Some Lessons from Watergate

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J. Reuben Clark Law Society, Los Angeles
October 16, 2015

It was my good fortune during my last year of law school to be offered a position as law clerk to the Honorable John J. Sirica, then-chief judge of the U.S. District Court for the District of Columbia. I say good fortune for two reasons. First, Judge Sirica's only son had enrolled as a freshman at Duke that year, and as a result, the judge for the first time since his appointment to the bench looked outside his alma mater, Georgetown, at candidates from the Duke School of Law. The second, more substantive reason is that my term of service as law clerk coincided with the Watergate trials and proceedings handled by Judge Sirica. This gave me a "ringside seat" for a little over two years to a unique epoch in U.S. history that enabled me to learn some crucial life lessons at the outset of my career. My hope today is to relate a few of those lessons learned in a way that you will find interesting and helpful.

Let me give a word of explanation for those of you for whom Watergate is a musty piece of history—that is, you who were otherwise occupied in the premortal world while some of us now-elderly types were preoccupied with Watergate in this fallen mortal sphere. In the last century, Watergate was a scandal's scandal, so prominent that almost every political scandal in the United States since has had "gate" attached to its name to give it added gravitas. Witness, for example, "Bridge-gate" applied to allegations leveled last year at Governor Chris Christie in New Jersey. The suffix has even been applied to sports scandals, such as with the recent controversy over the pressure of New England Patriot footballs, dubbed "Deflate-gate." Indeed, there's an entire Wikipedia page dedicated to scandals with the "gate" suffix.

Watergate derives from the name of a hotel, apartment, and office complex in Washington, D.C., located at the edge of the Potomac River. In 1972 the Democratic National Committee, or DNC, had its offices there. It was an election year, and some ethically-challenged persons connected with the reelection effort of President Richard M. Nixon devised a sinister plan for thwarting the opposition party. This plan included, among other things, planting electronic listening devices—electronic "bugs"—in the DNC's Watergate offices, as well as in the campaign office of the putative Democratic nominee for president, Senator George McGovern. A team located in a Howard Johnson hotel across the street from the Watergate office building made transcripts of conversations they intercepted. When, after a couple of weeks, some of the electronic bugs in the DNC offices were not working properly, the team that had originally planted them, consisting of a former CIA agent and four Cuban-Americans who had been recruited for what was described to them as a patriotic mission, went back on the night

of June 16–17 to replace the defective devices. They were caught and arrested by District of Columbia police.

The ensuing investigations by the police, the FBI, two grand juries, special prosecutors, a specially appointed Senate Select Committee, and the House of Representatives eventually revealed who was responsible, as well as what had been an extensive effort to cover up who was responsible. President Nixon's attorney general, White House legal counsel, and closest aides were implicated, and in the end, so was Nixon himself. In early 1973, those who perpetrated the Watergate break-in went on trial and were either convicted or pleaded guilty. In 1974 a trial of those implicated in the cover-up took place. Between these two trials, it was revealed in the Senate Watergate hearings that at the direction of President Nixon, virtually all meetings in the Oval Office and the president's office in the Executive Office Building next door to the White House had been tape recorded. Some of those recordings, thought to include meetings dealing with Watergate, were subpoenaed, and an unprecedented legal battle followed over the question of whether the president of the United States was subject to such a subpoena. Eventually the Supreme Court ruled that he was obligated to produce evidence in his possession bearing on a criminal trial.

Judge Sirica and his able law clerk listened to all the subpoenaed tapes in camera, and after discussion, the judge determined what was relevant to the investigation. He provided copies of all relevant portions of the tapes to the special prosecutor and grand jury. The tapes showed Nixon's complicity in the illegal cover-up, and with the threat of impeachment imminent, he resigned as president on August 9, 1974, to date the only president to have resigned his office.

Now, a few lessons:

Nixon and others were, as best I could judge, basically good and decent family men. For example, Nixon's chief assistant, H. R. (Bob) Haldeman, had a lovely daughter who was a law school student. She received permission to assist her father's attorneys in his defense during the "cover-up" trial. I was able to observe the interaction between father and daughter and had a few casual conversations with the daughter during court recesses. It was clear to me that she loved and respected her father and that those feelings were reciprocated by him.

