Lessons of Watergate

Ronald D. Rotunda
Lessons of Watergate Resurface

at Chapman Symposium 40th Anniversary Event

Forty years ago, strange phrases began creeping into our national vocabulary: *stonewalling*, *deep six*, *limited hangout*, the *Big Enchilada*. The lead players could be very poetic. As John Ehrlichman said of FBI Director L. Patrick Gray, “Let him hang there; let him twist slowly, slowly in the wind.” Or, as John Dean told Nixon, “There’s a cancer on the presidency.” These phrases, and others, like *expletive deleted* and *smoking gun*, fell under the umbrella called *Watergate*.

Since then, other scandals have picked up the “gate” suffix—Monicagate, Billygate, or IranContragate. Wikipedia lists about 100 scandals that adopted the “gate” appellation, including an episode from *The Simpsons*. (1)

We look at Watergate now, to remember. For many people, the incident is vague history. I recall, at the 25th anniversary, a “man-on-the-street” interview asked a young college student, “What do you remember about Watergate?” The answer, “Some President resigned, Johnson or Nixon.” Since then, another 15 years have passed.

We can look down on the student’s ignorance, but it is so easy to forget. A poll released in January 2012, shortly before the 67th anniversary of the liberation of Auschwitz, reveals that 20 percent of young Germans have no idea that Auschwitz was a Nazi death camp. (2) Of course, they may have a reason to forget. In contrast, we think of Watergate as a triumph, not a stain on our memory.

Still, remembering is not enough: we need to know why. Aeschylus, called the Father of Tragedy, advises us, “Time as he grows old teaches many lessons.” What then have we learned from Watergate?

Our lesson should relate to our own moral frailties and fallibility. The people involved in this conspiracy did not decide one sunny day in 1972 to get together and solemnly agree to obstruct justice. They took baby steps, and one day, they crossed a line that they may not have appreciated at the time. Many of them were only a few years older than many third-year law students. As for the more experienced people around them, they also crossed the line. Each looked to the other to rationalize their actions.

We should not be self-righteous, but think, “there but for the grace of God goes I.” We believe that if we would experience their temptations, we would never succumb, but

(1-R): Sen. Howard Baker; Rufus Edmisten (assistant to Sen. Sam Ervin); Sen. Sam Ervin (N.C.); Chief Counsel Sam Dash (whispering to Sen. Ervin); Ronald D. Rotunda, Assistant Majority Counsel (I wore a mustache in those days); David Dorsen, Assistant Majority Counsel.

(L-R): Terry Laxton (Assistant Majority Counsel); Rufus Edmisten (Assistant to Sen. Ervin); Sam Dash (sitting, Chief Counsel); Ron Rotunda (standing, with mustache; Assistant Majority Counsel); Sen. Herman Talmadge (Georgia, a member of the Watergate Committee, sitting to the right of Sam Dash); Sen. Sam Ervin (Chair of Senate Watergate Committee); Jim Hamilton (Assistant Majority Counsel, sitting on table).

During a break in the Watergate hearings, from left to right: Ron Rotunda, Assistant Majority Counsel, talking to John J. Wilson, the lawyer for H.R. Haldeman; & H.R. (“Bob”) Haldeman (President Nixon’s Chief of Staff, sitting).

John W. Dean.

Rosemary Woods, Richard Nixon’s long-serving private secretary, who claimed she had accidentally erased 18 mins 30 seconds of one of the crucial secret recordings of an Oval Office conversation.
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What we learn from Watergate tells us more about ourselves than about our system. It teaches us that only an informed, interested people can ensure that the system works.

... none of us really knows for sure because inside each of us is not only the good Dr. Hyde but also the evil Mr. Jekyll.

Another lesson relates to lawyer civility. There came a time when I hand-delivered a subpoena for the Watergate tapes to one of President Nixon’s lawyers in the White House. We were on opposite sides that day, but we later became friends. The Watergate Special Prosecutor prosecuted John Dean, and sued to prevent the Senate Watergate Committee from granting him immunity. Today, we all sit together as friends. That is one lesson of Watergate that young lawyers should learn: lawyers, practicing professionally, oppose each other, but they should not become personal enemies.

