

The Constitutional Legacy of Watergate

Thursday, August 8, 2024

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[00:00:03.1] Jeffrey Rosen: Today, August 8th, 2024, is the 50th anniversary of Richard Nixon's resignation as President of the United States. Happy Nixon Resignation Day! The resignation came as the House Judiciary Committee voted to recommend President Nixon's impeachment for high crimes and misdemeanors that would have been the first impeachment since that of Andrew Johnson in 1868.

[00:00:28.5] Jeffrey Rosen: Hello, friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center, and welcome to We the People, a weekly show of constitutional debate. The National Constitution Center is a nonpartisan nonprofit chartered by Congress to increase awareness and understanding of the Constitution among the American people. In this episode, we'll discuss the history and constitutional legacy of Watergate, and I am honored to be joined by two of America's leading historians of Watergate and of President Nixon. Garrett Graff is a best-selling historian and Pulitzer Prize finalist, a columnist for the Washington Post. He hosts the award-winning history podcast, *Long Shadow*, and his book, *Watergate, A New History*, was a finalist for the Pulitzer Prize in History. Garrett, it is wonderful to welcome you to We the People.

[00:01:21.5] Garrett Graff: Thank you so much. What a fun topic to talk about today of all days.

[00:01:22.1] Jeffrey Rosen: It is indeed, and Robert Doar is president of the American Enterprise Institute. He's written about Watergate for AEI's blog. He recently hosted a superb symposium at AEI reflecting on the 50th anniversary of Nixon's impeachment, and he is the son of John Doar, the special counsel to the House Judiciary Committee and a key player in the Watergate investigation. Robert, it's an absolute honor to welcome you to We the People.

[00:01:50.6] Robert Doar: Thanks for having me. Glad to be here.

[00:01:52.4] Jeffrey Rosen: Garrett, let's begin at the beginning and set the historical context. In your really wonderful book on Watergate, you say, at its simplest, Watergate is the story of two separate criminal conspiracies, the Nixon world's dirty tricks that led to the burglary on June 17, 1972, and then the subsequent wider cover-up. Take us up to 1972. You say the story begins in 1971 with the Pentagon Papers. What was going on and how did we get to the break-in?

[00:02:22.2] Garrett Graff: Yeah, I think Watergate, as we sort of popularly tell it, is the story of the break-in on June 17, 1972, yada, yada, yada, Woodward, Bernstein, John Dean, the tapes,

Nixon resigned. And what we have now come to understand is that Watergate, I think, is less an event and more a mindset. And that really, Watergate is this umbrella for about a dozen interrelated but distinct scandals and conspiracies that unfold across Nixon's political operation from the campaign in 1968 up through that summer of '74 when he actually resigned. And the question that had sort of always dogged historians and certainly reporters and members of Congress in the 1970s was, well, why didn't Richard Nixon just hang the Watergate burglars out to dry? Why did he engage in the cover-up in the first place? And what we have now come to understand is that the problem by June 17, 1972 is that Nixon's White House was involved in so many crimes, so many conspiracies, and so many layers of corruption and abuses of power and abuses of civil liberties of the American people that he couldn't sort of unravel just this one thread of the burglary without unraveling all of these preceding scandals.

[00:04:04.2] Garrett Graff: And what we now understand, I think, is that Watergate really actually began in the fall of 1968. And I'll tell sort of a quick version of the story 'because it is a big, complex, long story. But in the fall of 1968, you have former Vice President Richard Nixon running against sitting Vice President Hubert Humphrey, and you have the start of the Paris peace talks. Nixon realizes that sort of the end of war in Vietnam is actually going to be bad for him politically. He sends a message through a Washington socialite named Anna Chennault, who contacts the South Vietnamese government and effectively says, if you stall the Paris peace talks, Richard Nixon as president will give you a better deal when he becomes president in January. And it's hard to capture just how enormous and momentous this level of subterfuge is. I mean, here you have the Republican presidential candidate interfering in the government negotiations over the end of the Vietnam War to keep the Vietnam War going basically for his own political gain in the fall of '68. And the final hours, literally the final hours of the '68 campaign. Lyndon Johnson, the president, discovers this and confronts Richard Nixon.