Once while reviewing the White House tapes, Judge Sirica and I heard a snatch of a telephone conversation between President Nixon and his daughter Julie. Calls made on one of the White House phones were recorded. These and the office conversations I mentioned earlier were on reel-to-reel tapes. Everything recorded during a particular day in the Oval Office, for instance, was on one reel that was then stored under that date. Judge Sirica and I had to run the reels back and forth, spot-checking, to find and listen to the specific meeting or conversation that had been subpoenaed by the special prosecutor and grand jury. It was in that spot-checking process that we caught this bit of conversation between the president and his daughter.

The voice of the White House operator came on, saying, "Mr. President, it's your daughter Julie." I can't remember if President Nixon replied, but immediately we heard a bright voice saying, "Hi, Daddy," and an excited response, "Julie!" I stopped the tape at that point, since obviously this was not the Watergate conversation we were looking for, but the emotions in

that simple, short exchange stayed with me. Here was a wonderfully normal, affectionate father talking with his daughter. His position as President of the United States was irrelevant; they were just family, and by the expressions, tone, and feelings reflected in their voices, a happy and healthy family.

So, if Nixon, Haldeman, and probably most of the Watergate defendants were basically good people, decent husbands and fathers, competent, and in some cases exceptional professionals, what is it that caused or permitted them to go seriously off-track? What protects you or me, in our marriages, family life, and professional and vocational endeavors, from tragically destructive errors or even criminal conduct?

In reflecting on these questions, I have come to a few conclusions about the critical role of what we call conscience. A widely shared understanding of right and wrong underlies laws that govern conduct in society and the ethical standards of the legal profession. We cannot say that there is complete unanimity, but there is consensus on many standards and values. For example, speaking truth is right—perjury and lying are wrong; honoring a trust is right—betraying a trust is wrong; respecting another's property is right—theft is wrong; protecting children is right—abusing children is wrong; fidelity is right—adultery is wrong; and so on. Even though a particular consensus can change, the general acceptance of so many common standards suggests that they derive from a common source. For me, that is confirmed by statements in scripture. I quote two examples: the declaration of Jesus Christ, "I am the true light that lighteth every man that cometh into the world,"[1] and also, "It is given unto you to judge, that ye may know good from evil; and the way to judge is as plain . . . as the daylight is from the dark night. For behold, the Spirit of Christ is given to every man, that he may know good from evil."[2]

Nevertheless, we know by experience that consensus can break down and that the influence of conscience can be diminished. There are forces in play today that would dilute the influence of conscience by defining it more as granting license than as imposing duties. In a recent article in *National Affairs*, Professor Robert P. George quoted 19th-century theologian John Henry Newman on this subject. Cardinal Newman, says George, "had already identified in the 19th century the trend in thought about rights, liberty, and conscience that would become the secular liberal orthodoxy in the late 20th." He quotes Newman as follows:

> Conscience has rights because it has duties; but in this age, with a large portion of the public, it is the very right and freedom of conscience to dispense with conscience. . . . Conscience is a stern monitor, but in this century it has been superseded by a counterfeit, which the eighteen centuries prior to it never heard of. It is the right of self-will.

Professor George continues:

> Conscience as "self-will" is a matter of feeling or emotion, not reason. It is concerned not so much with the identification of what one has a duty to do or not to do, one's feelings or desires to the contrary notwithstanding, but rather, and precisely, with sorting out one's feelings. Conscience as self-will identifies permissions, not obligations. It licenses behaviors by establishing that one does not feel bad about engaging in them. . . . If there is a phrase that sums up the antithesis of Newman's view of conscience as a stern

monitor, it is the imbecilic slogan that will forever stand as a verbal monument to the "me" generation: "If it feels good, do it."[3]

It was the absence of conscience, or at least an inadequate commitment to conscience as "a stern monitor," that permitted Watergate to happen. I am persuaded from listening to hours of White House tapes, and from testimony at the two major Watergate trials, that Richard Nixon and his chief aides did not plan Watergate. By that I mean they did not devise or initiate the illegal eavesdropping attempts, mail intercepts, and other political spying directed at the Democratic National Committee and George McGovern in 1972. Those ideas and plans were primarily the creation of G. Gordon Liddy, an attorney (I regret to say), former FBI agent, and former congressional candidate from New York, who at the time was employed as legal counsel to the Committee to Re-elect the President (also known by the unfortunate acronym "CREEP"). Nevertheless, something in the ethical culture of the administration led Liddy to think he could propose such radically illegal ideas in the first place—and also led the then-attorney general of the United States to somehow think it permissible to listen to Liddy's proposals and eventually approve them.

