climate of the time. However, he cannot claim to have become Deep Throat because he was shocked by what the Nixon White was doing against dissidents. The more likely story is that the FBI objected to the White House’s aggressive surveillance plans because it did not want competition. After all, Woodward says Felt has over about John Ehrlichman’s Senate testimony about the Ellsberg break-in. At the same time, Felt adamantly defended the government’s scrutiny of Ellsberg.⁵⁵ Clearly, Felt was not angry over what Ehrlichman, Hunt and Liddy did with the Miami Cubans in Los Angeles. He was mad because they were doing it without the help of the FBI.

IV. The Tangled Webs

What makes *The Secret Man* a remarkable historical document is not merely the additional detail Woodward provides about his dealings with Felt around the time the Nixon Administration was sinking, much of which had been published before the disclosure of Felt’s identity. Rather, it is Woodward’s account of how Felt reacted when Watergate ended and he found himself being chased by hard-nosed investigators. What does this reaction say about his motives? We can learn about Felt’s troubles from the judicial opinions that tell the story. Woodward’s book reveals actions and statements by Felt that shed light on his state of mind at the time. Together, several more bizarre historical twists emerge, along with a fifth theory for Felt’s motivation.

A. The Trial of Mark Felt

In April 1976, approximately two years after Felt resigned from the FBI, the Justice

⁵⁴*Id.* at 42.

⁵⁵*Id.* at 107.

Department commenced an investigation into the FBI's use of illegal break-ins against family members and friends of several members of a radical Vietnam Era organization known as the Weather Underground.

Jimmy Carter, a Democratic President, was elected seven months later, and took office in January 1977. In April 1978, a Grand Jury sitting in Washington, D.C., handed up a one-count indictment charging L. Patrick Gray, Mark Felt and another FBI official, Edward S. Miller, with conspiring to deprive certain relatives and acquaintances of Weather Underground fugitives of their rights, in violation of one of the criminal civil rights statutes.⁵⁶ The legal theory of this prosecution had been established in the prosecution of Ehrlichman for the Ellsberg/Fielding break-in.⁵⁷ It was a creative charging decision. Prior to that time, this particular statute had been used mainly to prosecute racial hate crimes.⁵⁸

On March 5, 1979, District Court Judge William Benson Bryant severed Gray's case from the trial of Felt and Miller. In August 1980, shortly before commencement of the trial of Felt and Miller, Gray moved to dismiss the indictment against him outright, claiming prosecutorial misconduct in the failure to present the grand jury with the full evidence. The prosecutors acknowledged weaknesses in the case against Gray and in the manner in which it was presented to the grand jury, but indicated that they expected the trial of Felt and Miller to reveal testimony substantiating the charges against Gray. Without that testimony, prosecutors conceded, further proceedings against Gray would be unwarranted. The court accepted the prosecutors argument, and denied the dismissal.

⁵⁶*United States v. Gray*, 502 F.Supp. 150 (D.D.C. 1980). The statute was 18 U.S.C. § 241.

⁵⁷ *United States v. Ehrlichman*, 546 F.2d 910, 914 (D.C. Cir. 1977)

⁵⁸ See *United States v. Guest*, 383 U.S. 745, 86 S.Ct. 1170, 383 U.S. 745 (1966); *United States v. Myers*, 377 F.2d 412 (5th Cir. 1967); *Wilkins v. United States*, 376 F.2d 552 (5th Cir. 1967); *United States v. Hayes*, 444 F.2d 472 (5th Cir. 1971).

Felt and Miller went to trial, and they were convicted on November 6, 1980. Because the trial failed to bring out evidence strengthening the Government's case against Gray, prosecutors filed a *nolle prosequi* on December 10, 1980, acknowledging that the charges against Gray were "unconvincing," voluntarily dismissing the indictment against him.⁵⁹ Felt and Miller were ultimately granted full and unconditional pardons by President Reagan.

B. What Was He Thinking?

Thanks to Bob Woodward, we now know how Felt reacted to his legal troubles.