[00:05:39.7] Garrett Graff: Nixon denies it. Johnson doesn't have totally conclusive evidence. The election happens. Nixon wins. And Johnson basically makes the decision that he can't make public this information without undermining the presidency, undermining Nixon as he comes to the office. And so Johnson classifies the whole thing and buries it. It ends up in his presidential library down in Austin. But Richard Nixon knows that Johnson knows. And this secret becomes sort of the Edgar Allen Poe tell tale heart beating away at the center of the Nixon presidency. And when the Pentagon Papers came out in '71, the Pentagon Papers should be one of the greatest days of Richard Nixon's life. There are two million words in the Pentagon Papers and not a single one of them is Richard Nixon. They are totally about the lies and deception and subterfuge of Lyndon Johnson and John F. Kennedy, Richard Nixon's two most mortal political enemies. And Nixon should be thrilled with this, except that he's afraid as the Pentagon Papers come out that this chapter of subterfuge in the '68 campaign around the Paris peace talks will come out.

[00:07:11.4] Garrett Graff: And so in the summer of 1971, a year before the Watergate burglary, Nixon is on the White House tapes ordering the only burglary that he is actually ever recorded ordering, which is not the burglary of the Watergate building, but it's the burglary of the Brookings Institution, which he believes the Brookings Institution, the think tank in Washington, has in its safe a file about this Paris peace talks Chennault affair, and that he wants his burglars to go in, get the file, and escape. And they come up with this incredibly elaborate plot, this idea that

they are going to firebomb the Brookings Institution. And they turn to G. Gordon Liddy and Howard Hunt, and Howard Hunt recruits these Cuban burglars that he knows from Florida when he was involved in the CIA and the Bay of Pigs. And they're going to buy and decorate a used fire truck so that it looks like a DC fire truck equipped with these burglars in DC fire department uniforms. And then after they firebomb the Brookings Institution, this fake fire truck is going to arrive at the scene.

[00:08:36.4] Garrett Graff: The burglars are going to go in, steal back this file, and secure Richard Nixon's political future. Well, the White House, according to G. Gordon Liddy, decides not to pursue this plan in summer and fall of '71, not because anyone along the way says actually, this is one of the most criminal and wild and crazy and stupid ideas you could possibly imagine and shouldn't be anywhere near the White House. But because, as Gordon Liddy says, the White House is too cheap to buy the fire truck. And so what that creates, though, is it brings into the White House this, what we now call the plumbers, this sort of group of dirty tricksters, G. Gordon Liddy, E. Howard Hunt, and others, who go on to be the center of the Watergate burglary conspiracy the following spring, along with a bunch of other dirty tricks along the way. And what we sort of now understand is that the problem that Richard Nixon faced in the hours after the arrest of those burglars at the Watergate in the spring of 1972 is that he couldn't throw those burglars over the side without risking the exposure of this plot around the Pentagon Papers the year before, which would then unravel the conspiracy around the '68 campaign. And that basically, by the summer of '72, the problem for Richard Nixon is there's just too much conspiracy and criminality all around him.

[00:10:12.2] Garrett Graff: And the White House launches into the cover-up in the hours and days after that burglary in the summer on June 17, 1972.

[00:10:27.7] Jeffrey Rosen: Thank you very much for setting the stage in that compelling way. Robert Doar, what would you add to the context of Watergate between '68 and '72? And then take us up, if you will, from that break in on June 17, 1972 up to May 1873 when the Senate Watergate Committee begins its nationally televised hearing. How did the cover-up unfold and what went on during that crucial year?

[00:11:01.1] Robert Doar: Well, my expertise and knowledge is concerning the impeachment inquiry conducted by the House Judiciary Committee and its process, which began late December of '73 and ran to just before the president resigned and resulted in votes for impeachment. The one thing I would add to the context that Garrett provided is that what he described mostly was not discovered later and we've now come to understand. The House Judiciary Committee voted on two articles of impeachment that covered both of the kinds of activities that Garrett described, the cover-up and the abuses of power that were much broader and deeper and bigger and preceded the Watergate break-in. In fact, I would say that understanding was so convincingly described to the House Judiciary Committee members that seven Republicans voted and conservative Democrats from the South voted to impeach the president based on that broader understanding of President Nixon's abuses of power and that's a big issue that should be interesting to people who are concerned about the Constitution, the role of the executive, but it's not something that people didn't really get or maybe the public maybe may have completely understood it, but back then there were two articles.