The attorney general, John Mitchell, was, of course, an attorney (again, I regret to say) and a personal friend of Nixon. He had been a senior partner in the prominent New York firm of Mudge Rose and was soon to be leaving his position as attorney general to assume the role of campaign manager for President Nixon's reelection. Mitchell received Gordon Liddy and others in his office at the Justice Department and heard his proposal for a combination of illegal activities designed to torpedo the Democrats. Judge Sirica later observed: "I have always been amazed that the men around the president tolerated someone like Liddy. I have often thought of Liddy making his bizarre proposals in the meeting with Mitchell. The attorneys general I had known . . . would have locked Liddy up right then and there."[4] But Mitchell did not lock Liddy up or throw him out or fire him; he only objected to Liddy's $1 million price tag for the enterprise, which he had titled "Project Gemstone." Incredibly, Mitchell allowed Liddy to present his scheme twice more, and finally, on the third try, when the price tag had been reduced to $250,000, he gave his consent. It was Liddy's team that was arrested at the Watergate complex in the early hours of June 17, 1972.

As I indicated, to the best of my knowledge, President Nixon had not been aware of any of the foregoing. Within a few days of the arrests at the DNC's Watergate office, however, Nixon's chief aides, H. R. Haldeman and John Erlichman, informed him that the burglars had been financed by his reelection committee (when arrested, they were carrying expensive electronic listening devices and a large quantity of money, mostly in $100 bills). Haldeman and Erlichman proposed a strategy to the president for hiding this campaign committee connection to avoid the obvious political embarrassment and its potential negative effect on the campaign. Their idea was to have Deputy CIA Director Vernon Walters communicate with FBI Director Patrick Gray and request that the FBI's investigation stop trying to track the source of the burglars' funds. It was, they would claim, a matter of national security. Nixon (again, a lawyer, and not only that but a Duke Law graduate, I regret to say) agreed.

Nixon was likely unaware that at that moment he had joined an illegal conspiracy and committed a felony—obstruction of justice. But he had to have known that the proposed action

and his part in authorizing it were dishonest. Thus began the ultimately unsuccessful attempt to hide the identity of those above Liddy responsible for the Watergate break-in and the other elements of Project Gemstone. The attempt to throw off the FBI investigation failed after a couple of weeks because General Walters and Patrick Gray were men of integrity and demanded evidence of the claimed national security interest. There being no such evidence, they allowed the investigation to proceed, and in due course, months later, the higher-ups responsible for Watergate were identified. In the ensuing indictment, Richard Nixon was named an unindicted co-conspirator.

Between August 1972, when he authorized the first step in the Watergate cover-up, to August 1974, when he resigned as president, Richard Nixon had multiple opportunities to call a halt to what was happening. He took none of them. His White House counsel, John Dean (another lawyer, I regret to say), took over day-to-day supervision of the cover-up not long after it began. It is unclear to what extent he kept the president informed, but there came a time in March 1973 when Dean saw it all beginning to unravel and made a full report to Nixon. This report included demands from the jailed members of Gordon Liddy's Watergate break-in team for cash to be paid to their families as they felt they had been promised. If the payments were not made, they threatened, they would talk publicly about what they knew. I recall very clearly listening to the tape recording of this conversation between Nixon and Dean in the Oval Office long before it became public at the cover-up trial. I was shocked; Judge Sirica was shocked to hear the president of the United States not only fail to erupt in anger or outrage but calmly ask, "How much money would it take?"—and then to observe that it would be no trouble to come up with a million dollars; the only challenge would be how to distribute it without it being traced.