In June 1974, Felt was visited at home by two FBI agents, who insisted that he accompany them to the local Holiday Inn and sign a form acknowledging his understanding of his Constitutional rights. They asked him questions involving a Watergate-related leak to the *New York Times*. As Woodward describes it:

Felt denied any involvement. The drip, drip, drip of inquiry and the investigative zeal of the era were coming home to roost, and Felt didn't like it one bit. Though I didn't know it at the time, Felt was carrying around a secret that was perhaps as big or bigger than his role as Deep Throat.⁶⁰

Over the next years, Felt was called to testify five times before the Senate committee investigating civil rights abuses by the U.S. intelligence community. In his retirement, he had essentially become a professional witness. At some point, his status would change to that of an investigative target. He had been present at too many meetings that were of interest to prosecutors. It was just a matter of time.

⁵⁹ *Gray v. Bell*, 712 F.2d 490 (D.C. Cir. 1983).

⁶⁰ *The Secret Man* at 117-118.

The first stories regarding the Justice Department civil rights investigation into the FBI's conduct against the Weather Underground arose in the summer of 1976. Woodward describes this investigation as a natural result of the post-Watergate climate, in which the American public was eager to see civil rights abuses of Nixon critics redressed.⁶¹ In fact, Woodward himself jumped into the fray, writing an article which quoted Mark Felt, by name, as saying:

I'm proud of what I did ... You've got to remember that we were dealing with murderers, terrorists, people who were responsible for mass destruction ... The key word is violence. They were planning mass destruction ... Please emphasize the viciousness of these people. We were dealing with fanatics.

If you learn in advance of a bomb about to go off, you can't put your fingers in your ears and wait for it to go off ... [T]hese people had claimed responsibility for hundreds of bombings and we wanted to put them out of circulation ... we have an obligation to.

I think I have observed the spirit and the letter of the Constitution ... the right of one person cannot be allowed to exist to the detriment of the hundreds.⁶²

Felt's autobiography echoes this defiance. *The FBI Pyramid*, begins with a description of the Weather Underground, and how the country was in a "civil war" which few people understood." His book quotes Thomas Jefferson, arguing that the "laws of necessity, or self-preservation, of saving our country when it is in danger, are of higher obligation . To lose our country by a scrupulous adherence to the written law would be to lose the law itself."⁶³

Shortly after Felt's indictment, Woodward called him at home. Woodward thought he sounded tired, with the hesitation in his voice of a retiree facing up to 10 years in jail. Woodward's attempts to console him and to offer apologies were met with an icy response. The party was over. Woodward decided not to attend the arraignment, fearing that Felt might lash out at him.⁶⁴

In the fall of 1980, the trial opened at the federal courthouse in Washington, before a jury of eight women and four men. Several weeks into it, on October 29, 1980, there occurred

⁶¹ *Id.* at 128.

⁶² *Id.* at 128-129.

⁶³ *Id.*

⁶⁴ *Id.* at 136-137.

another historical twist. Richard Nixon appeared as a witness.

Although he was not asked whether he had authorized the Weather Underground break-ins, Nixon's testimony appeared to side with Felt, the anonymous source who, unbeknownst to him, had done so much to drive him from office. The former President claimed that he had authority to order the burglaries if national security was threatened, and that he had delegated that authority to the FBI Director. According to Nixon, a presidential authorization "meant what would otherwise be unlawful or illegal becomes legal." Like Felt, Nixon was defiant. As he uttered these words on the witness stand, Nixon pounded his finger on the wooden bench in front of him.⁶⁵

A few days later, on November 6, 1980, Felt and Miller were found guilty. Almost immediately, Bob Woodward's employer published an editorial expressing glee, describing the conviction as a landmark case that will deter future policemen from overreaching their legal authority. Felt bitterly told Woodward that Richard Nixon had done more to assist him than the newspaper ever had.⁶⁶ When President Reagan pardoned Felt and Miller several months later, as if they were old friends, Nixon – ironically - sent Felt a bottle of Champaign with the note "Justice ultimately prevails."⁶⁷

C. The Eccentric Hooverite

This strange series of events casts doubt on the more benevolent of the theories discussed above, like "civil libertarian" and the "apolitical cop." If Felt's motives were so pure, why did he not come forward and take advantage of the fact that he disapproved of the Watergate horrors so much that he took a role in disclosing them, when he himself was accused of committing constitutional violations? If Felt was proud of his role in exposing the Nixon Administration abuses, would he not have been more inclined to try to burnish his image as a civil libertarian by publicly revealing his identity? Surely, that would put his accusers in place. The fact that he did not suggests that, in his own heart, Felt did not view himself as a hero, and that his motivations might have been less principled.