[00:12:21.7] Robert Doar: One was the Watergate cover-up article which concerned obstruction of justice and one was the abuse of power article which concerned these broader issues. From the time of the break-in, one thing that happened between then and the summer of '73 is that President Nixon was re-elected with 72% of the vote and won 49 states. Another fact that's important to keep in context when you see that by only a year and a half or by the summer of '74, he was discredited by a bipartisan Congress and resigned facing certain impeachment and removal from office. Remarkable overturning of a popular election. Really, in some respects quite an achievement in that you could portray these complicated events and activities with limited knowledge. The tapes had not all been exposed, but through investigations and prosecution, court proceedings and Senate hearings and newspaper article efforts, this all came out sort of drip by drip. But the period from the Watergate break-in until the Senate Select Committee began its hearings were characterized most in my memory and my knowledge of it by the reporting of Woodward and Bernstein in the Washington Post.

[00:13:44.9] Robert Doar: They helped, they kept the issue alive. They exposed some things that raised enough attention to it that led to the Senate deciding to conduct the Senate hearings in the summer of '73.

[00:13:53.8] Jeffrey Rosen: Garrett, we're now at the Nixon impeachment and help us understand how that remarkable bipartisan consensus that Robert Doar just described emerged. Tell us about the crucial moments including the appointment of the special prosecutor Archibald Cox and then the crucial appointment of John Doar on behalf of the House Judiciary Committee. Tell us the story of how we got to the adoption of those impeachment articles.

[00:14:22.6] Garrett Graff: Yeah, I think one of the things that's important to understand and that it's actually hard for modern-day audiences to understand is how different the national political environment was in the early 1970s. The Watergate, as we've already talked about, is very tightly interlinked with the Pentagon Papers and with Vietnam and the lies leading up to Vietnam. It was a real rupture in American society and civic life in terms of the collapse and decline in faith in our institutions, our government, in the presidency. And a big part of that early stage of Watergate was people not understanding, not being able to really reckon with the possibility that a president would lie to the American people. And there were even Democrats saying in '72 and early '73, look, Richard Nixon says he's not involved in Watergate, that he's the president. If he says he's not involved, he's not involved. And as Robert sort of began to talk about, what you began to see was this sort of drip, drip, drip of additional information and follow-up newspaper articles and eventually in January '73, the trial of the Watergate burglars in which James McCord, one of the sort of members of the burglary conspiracy said, wrote a letter to the judge finally where he said, basically.

[00:16:20.9] Garrett Graff: There's a cover-up afoot here and people have committed perjury in this trial and that's really the moment that sort of blows open this case. But it was, as Robert said, it was the journalism of Woodward and Bernstein and The Washington Post as part of a constellation of about a half dozen reporters including Walter Rugaber and Seymour Hersh of the New York Times and Jack Nelson and Ron Ostrow of the Los Angeles Times who keep this story alive through the fall of '72 and the spring of '73 until basically Congress gets interested

and gets involved. And one of the things that really distinguishes the congressional investigation and the congressional interest, what you see is members of both parties participating in the impeachment inquiry mostly in good faith and that many of them start off not believing that Richard Nixon is involved, not believing that there is a cover-up here that stretches into the White House itself but as more evidence accumulates, they come to see it.

[00:17:43.3] Garrett Graff: Many people actually forget that sort of one of the most famous quotes out of the Watergate story, the Howard Baker, the Republican senator's quote of, what did the president know and when did he know it, was actually originally offered in that context in defense of Richard Nixon, sort of the defending the idea Richard Nixon did not know about the Watergate burglary in advance, which we still think today true that the burglary was not a premeditated act ordered by Richard Nixon himself and that what you saw was sort of this evolution by that congressional committee pretty reluctantly actually at a lot of times to continue advancing the Senate investigation in the summer of '73 at Sam Ervin's committee and then as the Watergate tapes become public in those hearings, the interest from the special counsel Archibald Cox sort of launches this court showdown that proceeds through the fall of '73, culminating of course in the famous Saturday Night Massacre where Richard Nixon orders the firing of the special counsel and his attorney general and deputy attorney general both resign.

[00:19:01.0] Garrett Graff: Then the number three at the Justice Department, Robert Bork agrees to become Acting Attorney General and fire the special counsel, Archibald Cox. And that it is sort of actions like that, that among that sort of most famously, but that among many other smaller moments as well that begin to really sort of convince Congress that there is in fact a cover up here. That the president is actively trying to hide information from them. And that really launches this new chapter that falls sort of the end of '73 and beginning of '74 into the House Judiciary Committee and a formal impeachment inquiry.

