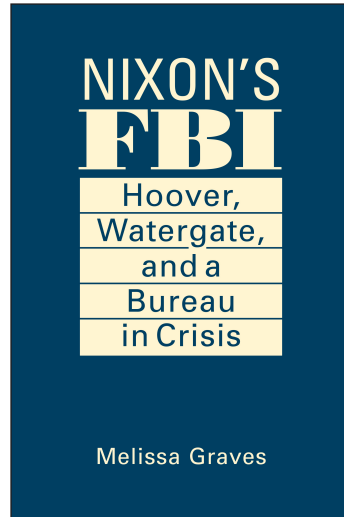


EXCERPTED FROM

Nixon's FBI:
Hoover, Watergate,
and a Bureau in Crisis

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ISBN: 978-1-62637-917-6 hc



LYNNE RIENNER PUBLISHERS

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Boulder, CO 80301 USA
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fax 303.444.0824

This excerpt was downloaded from the
Lynne Rienner Publishers website
www.rienner.com

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1

The FBI and the US Presidency

FBI Special Agent Angelo Lano awoke to the sound of the telephone on the rainy morning of Saturday, June 17, 1972. His supervisor, Ernie Belter, was on the other end, ordering him into the office immediately. The interruption would require no more than a couple hours' attention, he assured Lano. The FBI had just learned from the DC Metropolitan Police Department about a burglary that had taken place overnight in the Democratic National Committee (DNC) headquarters, located at the Watergate office complex. Belter wanted Lano to determine what had happened and report back to him.

As members of the FBI's Criminal 2 (C-2) Squad, Lano and his fellow agents received the odds and ends of the criminal world in Washington, DC, handling "miscellaneous" crimes, including theft of interstate property. Responding to a midnight burglary inside the DNC headquarters was simply par for the course.

When Lano arrived at the police station around 9 a.m., an officer led him to a holding cell, where he found five burglars sequestered and silent. They had been in police custody since 2:30 a.m., carried no identification, and refused to say anything beyond repeating the aliases they had provided to the police. Lano inspected a duffle bag recovered at the site of the burglary. Inside, he found fifty rolls of 35-mm film, two expensive cameras, and some hard items wrapped carefully in tissue paper and buried at the bottom. Lano peeled away the paper to uncover listening devices. By all appearances, it seemed they

had an interception-of-communication case on their hands, a surveillance job gone wrong. The FBI quickly identified the devices as wire-tapping equipment.

At the time of their arrest, two of the burglars possessed keys to the Watergate Hotel. By midday, police had obtained search warrants for their rooms. Lano accompanied the police to the hotel. He entered one of the rooms to find the door to the outside balcony open, the curtains fluttering in the wind. The bed was covered with wallets, dollar bills, the burglars' identification cards, and an antenna, all meticulously arranged. There were a couple of address books, filled with contacts. Two agents searching a dresser found an envelope addressed to a country club, with a return address of "E. Howard Hunt."

The information found at the hotel, along with the police's fingerprinting of the five burglars, allowed Lano and the police to identify the detainees. They discovered that the Central Intelligence Agency (CIA) had fingerprint records for four of them. One of the burglars, James McCord, was a former FBI agent. E. Howard Hunt turned out to have been a longtime CIA officer who oversaw the agency's botched Bay of Pigs operation into Cuba in 1961. Lano began to surmise that he had stumbled into a bungled CIA operation. One detail, however, caught his attention. During the background investigation into Hunt, the FBI discovered that he had an office in the White House. A couple of phone calls confirmed that Hunt worked as a consultant for Charles Colson, special counsel to President Richard Nixon. What began as a routine, albeit strange, burglary morphed quickly into a scandal at the highest echelons of the federal government and the White House. By the time Lano made it home that evening around midnight, it was clear that his inquiry into the burglary would last far longer than the "couple hours" his supervisor originally promised. Two years later, after thousands of hours of FBI investigation, the appointment of two special prosecutors, a Supreme Court decision, and the release to the public of his taped White House Oval Office conversations, Nixon resigned the office of the presidency in disgrace amid impeachment proceedings resulting from his cover-up of the Watergate break-in.

The FBI and the Executive Branch Under Nixon

Long before Nixon's aspiration to become president, he hoped to become an FBI special agent. Freshly graduated from Duke University Law School in 1937, Richard Milhous Nixon submitted an application

for employment to the Bureau.¹ Months later, after he had passed a rigorous background check and physical examination, the Bureau rejected his application without explanation. Nixon shifted his plans and began his career as an attorney in California, after which he transitioned into government work as a congressman. In 1954, while serving as Dwight Eisenhower's vice president, Nixon asked his good friend and FBI Director J. Edgar Hoover why his application to the Bureau had been rejected all those years ago. After a bit of digging, Hoover discovered that he had actually selected Nixon as a candidate for special agent.² His candidacy was rejected by Hoover's second-in-command at the time, Associate Director Clyde Tolson, who became impatient with the young applicant after he tried to delay entry into the Bureau in order to study for the California bar exam.³ Nixon might well have become an FBI agent but for an apparent paperwork mishap.