Watergate should also teach us that, with careful diligence, investigators can uncover almost anything. That should cause us to think twice before we do something wrong, for others may find us out. For example, our committee uncovered a document even
though all copies had been destroyed. The memo in question was sent to H.R. Haldeman & Chuck Colson and others. At the end of the memo was the notation: "destroy all copies." We still uncovered it. Haldeman had dictated the memo to a secretary, and she had kept her dictation notebook. We subpoenaed her and her book, and she retyped the memo for us. We showed it to Haldeman and his jaw dropped. As the Good Book says, "Nothing is covered up that is not uncovered. What you have whispered in private places will be shouted from the housetops." Luke 12: 2-3.

Finally, there is another Watergate lesson of far greater significance: the necessity for an informed public. In this 40th anniversary of Watergate, people recall vaguely that the system worked the way the founding fathers had intended. We knew that then. When one President resigned, the next one announced, "Our long national nightmare is over. Our Constitution works." But why did it work?

Certainly, the courts, the Senate Watergate Committee, the Special Prosecutor, and the press were crucial, but none of that would have been sufficient if the people had not supported them. When the Supreme Court unanimously ruled that the President must turn over the Watergate tape recordings, he complied, because the people demanded it. Our judiciary, which Hamilton called the "least dangerous branch," does not have the power of the purse or the power of the sword. It enforces its orders by using U.S. Marshalls, but the President appoints the U.S. Marshalls.

Joseph Stalin once asked, dismissively, "How many divisions does the Pope command?" The answer: the Pope has as many as the Supreme Court—none. And yet the President obeyed the Court. Horace Greeley tells us that another President, Andrew Jackson, when asked about a decision he did not embrace, said, "John Marshall has made his decision; now let him enforce it." (3) However, during Watergate, the people backed the courts.

The people supported gavel-to-gavel television coverage of the Senate Watergate hearings because of their desire to learn for themselves what had happened. Public support was so great that our hearings had better ratings than the soap operas that we pushed off the air! The networks were able to charge their advertisers more because ratings were up.

The House Impeachment Committee announced that it would not go to court to enforce its subpoena for the Watergate tapes because, it said, the Constitution provides that the House has the sole power of impeachment. The President could have ignored its subpoena, but he did not because the people supported the Committee.

When the President fired the Special Prosecutor and abolished his office, the Attorney General resigned. It was public protest that forced the new Attorney General to appoint a new Special Prosecutor. This new Prosecutor, like the prior one, had no statutory tenure. The President could have fired him too, but he did not because the people would not allow it.

The passage of 40 years will prompt many to write "where-are-they-now" stories about the people connected by Watergate. Actually, many of the important players in the Watergate saga were at Chapman University, on January 27, 2012, and they all participated in the symposium sponsored by
the Chapman Law Review to commemorate Watergate and the rule of law:

- John Dean, who was the former counsel to President Nixon;
- Scott Armstrong, the Chief Investigator for the Senate Watergate Committee, who was most responsible for uncovering the existence of the tapes;
- Jill Wine-Banks, the Watergate Special Prosecutor who cross-examined Rosemary Woods, the President’s secretary, about the missing 18 1/2 minutes;
- Alexander Butterfield, who disclosed the existence of the taping system to Scott Armstrong; and
- Arnold Rochvarg, who served on the defense team of Watergate defendant Robert Mardian, and secured a reversal of his conviction.

However, Watergate is not about them; it is about us. It is about the people.

What we learn from Watergate tells us more about ourselves than about our system. It teaches us that only an informed, interested people can ensure that the system works. It is a lesson we can never learn too well.

ENDNOTES
(1) http://en.wikipedia.org/wiki/List_of_scandals_with_%22-gate%22_suffix#Fictional_scandals
(3) Greely may be incorrect. We do know that Jackson wrote a letter to John Coffee that said, “the decision of the Supreme Court has fallen still born, and they find that they cannot coerce Georgia to yield to its mandate.” Coffee commanded troops under General Jackson in the Battle of New Orleans.

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