[00:19:45.5] Jeffrey Rosen: Robert, your father John Doar, was Special Counsel to the impeachment inquiry. He played a heroic role and you had a front row seat, as you say, as your father led the impeachment inquiry. You have a wonderful piece about Five Lessons From the Nixon Impeachment that you got from that front row seat. First, tell us what it was like to literally be sitting at the hearings, watching your father play this extraordinary role, and then tell the story and what can we learn from it?

[00:20:16.4] Robert Doar: Well, I was 12 years old and well, I might have been a precocious 12-year-old. I wasn't really in the front row seat every day, I was going to school in New York. But, these previous activities, the Senate inquiry, the special prosecutors investigation, and journalism, led to enough there to make the leaders of the House of Representatives decide that this enormous responsibility of impeachment. Remember, we've had a few impeachments since then. They haven't gone so well; they've been kind of disasters. But at the time that this impeachment was being considered, we hadn't had one for a hundred years, and that had been a disaster. So this was a very rare and unusual thing. And the first decision this Congress had to make, the House of Representative, was which committee should get this responsibility? And instead of setting up a special committee, they gave it to the House Judiciary Committee and just took their chances on a very new and untested chairman, Peter Rodino. And they said, Well, let's do it in the, where it should go in the normal course of a congressional business. 38 members,

more Democrats than Republicans, for sure, but freshmen and old people that had been around for a long time, Barbara Jordan, Charlie Rangel, a lot of people that became famous later.

[00:21:38.0] Robert Doar: And they said, it's your responsibility, you do it. And then Chairman Rodino decided to do it in a very careful and bipartisan, and not in the beginning, judgmental way. And he was given the leeway to do that by the Democratic leadership and by his Democratic members on his committee mostly. And of course, the Republican members appreciated it and thought that was, if we're gonna do this, we should do it in a serious lawyer-like way. And they picked a Republican lawyer, who had been working in New York, but had been working in the Justice Department in the '60s in the Civil Rights Division, my Dad, to come down. My dad had a reputation that was very strong for integrity, and he certainly was a Republican. And Chairman Rodino said, I want the special counsel to be the council to the whole committee. I'm not gonna divide this into a minority staff and a majority staff, that Republicans cooperated in that. And then they decided that in order to get the evidence in front of the members, they had to do it in a way that was very slow and judicious and plotting, but didn't tilt, didn't sort of go at it in a prosecutorial way, but more as an inquiry. They created these statements of information, which were step-by-step accounting of activities in the Nixon White House on a whole range of events that each were well documented and each were presented to the full committee.

[00:23:20.1] Robert Doar: Think of this now, they met, I think three times a week for six to eight weeks in executive session. And that's all they did. These 38 members listened to this evidence presented to them in a way that couldn't be said to get them headlines every day in the newspaper, or they weren't, they tried to remain leak proof. They weren't allowed to divulge information. They sort of went into a process that was very unlike the normal way in which Congressional Committee inquiries take place. And then as that evidence was brought before them in that way. And the Republican members, Caldwell Butler, one of the most conservative members of Congress, Hamilton Fish, longstanding Republican stalwart, Larry Hogan, the father of the current governor of Maryland, Bill Cohen, Harold Froehlich from Wisconsin, these are all conservatives plus Southern Democrats. Walter Flowers District voted overwhelmingly for Nixon. Walter Flowers was a Democrat from Alabama, Ray Thornton from Arkansas. These were places where Nixon was extremely popular. They began to say, Well, that may be true, but this evidence, these facts block by block. And this is a very key ingredient that Garrett, I think brings out in his book, but really was brought out first by the Judiciary Committee. It was not a smoking gun.

[00:24:47.0] Robert Doar: There are smoke guns, there are a lot of them. The President really shouldn't be impeached for a single action on a March day in 1972. He should be impeached for a pattern or practice over a long period of time, of repeated abuses of power and violations of his oath of office. And it's that cumulative pounding away of fact after fact. Now, I should say there were some things they looked into, which some liberal Democrats wanted them to impeach the President on but they rejected. His tax returns, not worthy of impeachment, concealing the bombing of Cambodia, not worthy of impeachment, issues concerning impoundment, not worthy of impeachment, but these two obstruction of justice concerning a valid investigation into the Watergate inquiry. That was very clear. If you just looked at the evidence and abuse of power in this whole array of activities that preceded the Watergate Break-in, those were serious. Those

were things that raised the level of impeachable conduct and high crimes and misdemeanors. And one more thing, they also, I think by their actions, I don't know that every one of them in their own way would say it this way, but they made it clear that they were impeaching the president for presidential conduct, for abusing the power of the President, violating his oath of office to take care, to execute the laws faithfully.