Exactly what did the FBI look like under Richard Nixon? His affinity for the Bureau was obvious during the early days of his presidency; he had a longtime friendship with Hoover, and he trusted that the FBI would direct its investigations in his favor. Nixon, the president most often associated with "law and order," also had a dysfunctional relationship with the nation's leading federal law enforcement agency. He demanded that the Bureau enforce law and order in accordance with Americans' constitutional rights; yet he sometimes waylaid those rights, requesting the investigation and prosecution of political dissidents at all costs. In examining Nixon's demands upon the Bureau, I delve into Hoover's final days, his immediate successor's tenure, and the Bureau's involvement in Watergate.

Watergate literature is dominated by Nixon biographies as well as the media's role in exposing Nixon's illegal doings, with much focus on *Washington Post* reporters Carl Bernstein and Bob Woodward. These histories relegate the FBI's involvement to a tangential plot point in a narrative that revolves around the president and the media. Though popular myth has it that Woodward and Bernstein uncovered the breadcrumbs of Watergate, the real work happened within the Bureau. At the time of the Watergate investigation, the FBI's top leaders were awash with ambition. Hoover's successor, L. Patrick Gray, desperately wanted his term as acting director to lead to his permanent installment as director of the Bureau. Acting Associate Director Mark Felt, Gray's second-in-command, was not only bitter about being passed over as director but vindictive as well, sitting on leads and reprimanding his agents for displaying too much tenacity, for fear of making Gray appear too competent. Serving as the infamous source "Deep Throat," he leaked critical

information produced by the Bureau agents working under him to the *Washington Post*. His indiscretions continually jeopardized the Watergate investigation.

The Bureau's strength during Watergate resided in the agents of the C-2 Squad. Had they not carried out the day-to-day work of their investigation, the Bureau would never have unraveled Watergate. Equally important was the leadership displayed by a single agent, namely, Lano. As head of the Watergate investigation, Lano insisted repeatedly on getting to the bottom of things, interviewing witnesses at all costs. At multiple points in the investigation, Bureau leadership became greatly irritated with Lano or threatened to fire him for insisting that agents follow leads, wherever they went. What the Bureau leadership lacked in its upper echelons the C-2 Squad more than made up for. Of that group, no one evinced more determination than Lano. Had a different agent led the investigation, one who submitted indiscriminately to the Bureau's administrative demands and turned a blind eye to its foibles, perhaps Watergate would have ended differently. Looking at the work of agents during the Watergate investigation provides a bottom-up examination of the Bureau and illustrates the extent to which the organization is much more than its upper leadership. The daily work of the FBI is carried out by special agents, and their relationship to FBI Headquarters is often-times puzzling. Sure, FBI Headquarters determines the priorities of its organization—which cases will be prosecuted and where to allocate resources. Still, these priorities remain wholly dependent upon the determination and prowess of the agents who conduct the work of the investigation. The relationship between FBI Headquarters and its special agents is symbiotic; neither exists without the other. FBI directors are prominent in both the public sphere as well as Bureau and presidential archival records. To tell a story based solely on the actions of directors, however, is to provide a wholly incomplete picture of the Bureau. To understand the Bureau, one must look at the whole Bureau, top to bottom. Such examination is crucial when attempting to understand the Bureau during Nixon's presidency, when special agents' persistence juxtaposed acutely with the Bureau's timid leadership.

For nearly half a century, Hoover captained the Bureau, serving under eight presidents in a directorship that had become legendary even before his death. Hoover wanted the FBI to be the world's elite law enforcement agency, and he stretched the legal limits of domestic intelligence in his effort to make it so. Over the course of his tenure, Congress and the American public alike became uncomfortable with the immense power that he wielded. Before Hoover's death, Congress took

legislative action to ensure that no subsequent director would lead the Bureau for such a long time. In doing so, Congress failed to realize the extent to which the balance between the FBI and the executive branch, between the Bureau director and the president of the United States, had actually reflected the balance of power between Hoover and the presidents under whom he served. A political behemoth, Hoover had held his own against every president, Nixon included.

Most modern histories of Hoover look at his many indiscretions. Indeed, he wielded his authority profusely. This book is not an apologetic for Hoover's behavior. He changed the nature of law enforcement in the United States, building the FBI into a powerful force of G-men who, at times, grossly abused their powers of investigation, trampling US citizens' constitutional rights in the name of national security. Historians, however, have overlooked how Hoover's absence, following his death, profoundly affected the Bureau. That his death coincided with Watergate makes the period of the Bureau under Nixon crucial to understanding the relationship of an FBI director to the president.