Following the Deep Throat announcement but prior to the publication of *The Secret*

⁶⁵*Id.* at 141-142.

⁶⁶*Id.* at 143.

⁶⁷*Id.* at 147.

Man, I posed this question to several people, including a former Deputy Attorney General from that era, a former FBI Director, and a private lawyer who was involved in the Gray/Felt/Miller defense. Their answers varied. Perhaps Felt knew that this would not help him with his immediate legal troubles. Maybe he was never truly worried that he would be sent to prison, knowing that a pardon was inevitable in the event of a conviction, and he could therefore afford not to play that card. I initially doubted these possibilities.

In *The Secret Man*, Woodward considers the question whether Felt's revealing his identity would have assisted his legal defense:

For some time, I had a fantasy that I could convince Felt to let me tell the full story of his role as Deep Throat. Many people, perhaps most people, would see him as a hero. He could explain what he had done and why. Public opinion might be with him. I even had the idea that I could testify at his trial as a character witness, showing up dramatically, taking the oath and laying out his willingness to blow the whistle on Nixon, the Justice Department, Gray and others.⁶⁸

Woodward ultimately concludes that Felt's unwillingness to disclose their secret reflected a cool assessment of the legal trouble he was in, and how he badly needed to preserve his law enforcement ties at the time.⁶⁹ I was not convinced, in part because I wanted to think that whoever Deep Throat was, he should have been proud of his legacy. For years, I and others wanted to believe the best about this person. I also did not like to think that the men and women of law enforcement - of which I am one - would not have failed to embrace Felt as a hero. Felt must have made a mistake in not taking advantage of his role as Deep Throat. Instead of getting Bob Woodward as a witness, he was stuck with Richard Nixon, and the jury convicted him.

The problem is that Felt was absolutely right. Revealing himself as Deep Throat would not have softened the attitude of his law enforcement accusers. We now know that for certain. Granted, Felt might have benefited from a favorable public reaction, but this would not have prevented his trial going forward, nor would it have likely changed the judgment of the sequestered jury. If anything, revealing himself as Woodward's source may have eliminated his chances of a pardon by the incoming Republican president. Felt probably played his cards right.

⁶⁸*Id.* at 136-137.

⁶⁹*Id.* at 126.

So we are left speculating about his true motives.

Without knowing it, Woodward's *The Secret Man* contains details about Felt's personality that suggest a theory that may better explain his motives, one that bridges the theories discussed above. Is it possible that Felt had become, over time, a replica of his hero, and who we now know had some rather eccentric views about how people should behave? Was his decision to become Deep Throat a response to the behavior of people who did not act in accordance with these eccentric views, to individuals whose manners he simply did not like? J. Edgar Hoover, it can be said, valued rectitude, and despised slothfulness and soft-headedness, and he was a stickler for appearance. Mark Felt might have lashed out against the Nixon White House because he thought they were slothful – that is, they were tacky, un-Hoover-like. Perhaps it was nothing more profound than that.

The Secret Man offers support for this theory, although Woodward does not seize on it as an explanation. Consider Woodward's description of Felt's infatuation with Hoover:

Somewhat to my astonishment, I felt that Felt was an admirer of J. Edgar Hoover. He appreciated the orderliness of Hoover, who ran the Bureau with rigid procedures and an iron fist. Hoover was always well dressed, fresh and directly. Felt said he appreciated that Hoover arrived at the office at 6:30 each morning and that everyone knew what was expected. The Nixon White House was another matter.⁷⁰

Felt himself described Hoover as being intolerant of typographical errors in documents, and his insistence that FBI correspondence be answered within 24 hours and every incoming phone call be answered by the third ring.⁷¹

Contrast this with how Felt reacted to Richard Nixon, on one of the few occasions he dealt with him directly. On May 15, 1972, during the 1972 Presidential Primaries, Democratic candidate George Wallace was shot at a Laurel, Maryland shopping mall. The shooter, Arthur Bremer, was immediately arrested. That evening, because Gray was out of town, Nixon called Felt at home to get an update on the incident. Bremer had apparently been injured in the melee, and was in the hospital. According to Felt's book, he was offended by Nixon's reaction and to his language:

“Well, it's too bad they didn't really rough up the son of a bitch,” the President said.

⁷⁰*Id.* at 33.

⁷¹*Id.* at 42.