[00:26:20.2] Robert Doar: Those are things only a president can do and aren't necessarily covered by the criminal code. And so the idea that you take, you need to find an actual violation of the criminal code to impeach the president, they would say that's too small. We need something bigger, high crimes and misdemeanors speaks to violating your appropriate role as the President of the United States. So, that's what they did. And the other shining moment besides the, I always like to think of those evidentiary hearings as being quite remarkable 'cause they're so unusual and brave, and they took some flack for the amount of time they took. But the debates were also quite remarkable. They then, and this was before C-SPAN, and they had televised the Senate inquiries and they had been high drama, but a little bit of a circus. And then the Judiciary Committee debates were much more formal. Each member was given 15 minutes to make a statement, and then they had several days of debates on each article, and there was back and forth, and there were Republicans who were adamantly opposed to impeaching the President, and they were given their time to engage in a debate. And then the votes came. And then, and around that time, the court ruled, and this is what I also think is quite remarkable, the court ruled and the tapes that had been withheld were released.

[00:27:47.3] Robert Doar: The House Judiciary Committee's summary of information and case against the President on the Watergate matter said that he was involved in the coverup and participated in directing the CIA to tell the FBI, that this was something that they should stay out of, that Judiciary Committee's evidence. And the members came to believe based on the evidence that Nixon was involved from day one. The special prosecutor's attitude about it was, Well, you might not be able to get that, but on March 21st he's clearly involved. Well, when the tapes came out, the key tape was the June 17th tape, which confirmed exactly what the Judiciary Committee's findings had been without having the actual tape to rely on. And I think that's a kind of remarkable marshaling of the evidence and putting the evidence through so that this jury, the 38 members of the Judiciary Committee could come to it. I should say one thing about Dad, you know, Dad's theory of being a good lawyer was if you try a case and you do your best, and when you win the case and you go ask the jury afterwards, Boy, that lawyer must have been really good, he persuaded you to come in for him, the jury should say, Oh, no, no, the lawyer wasn't that great. The facts were so clear.

[00:29:11.4] Robert Doar: I didn't really, the lawyer wasn't, no, no, this wasn't about lawyering. This was about the facts. And I think that's what happened in part with not only Dad, but with the entire legal staff of the impeachment inquiry staff that he had put together. They had put a case that was so strong and so solid that the facts stood for themselves and lawyering or what's that? That song from the Broadway show, all that jazz, there was no jazz. It was just the facts.

[00:29:42.5] Jeffrey Rosen: Wow, what a riveting account you just gave. And it's so striking to hear you describe a process that was truly deliberative. And as you say, it was so important that the committee allowed the President's Council to have a role in the proceedings that it was

behind closed doors, and that your Dad and the members decided to look for a whole pattern and practice and to take out the charges that didn't have bipartisan support. And you described the remarkable battle over the tapes. And Garrett, I wanna ask you about that. First of all, in your book, you described the incredible decision to put in the taping system to begin with, and you say it was 'cause Nixon wanted to write his memoirs and was to give himself a fair shake in history, one of the most catastrophic decisions by a president ever. But then describe how the special counsel sought the tapes. The president resisted, it went up to the Supreme Court, they unanimously decided, tell us on what grounds, and the president considers defying the subpoena but then complies, tell us the constitutional story of the battle over the tapes.

[00:30:51.8] Garrett Graff: Yeah, part of what I think is the shame of Richard Nixon is that he, by any other measure, is one of the most consequential leaders of the 20th century. That this is a man who was on five presidential tickets between the 1952 and 1972, which is a record tied only by FDR himself, as a young congressman, Richard Nixon helps fuel the red scare and give life to sort of the era we now know as McCarthyism, in the presidency he shaped and escalated and eventually wound down the Vietnam War. He signed the Clean Air Act, created the EPA, created OSHA, transformed the post office into a quasi-private government enterprise, hiked Social Security payments, declared the War on Cancer, signed Title IX, transformed the military by ending the draft, and helped push forward civil rights. He brought more than a thousand women into previously male middle management roles in the US government, and brought the first female military aids to the White House. He averted a larger war in the Middle East amid the Yom Kippur War. He brought detente with the Soviet Union, reopened diplomatic relations with China. He's the first president to visit a communist country. He's the first president to visit Moscow. He's the first president to visit China. And all of that ends up getting subsumed into sort of this one word that we now define Richard Nixon with, the Watergate scandal.