Whatever influence conscience may have had before Watergate got underway, it had long since vanished by the first anniversary of the break-in. One can perhaps feel a bit of sympathy for Nixon at the beginning if his thought process was something to the effect that, "My friend John Mitchell did a dumb thing, but I'm not going to throw him to the wolves if we can easily hide his involvement. After all, no one was hurt, nothing of value was taken, and no information of any value was stolen." That may have been on his mind, as well as some anxiety to avoid personal embarrassment for the actions of his subordinates and his reelection committee. After a while, however, it was purely a matter of self-preservation. The point is that putting one's integrity on hold, even in seemingly small matters and for what are usually laudable motives, such as loyalty to one's friends, places one in danger of losing the benefit and protection of conscience altogether. I'm sure some have "gotten away with it," in the sense that they acted dishonestly and/or illegally in business, professional, or political life and have never been made to account (in this life at least), as Nixon was. Perhaps being news media darlings, they benefited from investigations that were as bloodless in their case as they were bloodthirsty in Nixon's. In any case, an eviscerated conscience, or even a numbed conscience, opens the door for Watergates, be they large or small, corporate or personal—disasters that can hurt and destroy both the guilty and the innocent.

I urge all of us to take the matter of conscience to heart. I have mentioned, with regret, the critical role of four lawyers, including Richard Nixon, whose actions were responsible for or who aided and abetted the Watergate scandal. At the time, I began to wonder about my choice of professions. Fortunately I was able to observe at close range individuals who honored the

profession and who were key to resolving the scandal. These included special prosecutor Archibald Cox and his successor, Leon Jaworski; the U.S. attorney for the District of Columbia, Earl Silbert, who pursued and prosecuted the Watergate matter before the first special prosecutor was appointed; and Charles Alan Wright of the University of Texas, who represented Nixon, ably and ethically, in connection with the grand jury subpoena for the White House tapes. Not least was the judge, John J. Sirica, whom I was serving as law clerk. His determination always to do the right thing as best he could discern was and is an inspiration to me. These and others made me proud to be a lawyer. I witnessed what lawyers of skill, competence, and integrity can achieve in a time of national crisis.

May I conclude with a plea for two things that I believe are prerequisites for conscience to have its essential role in society and in our lives, both personal and professional. One is to preserve the religious roots of conscience, and the other is to have a focus outside ourselves—a focus on the contribution we can make to the well-being and happiness of others—on the service that defines a life well-lived.

Conscience endures when populations generally seek to discover and build on moral principles that exist independently, that are not simply one's own invention. Over the generations, religion has served to identify and deepen understanding of fundamental (I would say divinely ordained) moral laws.

For many of the American founders, the connections between religion, individual conscience, and the public morality essential to a free and good society were obvious and undeniable. One prominent historian of the Founding wrote that "[t]he men of 1776 believed that the good state would rise on the rock of private and public morality, [and] that morality was in the case of most men and all states the product of religion . . . ."[5] In his famous farewell address, George Washington urged his fellow citizens to foster religion as a source of civic liberty: "Of all the dispositions and habits which lead to political prosperity, Religion and morality are indispensable supports…."[6] John Adams echoed this sentiment when he argued that "we have no government armed with power capable of contending with human passions unbridled by morality and religion. . . . Our constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."[7] And this was not only the view of political elites. Tocqueville found that ordinary nineteenth century Americans considered religion "necessary for maintaining republican institutions. This opinion does not belong to one class of citizens or to one party, but to the whole nation …."[8] "I stop the first American whom I meet," he said, "and I ask him if he thinks religion is useful for the stability of law and the good order of society; he immediately responds that a civilized society, but above all a free society, cannot subsist without religion."[9]

This broad consensus about the importance of religion in American public life persisted into the twentieth century. Invocations of the importance of religion were commonplace for presidents from Calvin Coolidge[10] to Eisenhower[11] and Reagan.[12] With the ongoing decline in church attendance and religious affiliation, however, I worry that for millions of Americans a vital wellspring of conscience is drying up.[13]

Of course, I am not arguing that religion in general or any faith tradition in particular should have a right to dictate the moral values and obligations on which society is founded, and it is certainly true that there are many deeply moral people who do not consider themselves religious. Nevertheless, the religious voice remains a critical part of the on-going dialogue that establishes society's foundational values and obligations. The debate over the values that will be enshrined in law and that will promote and protect individual conscience is never-ending, and in just societies, all voices must be heard. Secular and religious citizens of goodwill must work together to affirm the highest and best principles in their respective worldviews—virtues such as honesty, civility, generosity, respecting the law, and doing to others as you would have them do to you. These and other virtues nurture the conscience, providing vital guideposts in times of moral crisis.