This was a rather rude and ill-mannered statement, and Felt did not like it.⁷² Chances are, Hoover - certainly a man of strong opinions - would not have said such a thing to a virtual stranger. That would have been sloppy.

Next, consider Felt's reactions to Patrick Gray. He did not like the fact that Gray was often out of town visiting field offices, or in the gym exercising, where he would not permit intrusions.⁷³ On his trips to the field, Gray insisted on using expensive military aircraft, the cost of which had to be reimbursed out of the FBI's budget. To Felt's chagrin, Gray installed a private kitchen near his office and a \$10,000-a-year chef. The immediate effect of the kitchen and the gourmet meals was a cooking smell that filled the public corridor.⁷⁴ Gray was stinking up the FBI hallways!

After Gray resigned from the FBI in disgrace (based in part on Felt's actions), Felt also seemed to have a visceral reaction to the next FBI Director, William Ruckelshaus. In his book, Felt describes himself as "jarred by the sight of Ruckelshaus lolling in an easy chair with his feet on what I still felt was J. Edgar Hoover's desk."⁷⁵ The examples continue. Felt hated the youngsters at the White House like John Dean who were trying to commandeer the FBI for their own purposes.⁷⁶ In *The FBI Pyramid*, Felt complains about the manners and professionalism of the young FBI agents who interviewed him as part of the leak investigation themselves, rather than following protocol of having the current FBI Director do the job.⁷⁷

If Felt was motivated by his distaste for tackiness, it is easy to see why he would be impressed by the young Bob Woodward. The first time Felt met him, the future reporter was in his Navy uniform, sitting outside the Situation Room in the West Wing of the White House.⁷⁸ Pictures of the *Washington Post* staff from the a few years later show Woodward to have remained relatively well groomed and conservative in his appearance, particularly when compared to Carl Bernstein. In *All the President's Men*, Woodward revealed himself to be a Republican.

⁷²*Id.* at 48.

⁷³*Id.* at 47.

⁷⁴*Id.* at 50-51.

⁷⁵*Id.* at 97-98.

⁷⁶*Id.* at 74.

⁷⁷*Id.* at 117.

⁷⁸*Id.* at 16-17.

If we take this theory and follow it, more pieces of the puzzle fall into place. Woodward, for example, describes Felt's actions the first time he called him after the publication of *All the President's Men*. Felt wasted no time, hanging up on his friend. To this day, Woodward "can still hear the bang of his telephone and the sudden dial tone. Hanging up was worse than any words he might have uttered."⁷⁹

Why this reaction? Much of the detail Felt provided Woodward had already been published in the *Washington Post's* Watergate coverage. For Felt, perhaps it was the shock at having specific information attributed to a particular, singular source in one volume. Or could it be that he was simply offended by the moniker that emerged from the book? "Deep Throat" was the title of a popular pornographic movie of the time. The irreverent name was coined by Howard Simons, the *Post's* managing editor at the time.⁸⁰ J. Edgar Hoover, with all of his hang-ups, certainly would have been offended by someone calling him that. After all, Felt attributed Hoover animosity towards Martin Luther King Jr. to the reverend's sexual peccadilloes.⁸¹ When asked point-blank by a *Wall Street Journal* reporter whether he was Deep Throat, Felt responded, "I'm not that kind of person."

This theory, which can never be proven, would account some of the weaknesses of the other four theories described above, and explain some of the mystery identified by Woodward: how could Felt could square Nixon's break-ins with his own actions?⁸² Without knowing it, Woodward comes close to attaching himself to the "eccentric Hooverite" theory:

"I'm just not that kind of person." Did he know who he was? Did I? His denials seemed to be embedded in the identity he had fashioned for himself. He was like a witness who had told his story a dozen or a hundred times. He had to stick to it, and over the years, perhaps he had even come to believe it.⁸³

"Running off to a parking garage to talk to me at 2 A.M." Woodward explains, would subject Felt to the charge "that he was out of control, a freelancer, inclined to take things into his own hands for a larger purpose that he, and he alone, defined. He seemed to fear that he would be

⁷⁹*Id.* at 116.

⁸⁰*Id.* at 4.

⁸¹ *Id.* at 43.

⁸²*Id.* at 136.

⁸³ *Id.* at 137-138.

considered a snitch, a rat.”⁸⁴ This was tacky. It was something J. Edgar Hoover, who was known to use the term “rat” to describe public enemies and Communists, would have abhorred.