[00:32:43.3] Garrett Graff: And Nixon comes to the presidency and understands that the taping system is a terrible idea. He inherits the taping system that Lyndon Johnson had. John F. Kennedy, of course, had a taping system in his White House as well, which is how we have such amazing records of what took place during the Cuban Missile Crisis and the debates in the cabinet room. Richard Nixon had all of that infrastructure torn out as he came into the White House in '69. But then as he begins to rack up this incredible record of achievement as president, Richard Nixon, again, sort of the paranoia and conspiracy that drives him in his mind begins to get concerned he's not going to get credit for his great presidency. And that there are these people, his advisors like Henry Kissinger, specifically Henry Kissinger, who are sort of saying one thing in the Oval Office and then saying something else at the cocktail parties in the evening in Georgetown. And that basically Henry Kissinger is out there taking credit for all of Richard Nixon's successes and laying the blame for all of Richard Nixon's failures at the feet of Richard Nixon.

[00:34:12.0] Garrett Graff: So he wants a taping system that is going to capture an accurate record of his presidency so that both he can write his own memoirs later, but that he can also catch these advisors in their lies about what they really told him behind the closed doors of the Oval Office. So he secretly installs this taping system with one important difference. Lyndon Johnson could turn his taping system on and off. Richard Nixon is sort of a klutz, and they don't, he doesn't actually think he sort of can fumble his way through turning this system on and off.

The aides who are working with him on it are like, don't worry Mr. President, we'll just set up a voice activated recording system that will always be running and you don't need to worry about it at all. And to me, there's sort of this great question of if Richard Nixon had been slightly more technologically adept, would he have retired as a successful two-term president in January, 1977 without ever facing sort of the ignominy of his, the end of his resignation in the summer of '74. So this taping system, as we've sort of talked about, is secret even to his top aides. Henry Kissinger has no idea in Miranda warning terms, that anything he says in the Oval Office can and will be used against him in Richard Nixon's future memoirs.

[00:36:04.7] Garrett Graff: And this taping system became public in those Ervin committee hearings in the summer of '73 and touched off this incredible battle over the tapes. Again, going back to the President's Council being involved, the President's Council was trying to find ways to cooperate with the investigation as it unfolds. So one of the things that they turn over to the special counsel in the spring of '73 is the president's so-called White House Daily Diaries, which are the sort of daily schedules that list what meetings take place, who enters the Oval Office at what time, who leaves the Oval Office at what time, who Richard Nixon telephones, who calls the president, and so on and so forth. And so the special counsel in the summer of '73, hears about this taping system and then has this incredible wealth of a roadmap to every meeting that has taken place in the Nixon White House. And so he's able to sort of go back through these Presidential daily diaries, look for the most interesting looking meetings that might sort of bear fruit on what, if any, coverup was taking place, and they write these subpoenas for these specific meetings based on the White House Daily Diaries.

[00:37:45.0] Garrett Graff: And this sort of whole center of this becomes battle over these tapes that ends up going all the way up to the Supreme Court and results in that 9-0 decision in the summer of 1974 in *Nixon v. US* holds that the president has to comply with basically the judicial process. In this 9-0 decision that the Supreme Court says the president is not above the law and he has to turn over these tapes about these specific meetings. And as Robert says, that sort of kicks off this final moment as everyone is confronted with the sort of inescapable evidence that Richard Nixon was involved in the coverup from the earliest moments.

[00:38:40.7] Jeffrey Rosen: Thank you so much for telling that incredible story. Robert, reflect, if you will, on the constitutional legacy of Watergate. The Supreme Court did unanimously reject the statement by President Nixon's lawyers, that when the president does it, that means it's not illegal. It rejected the idea that Article 2 vests the president with unreviewable authority to oversee the executive branch and accepts the constitutionality of the special prosecutor. What does that ruling say about where we are today, and broadly, what can we learn from the constitutional legacy of Watergate?