At a time when the nation was beset with daily bombings and hijackings, Nixon worried that the radicals behind these operations posed a threat to his presidency. Though the president wished to use the FBI to pursue subversives, Hoover, in his waning days, refused. In doing so, he suffered the indignation of Nixon, the ridicule of the Department of Justice, and the defiance of his own agents. Hoover ended his tenure on the brink of being fired and reticent to collect any intelligence for anyone.

What no one was prepared for, and what Nixon used to his advantage, was the shift in power brought by a new director. By replacing Hoover with a less powerful person who was loyal first and foremost to the president, Nixon shifted the balance of power between the Bureau and the White House entirely in his favor. This happened in the midst of the FBI's investigation into Watergate and Nixon.

But Watergate is only part of the story. Arguably more important about this time is the Bureau's vulnerability to the president, which Watergate exposed. In this book I argue that the Nixon presidency was a pivotal moment in the Bureau's history because it laid bare the great extent to which the Bureau had been crafted specifically around Hoover and how vulnerable it would be in his absence. Crucial moments coalesced during the brief years that Hoover served under Nixon, beginning with Nixon's first term in 1969. Nixon's presidency caused a crisis within the FBI. Hoover worried that his tenure as director was coming to an involuntary end. Indeed, Nixon was looking for any excuse to be

rid of Hoover in order to appoint a director more favorable to his intelligence demands. Had Hoover acquiesced to Nixon's calls for intelligence, the president would never have needed to create his "Plumbers." Nixon established the secretive unit to collect intelligence against political enemies only after Hoover refused to do the work for him.

Six weeks after Hoover's death, the Plumbers burgled the Watergate complex in an attempt to procure political intelligence from the DNC headquarters. The FBI began its investigation into the incident under a new and fledgling acting director. L. Patrick Gray had no law enforcement experience, but he was devoted to the Nixon administration, placing the Bureau at the White House's beck and call. Hoover's absence was so felt that by the time of Gray's Senate confirmation hearing, one of Hoover's harshest critics publicly declared that he had still been a better director than Gray. Indeed, as acting director, Gray was an incapable successor to Hoover. He is little more than a footnote in FBI historiography, but his damage to the Watergate investigation and his relationship to the Nixon administration provide reasons to reexamine the FBI's relationship to the presidency. Gray brought the Bureau as close as it had ever been to functioning as an arm of the president. Inexperienced and blindly obedient to authority, Gray did not defend the Bureau against Nixon's interference. He declared his loyalty first to the president and second to the Bureau, thereby compromising the FBI's investigation into Watergate. During his 361-day leadership, Gray destroyed Watergate evidence on behalf of the Nixon administration and became a pawn in Nixon's quest to thwart the FBI's investigation into his indiscretions.

The juxtaposition of Hoover's and Gray's leadership of the FBI under Nixon illuminates the complexities inherent in the executive branch's control of a federal law enforcement agency. Such a comparison also underscores the extent to which the FBI is an extension of both the president and its leader. Nixon threatened the FBI unlike any president before him. Under both Hoover and Gray, the Bureau faced unprecedented hardship. Yet only Gray allowed for Nixon's flagrant misappropriation of the FBI. That Hoover held his own against Nixon in his weakest days is both a testament to his leadership and a departure from the historiography about him.

During Nixon's presidency, the FBI existed under a scant legal framework. When the Bureau began in 1908, it did so under a one-paragraph order written by Attorney General Charles Bonaparte.⁴ For over sixty years, the Bureau subsisted on presidential directives, executive orders, and attorney general guidelines, rules that could be undone

by a president on a whim. Though the rest of the intelligence community functioned under the charter that was the National Security Act of 1947, the Bureau predated the other agencies and was not included in the post–World War II legislation. Until Congress adopted legislation in 1975–1976 to define the parameters of the Bureau’s authority, its intelligence operations remained legally murky.

Today, the FBI continues to exist without a legal charter. In the years following Watergate, the Department of Justice issued guidelines to rein in the FBI after the Church Committee in 1975 exposed some of its most serious indiscretions. Still, a president retains a constitutional power and thus the ability to intervene in Bureau affairs. Even with a cadre of agents eager to investigate Watergate, the combination of a weakened leader (Gray), a prying president (Nixon), and the memory of a director with too much power (Hoover) crippled the FBI’s investigation. Recently, this dilemma emerged as central to the FBI investigation into President Donald Trump. Once again, the Bureau found itself in a precarious position centered on the relationship of the president to its director. Watergate showed that even in the face of great compromise, the Bureau could successfully conduct an investigation of a sitting president. However, Nixon and the Bureau’s own leadership impeded the investigation at many turns. Today, the president retains constitutional powers to interfere lawfully in the Bureau’s work. As long as this structural conflict of interest remains, the FBI will struggle greatly to investigate a sitting president. Despite the success of the Bureau’s Watergate investigation, there is no guarantee that the Bureau can carry out future successful investigations of a sitting president as long as it remains constitutionally tethered to executive power.