Maybe Felt had so absorbed the personal habits of Hoover, pushed so aggressively by the Old Man on his subordinates, that, when Hoover died, Felt found himself rudderless and reeling and had to react to the Watergate abuses the way he did. Maybe he did the right things, but for the wrong reasons. He then came to regret the manner in which he operated, and even the dirty name that was attached to his role. Of course, we will never know. Felt is still alive, but he has no recollection.

D. The Last Odd Twist

How can we be so certain that a decision by Felt to reveal his identity as Deep Throat would not have helped him defend himself when he found himself under indictment by the Carter Justice Department? The answer comes, once again, from a combination of the published case law and *The Secret Man*.

The criminal case against Patrick Gray was severed from the Felt and Miller prosecution. Thereafter, Gray’s lawyers, led by former federal prosecutor Alan Baron, managed to get the entire case against him dismissed. However, Gray was not yet done.

⁸⁴*Id.* at 144.

On April 9, 1981, Gray filed a lawsuit against his former accusers in the government, seeking money damages for injury to his personal and professional reputation, extreme emotional distress and mental anguish, and associated physical ailments. The complaint alleged that the defendants violated Gray's Fifth Amendment rights to due process and to an informed and impartial Grand Jury by conducting a grossly negligent pre-indictment investigation and, as a result, failing to present exculpatory evidence and presenting false and misleading evidence to the Grand Jury. About a dozen Department of Justice officials were named in the lawsuit.⁸⁵ This is yet another bizarre twist in the Deep Throat saga.

One of the civil defendants was J. Stanley Pottinger, Director of the Justice Department's Civil Rights Division. Remember, the Gray/Felt/Miller prosecution relied on the civil rights criminal statute, the enforcement of which fell to Pottinger.⁸⁶ Pottinger was one of the Justice Department officials involved in the prosecution.

From Woodward's book, we now know that Stanley Pottinger knew that Mark Felt was *Deep Throat* before Felt was indicted. Would Felt's disclosure have helped him? It turns out that Pottinger, who had a role in the decision to seek the criminal charges, apparently knew Felt's secret before he approved the indictment.

Woodward and Pottinger knew each other. Pottinger was less concerned than Felt about being seen in public with Woodward. They did not have to meet in secret in underground parking garages. In 1976, while Pottinger was a senior Justice Department official, Woodward met him for lunch in a restaurant. Pottinger proceeded to violate the rules relating to grand jury secrecy by telling Woodward that he had uncovered Deep Throat.

Pottinger had questioned Felt before the grand jury, asking him whether Nixon had ever pressed the FBI to conduct black-bag jobs. Felt said no, but smiled slightly and said that there was some speculation that he was Deep Throat. Unexpectedly for Felt, a grand juror raised his hand and asked, "Were you?"

"Was I what?" inquired Felt

"Were you Deep Throat?"

Felt was caught off guard. He turned white, and said no. Apparently feeling sorry for Felt, the prosecutor told the stenographer to stop taking notes. Pottinger walked over to Felt, and whispered to him that he was still under oath, but that he considered the question to be out of bounds. He said he would be willing to officially withdraw the question, and asked for his

⁸⁵ *Gray v. Bell*, 712 F.2d 490 (D.C. Cir. 1983).

⁸⁶ 18 U.S.C. § 241.

preference.

“Withdraw the question,” a flushed Felt immediately responded.

As he told this story to Woodward, Pottinger smiled. Obviously, he was in on the secret. He promised not to disclose this to anyone, and apparently fulfilled his commitment, even though he had violated grand jury secrecy in his discussion with Woodward.⁸⁷

So one of Felt’s prosecutors knew Felt was Deep Throat, and the indictment nonetheless followed. That probably puts to rest any claim that Felt’s disclosure of his role in publicizing the Nixon abuses would have softened the prosecutors’ attitude towards him to not pursue the criminal case.