[00:38:51.3] Robert Doar: So, there's two contexts in which to evaluate that, and I'm not a lawyer and I'm not a constitutional expert, but I would say that you first have to look at the court's decision in *US v. Nixon*, and note that while they ordered the release of the tapes, they did acknowledge that the president had executive privilege, and that there needed to be great effort made to protect the president from illegitimate or inappropriate intrusions on his ability to meet with his staff and discuss difficult issues. But that exception could be made to that executive privilege when there were criminal proceedings going on of this kind.

[00:38:58.9] Robert Doar: Now, having said that, I've been thinking about this a lot in the context of Justice Roberts' recent opinion on immunity, and I think that's been a little bit over-interpreted, or the interpretation of that's been a little bit exaggerated. I don't think Justice Roberts said that the president is above the law. I think he said that there is a legitimate place for protections for the president against illegitimate efforts to undermine their authority in some areas and their decision-making process. And I should say that the Judiciary Committee felt the same way, unanimously. They took a long time to get to the point where they issued a subpoena, and then when they did, it was by an overwhelming majority vote. The Judiciary Committee rejected, oh they approved, but not by a bipartisan vote, the impeachment article that impeached the president for failing to turn over the tapes.

[00:41:14.1] Robert Doar: And they always treated the president and his counsel with a lot of respect and understanding that as the head of the co-equal branch of government, they deserve that. And then the last thing, when you ask about reflecting on the Constitutional, is that Chief Justice Roberts, in his decision in the impunity case, never mentions impeachment. But it's always there, it seems to me. He's always saying policing presidential misconduct needs to be very carefully monitored when it's being done by US attorneys' offices and criminal prosecutors in the legal framework. But there's always impeachment. The Congress has this authority to investigate and to pursue presidential misconduct. And when done correctly, where the evidence is persuasive and a bipartisan vote can be achieved, the president can be held accountable. And to me, that's the most interesting lesson of the impeachment proceedings in '74, was that in order to be successful, the process needs to earn the support of the party that the president comes from. And to think that you can go through it and not do that, especially knowing that in order to convict, you need two-thirds in the Senate, is just kind of a waste of time.

[00:42:50.5] Robert Doar: And if you want to do it, you've got to do it always in your mind. I have to persuade the other party, the President's party people, to go along as well. I guess that's what I'd say, but I need to think about it some more. But it seems to me that absent an effort to win over the other side, impeachment is not ever gonna be successful.

[00:43:15.9] Jeffrey Rosen: In order to be successful, the process needs the support of the party that the president comes from. That's a great way of putting your conclusion that you really do need bipartisan support to have successful impeachments. And that's exactly what the Nixon impeachment had. Well, it's time for closing thoughts in this great discussion. Garrett, do you believe that US v. Trump is consistent with US v. Nixon? Would it be possible for a special prosecutor to get the Nixon tapes today under US v. Trump? Would we even have a special prosecutor? And then reflect, if you will, in your wonderful distilling way about what the constitutional and historical legacy of Watergate is.

[00:43:55.9] Garrett Graff: Yeah. I am not a lawyer. I'm not a legal scholar. I'm a historian. So I will sort of only say, without offering a deep legal analysis, that I saw the Trump immunity decision as historically inconsistent with the view reached by the Supreme Court and the other institutions across the Watergate story. But to pick up on the point that Robert was just making, to me, there's actually this sort of wonderful story about the Constitution at the heart of the Watergate story. Because to me, Watergate is not actually a story about Nixon's crimes and

criminality and corruption at the center of the American political system. It's the story of how Washington worked to bring a corrupt president to justice. And that what you see in Watergate is this remarkable, delicate ballet of the checks and balances that our founders have written into the Constitution. That every institution across Washington, inside and outside of government, had a role to play in bringing Richard Nixon to justice.

[00:45:24.9] Garrett Graff: That this was a combined effort by the media, protected, of course, by the First Amendment. That the Justice Department, the FBI, the House, the Senate, the district courts, the appeals court, the Supreme Court, all had distinct roles to play. And by playing them all and doing their job and fulfilling their roles as envisioned by the Constitution, they were able to force Richard Nixon from office. And I think to elaborate a little bit on Robert's, I think, point about how impeachment needs the members of the president's own party. To me, what is incredible about that Watergate story and the Senate committee and the House committee was that what you saw were members of the president's own party participating in the impeachment inquiry, in the investigation of the Nixon presidency, as members of Congress first, understanding that as members of a co-equal branch of government, the legislative branch has a critical role to play in preventing and holding to account abuses of power by the executive branch. And so, yes, I think, as Robert said, it's important that impeachment include members of the president's own party. But I think the sort of important insight in Watergate is that the members of the president's own party participated in the process as members of Congress first and as political party members second.