Finally, I submit that conscience flourishes in a life devoted to service. Service provides a natural barrier against the ills and temptations that flow in the wake of self-interest—the self-interest that is the enemy of conscience. We need a focus outside ourselves and beyond personal ascendancy or pleasure. In this regard, I recently came across some observations made by Charles Murray in 2009 that I think you will find thought provoking. Let me share a part of his lecture.

> To become a source of deep satisfaction, a human activity has to meet some stringent requirements. It has to have been important (we don't get deep satisfaction from trivial things). You have to have put a lot of effort into it (hence the cliché "nothing worth having comes easily"). And you have to have been responsible for the consequences.
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> . . . . If we ask what are the institutions through which human beings achieve deep satisfactions in life, the answer is that there are just four: family, community, vocation, and faith.
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> It is not necessary for any individual to make use of all four institutions, nor do I array them in a hierarchy. I merely assert that these four are all there are. The stuff of life—the elemental events surrounding birth, death, raising children, fulfilling one's personal potential, dealing with adversity, intimate relationships—coping with life as it exists around us in all its richness—occurs within those four institutions.[14]

You and I know that the purpose of life is not to "while away" our lives in pursuit of pleasure before we chemically expire. We are God's great work and glory, and so He has much higher plans for our lives if we are willing. The Savior asked, "what manner of men ought ye to be? Verily I say unto you, even as I am."[15] As lawyers, we have more opportunities to be like Christ than we sometimes realize. Ours is a noble profession with a higher purpose. At our best, we defend the vulnerable, protect God-given rights, promote justice and peace, and counsel against dishonor. I hope that as advocates and mediators we are constantly striving to emulate Jesus Christ, our great Advocate and Mediator.

May your life find real purpose in the good you achieve in your family, community, vocation, and faith. May your voice in support of eternal truths and moral principles be persuasive in establishing a strong, communal conscience in our society. May your own

conscience, enlightened by the gospel of Jesus Christ, grow increasingly firm and refined. And may there never be a Watergate in your personal history.

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[1] Doctrine and Covenants 93:2.
[2] Moroni 7:15–16.
[3] Robert P. George, "Liberty and Conscience," *National Affairs*, Fall 2013, 135–36.
[4] John J. Sirica, *To Set the Record Straight* (New York: W. W. Norton & Co., 1979), 81.
[5] Clinton Rossiter, *Seedtime Of The Republic: The Origin Of The American Tradition Of Political Liberty* 59 (1953).
[6] George Washington, *Farewell Address*, Sept. 17, 1796, *in* George Washington: A Collection 521 (W.B. Allen ed., 1988).
[7] John Adams, *To the Officers of the First Brigade of the Third Division of the Militia of Massachusetts*, October 11, 1798, *in* 9 The Works of John Adams, Second President of the United States 229 (Charles Francis Adams ed., 1854).
[8] 2 Alexis de Tocqueville, Democracy in America 475 (Eduardo Nolla ed. & James T. Schleifer trans., 2010).
[9]1 Alexander de Tocqueville, The Old Regime and the French Revolution 206 (François Furet & Françoise Mélonio eds., Alans S. Kahan trans., 1998).
[10] Calvin Coolidge, *Religion and the Republic*, Foundations of the Republic 149 (1926).
[11] The Public Papers of President Dwight D. Eisenhower, *Remarks Recorded for the "Back-to-God" Program of the American Legion*, February 20, 1955.
[12] The Public Papers of Ronald W. Reagan, Remarks at the Annual Convention of the National Association of Evangelicals in Orlando, Florida, March 8, 1983.
[13] See generally Pew Research Center, *America's Changing Religious Landscape* (May 12, 2015), *available at* http://www.pewforum.org/2015/05/12/americas-changing-religious-landscape/
[14] Charles Murray, "The Happiness of the People," *2009 Irving Kristol Lecture, American Enterprise Institute for Public Policy Research* (Washington, D.C.: The AEI Press, 2009), 8, 10–11.
[15] 3 Nephi 27:27.