Or does it? It is possible that Pottinger argued against Felt’s indictment for this very reason, but lost the internal battle. I am familiar with how this can happen, and Pottinger’s name would have still appeared on the charges. This possibility is doubtful, because a case such as this could not likely have gone forward without the acquiescence of the chief of the Civil Rights Division. Pottinger’s opinion of the case would have carried too much weight for it to go forward over his objection. Perhaps Pottinger was against the case but hid this fact from his colleagues, because he did not want to reveal that Mark Felt was Deep Throat. Of course, this would have been an abrogation of his responsibility as a Justice lawyer, not to mention his role as a team player. Perhaps Pottinger thought that the Felt prosecution was righteous, that the process of the trial would force Felt to reveal himself as Deep Throat so Pottinger would not have to. Still, it is hard to fathom a prosecutor who knows Mark Felt’s secret allowing a prosecution for the same conduct on which the defendant blew the whistle. Moreover, for Pottinger, there is this tough legal question: if he had concluded that Mark Felt was Deep Throat in 1976, as Woodward now claims, did he not have an obligation to bring this information to the attention of Felt’s attorney because it may have been exculpatory? In leaking grand jury information to Bob Woodward over lunch, did Stanley Pottinger not become Deep Throat II? We know that Felt confirmed the existence of information in FBI files to Woodward, but no one has yet suggested that he disclosed matters that occurred before the grand jury. Within law enforcement circles, that is a far more serious violation.

What do we know about Pottinger’s motives, and where is he today?

⁸⁷*The Secret Man* at 132-133.

We know from Woodward that Pottinger was a sufficiently dashing figure to be invited to the Kennedy compound in Hyannisport, Massachusetts, as a guest of Ethel Kennedy, since Woodward ran into him there in the summer of 1977.⁸⁸ By that time, Woodward himself was a celebrity, having been portrayed in the movie *All the President's Men* by Robert Redford. This past year, Woodward spoke to Pottinger, who described himself as supportive of the right of reporters to maintain confidential sources and favorably disposed to Felt's decision to provide information to Woodward. Of course, this should be expected. Pottinger had leaked grand jury information to Woodward 28 years earlier.

This attitude is consistent with Pottinger's current station. He was a rising star in legal circles, a 34-year old Justice Department appointee who - along with Bill Clinton and Dan Rather - actually made *Time* magazine's 1974 list of 200 "Future Leaders of America."⁸⁹ He argued four cases before the Supreme Court. He left law to try his hand at investment banking. In the 1980s, he went to film school, while serving as a trustee for the Lawyer's Committee on Civil Rights. He was romantically linked to Gloria Steinem. Pottinger ultimately decided to try his hand at writing fiction. He has been successful at it, publishing several well-received novels that focus on the hunt for Nazis, biological warfare, and abortion.⁹⁰ Asked why he left a high-powered law practice, Pottinger says "We all have to zig and zag to find out where we ultimately want to go."⁹¹

V. Conclusion: Who Are The Good Guys?

Like many Watergate aficionados, I want to believe that Deep Throat was motivated by high principles and patriotism. His actions enriched our lives. It is hard not to cheer for him, when one realizes the role he played in exposing clear government abuses.

The problem for me is that I am on record in lauding the Justice Department's actions against rogue FBI officials who ignored the legal regime that allows us to rebut the claims of the critics of the USA PATRIOT Act. Today, it is important that we be able to say that there is no such thing as a legal warrantless wiretap. The Foreign Intelligence Surveillance Act (FISA),⁹² an example of positive post-Watergate reform, is the sole basis for conducting certain

⁸⁸*Id.* at 133-134.

⁸⁹See <http://www.time.com/time/archive/preview/0,10987,981959,00.html> (Last visited Aug. 16, 2005).

⁹⁰See <http://www.stanpottinger.com/> (last visited Aug. 16, 2005).

⁹¹<http://www.stanpottinger.com/author/interview.asp> (last visited Aug. 16, 2005).

⁹²50 U.S.C. § 1801 *et seq.*

types of intrusive surveillance when focused on national security threats within the United States. If this reform means anything, we must be willing to punish government officials who cavalierly ignore it, no matter how pure their motives.

Perhaps we can think the best about Mark Felt if we treat his conduct as occurring at a time when the rules were not so clear. After all, FISA was not enacted until 1978. Like those of us involved in counterterrorism today, perhaps history should judge Mark Felt by his motives, rather than whether he occasionally stepped over the line. The problem with this notion is that it seems like a rationalization. The rule of law matters for law enforcers. It is not enough to be properly motivated. We must operate legally, lest we plunge into the abyss. We cannot pick and choose which laws we want to follow. We should not tolerate such a wide margin of error by our counterterrorism enforcers. Then again, indicting them may be too much. The fact that law enforcers are occasionally indicted for their official conduct may be part of the reason we are not more creative in our terrorism disruption efforts, not willing to be as aggressive as the American people (and blue ribbon commissions) want us to be after they come face to face with an actual terrorist attack. More rationalization.