[00:47:11.8] Garrett Graff: That to me is, I think, the lesson for sort of how checks and balances are supposed to work and how the American system sort of works in an ideal circumstance.

[00:47:22.4] Jeffrey Rosen: Wonderful. Robert, the last word in this great discussion is to you. Please sum up for We the People listeners, if you will, what you believe the historical and constitutional lessons of Watergate are.

[00:47:35.0] Robert Doar: Well, I agree with Garrett that there's a kind of tragedy of Richard Nixon going on here. He did many great things and he was a fascinating and remarkable participant in the politics of America for over 50 years. And But it goes to show you that you can have all of that and if you abuse your powers and you violate your oath and you commit crimes that meet the standard of impeachment, the system will hold you accountable when the system is working correctly and when good people of good faith and good judgment who put their respect and honor to the country above their political fortunes apply themselves, they will hold you accountable or they can, or at least they did. And my general judgment of these sorts of things is if it happened once, it can happen again and we should hold out that faith and hope. And so that's what I think. I do also think that there needs to be an understanding about the pattern of practice business which Garrett started out with. This was about more than just one break-in and one decision in June of 1972 to have someone cover up something.

[00:48:56.6] Robert Doar: President Nixon was found wanting for a whole array of activities that all together added up to sufficient evidence to justify this really awesome thing to overturn a presidential election. We are a democracy. Elections, as President Obama said, should have

consequences. And one of them is that the person should serve out his term unless it can be shown that he's done such serious harm that he's worthy of impeachment. And I think we need to be conscious of that and that trivializing impeachment, trivializing efforts to get the president, that doesn't help. It's got to be serious. The only other thing I would say, Jeffrey, and I think you may have a separate show on it, is the history of the special prosecutor because that is a complicated legal issue. My Dad was never really comfortable with, for certainly he didn't support impeaching the president because he fired Archibald Cox. And the special prosecutor is an employee of the executive branch. And so there's some issues there that lots of lawyers have debated over. And I'm not sure that the special prosecutors that have succeeded Archibald Cox and Leon Jaworski, who I think we're really quite remarkable men, went about their responsibilities with the same prudence and wisdom and good judgment that those two gentlemen did.

[00:50:25.5] Jeffrey Rosen: Well, thank you very much for the homework assignment. We will have a follow-up show on the history of the special prosecutor. And most of all, thank you so much, Garrett Graff and Robert Doar, for a deep, illuminating, and ultimately inspiring account of a time when the constitutional system held the president accountable because the system was working correctly. Garrett Graff, Robert Doar, thank you so much.

[00:50:52.3] Robert Doar: Thank you both very much. I enjoyed this.

[00:50:54.7] Garrett Graff: Yeah, this was great.

[00:50:58.9] Jeffrey Rosen: Today's episode was produced by Lana Ulrich, Samson Mostashari, and Bill Pollock. It was engineered by Bill Pollock. Research was provided by Samson Mostashari, Cooper Smith, and Yara Daraiseh. Dear We the People friends, let's remember on President Nixon's resignation day, his remarkable speech the following day, August 9th, where he quoted Theodore Roosevelt and ended with the following wise words. Always give your best. Never get discouraged. Never be petty. Always remember others may hate you, but those who hate you don't win unless you hate them. And then you destroy yourself. Wise words indeed.

[00:51:40.1] Jeffrey Rosen: Please recommend the show to friends, colleagues, or anyone anywhere who's eager for a weekly dose of Nixon impersonations and constitutional debate. Sign up for the newsletter at constitutioncenter.org/connect. And always remember that the National Constitution Center is a private nonprofit. We rely on the passion, generosity, and devotion to constitutional impersonations of all perspectives. And that means people who are inspired by the nonpartisan mission and want to support it. Do exactly that by becoming a member at constitutioncenter.org/membership, or give a donation of any amount to support our work, including the podcast at constitutioncenter.org/donate. On behalf of the National Constitution Center, I'm Jeffrey Rosen.