The fact remains that Mark Felt did not operate legally. Judging his historical legacy, we might be willing to cut him some slack, and accept that his effectiveness as a cop depended on virtual blind reverence to a system of acceptable practices that built the great American federal police force, no matter how eccentric. That might make his pardon, as Richard Nixon described it, a true example of justice prevailing. It is hard not to agree with President Reagan's words when he issued the unconditional pardon:

America was at war in 1972, and Messrs Felt and Miller followed procedures they believed essential to keep the Director of the FBI, the Attorney General, and the President of the United States advised of the activities of hostile foreign powers and their collaborators in this country ... America was generous to those who refused to serve their country in the Vietnam War. We can be no less generous to two men who acted on high principles to bring an end to the terrorism that was threatening our Nation.⁹³

Still, Mark Felt, like all of us, will have to be judged by the sweep of history, with all of its bizarre twists. The same is true of Richard Nixon, Bob Woodward, Patrick Gray, even Stan Pottinger, and other characters who make *The Secret Man* such a remarkable book, and Watergate such a fascinating story. This is the price we pay as a society if we believe that history is relevant. It has to be, for anything less is beneath us. The secret of Deep Throat is over. The historical arguments continue.

⁹³*The Secret Man* at 146.

Here is my argument.

Those of us in law enforcement are proud of the tradition that requires us to be driven by facts, rather than by political power, what is sometimes referred to today as “juice.” We occasionally make high-powered enemies. In the ideal world, there is a system that protects us. What creates this tradition? It is from those who have come before us who, by their example, give us the daily comfort to stay in this game. Somehow, we find our way to go on.

Mark Felt's decision to cooperate with Bob Woodward might well have been driven by this type of dynamic. He was an FBI special agent, and one of the truly successfully ones, so much so that eventually ascending to the position of FBI Director was a distinct possibility. He knew the agency, its traditions and its secrets. Like Hoover, he was neat and rigid in habit, because that is what got you promoted. Like with Hoover, the FBI was Mark Felt's life. Suddenly, Hoover is gone. Felt's life is thrown into disarray, at a time when some unscrupulous people within our government are trying to take advantage of the leadership void and manipulate it for their own purposes.

If you are Mark Felt, as has been said so many times since the Deep Throat revelation, where do you turn? There are no friendly prosecutors, at least not initially. They all report to the Attorney General, and ultimately to the President. Congress? Not a place a Hooverite is likely to turn for help. What about the clean-cut kid from the *Washington Post* who he met in such a confused state a couple of years ago, the one who is on this story now? Felt's entire career had been based on prosecution of bad guys. Suddenly, he finds, in the twilight of his career, that the bad guys are in charge. This circumstance threatens the very essence of his life up to that point. Where does he go? How about that impressive young man now who is now a reporter, who looks like the type that will not cause too much damage and may be useful. The scenario starts to come together.

The unfortunate fact was that, for at least a brief period, Felt might have become a bad guy himself, at least one who was willing to cut corners, when it comes to his relations with the media and with the way he conducted certain very important investigations where lives may have been at stake. He was pardoned, but the law books still contain descriptions of his misdeeds, and he is referred to by people like me as an example of how the system works and how the government can be trusted to police their own bad elements. There is also now a clear split within law enforcement ranks whether Mark Felt should be considered a hero.⁹⁴

This is what I mean about shaking my attitude about what it means to be a public

⁹⁴ See Toni Locy, “FBI veterans reflect on ethics and obligations,” USA Today, August 17, 2005; Stacy Finz, “Former FBI agents debate Felt's ethics. Some see betrayal – others say he acted heroically,.” *San Francisco Chronicle*, August 17, 2005.

servant. I now believe that Mark Felt embodied some of the best traits of career professionals, and that it was some of those traits that led him to become Deep Throat. However, his real motives were more base, and even aesthetic - perhaps petty - in nature. Like J. Edgar Hoover, Felt was offended by the personal attributes of those individuals with whom he had to deal, and it was this tendency that drove him to do what he did. He was not trying to save the Republic. He was trying to punish obnoxious people. What he did may have been good, but he most likely did it for the wrong reasons.

The again, I may be proven wrong by history. Stay tuned.