About the Book

In this book, I address how the FBI is fundamentally compromised by a structural and constitutional conflict of interest, as it answers to the president while bearing responsibility for investigating said president. This conflict of interest was especially pronounced during Watergate. My analysis was born out of several different avenues of research. In 2015, I had the privilege of meeting John Elliff, a retired political science professor who spent his career studying the Bureau and working for congressional committees, including the Church Committee, to restructure the Bureau. Elliff graciously allowed me to visit his home and peruse his entire career’s worth of unclassified documents related

to his research of the Bureau, including interviews he conducted with key Bureau figures under Hoover, correspondence regarding the Princeton conference (the first academic event of its kind to examine the Bureau through a critical lens), and research supporting his papers published during and immediately following Nixon's presidency. During our interviews, he illuminated the Bureau under Nixon by patiently explaining the concerns that he and others like him had at the time. My correspondence with John Elliff led me to Christopher Pyle, who granted an interview to help with my understanding of the US Army's intelligence gathering. My research then took me to the Richard Nixon Presidential Library in Yorba Linda, California, where I spent time going through files of Nixon's staff related to the Bureau. Additionally, I found transcripts from the famed Nixon tapes to be particularly relevant to the Bureau's role in Watergate, as Nixon discussed the investigation and Pat Gray on multiple occasions. To understand the failed proposal for an FBI charter, I visited the Jimmy Carter Presidential Library in Atlanta, Georgia. Transcripts of congressional hearings and proposed legislation related to the Bureau provided me with an understanding of the civic debate prominent in the years immediately following Nixon's tenure.

Finally, my research led me to five FBI agents who worked on the Watergate case: Angelo Lano, Daniel Mahan, John Clynick, John Mindermann, and Paul Magallanes. Through months of interviews and countless emails and phone calls, they meticulously walked me through their investigation, which I corroborated with files from the FBI Vault, an online repository of declassified documents. In speaking to the agents who investigated the case, I was able to complete my look at the Bureau under Nixon, focusing not just on the Bureau's top leadership but on those who did the real work of the Watergate investigation.

Structure of the Book

I begin in Chapter 2 by examining in detail an intelligence-collection plan imagined by the Nixon administration. In this chapter, I look at Hoover's reluctance to join the plan and his withdrawal from it. Then, in Chapter 3, I examine the events that led Hoover to worry about the American public's acceptance of his most secretive and invasive intelligence techniques. Hoover's vulnerability under Nixon developed over time in response to a growing chorus of dissenters who voiced their displeasure with the FBI. In Chapter 4, I also look at criticism emerging

from left-leaning academics who convened in 1971 to examine the Bureau at a conference held at Princeton University. These scholars not only examined Hoover's faults and strengths but also studied the legal basis for his intelligence operations, identifying a direct relationship between the FBI's illicit activities and presidents' past authorizations of such conduct. In Chapter 5, I discuss Hoover's final days in office and the lengths to which the Nixon administration went to fire him. Consequently, in Chapter 6, I look at the appointment of Gray as the Bureau's acting director and his interference with the Watergate investigation, before I examine, in Chapter 7, the FBI agents' unlikely ability to carry out their investigation of the Watergate burglary, despite continuous interference from the White House and Bureau leadership. I conclude the book in Chapter 8 with a discussion of the Nixon White House and the implications that reverberate from it today.

The intersection of such powerful and iconic figures—Nixon and Hoover—and the imbalance of power between Nixon and Hoover's replacement, Gray, allow a glimpse into the profound effects of a president upon the Bureau. From a comparison of Hoover's and Gray's responses and actions to Nixon's demands, a Bureau emerges that is every bit as much the president's as it is the FBI director's.

Notes

1. Application for Appointment by Richard Milhous Nixon, April 23, 1937.
2. J. Edgar Hoover, Letter to Medical Officer in Charge, United States Public Health Service, July 24, 1937. Hoover writes, "The bearer of this letter, Mr. Richard M. Nixon, is a candidate for appointment to the service of the Federal Bureau of Investigation, United States Department of Justice, as a Special Agent."
3. FBI, US Department of Justice Brief of Investigation, August 10, 1937. Handwritten at the top of the memo describing Nixon's fitness for the position is "Not Qualified," with "Cancel appt. 8/11 T" written underneath.
4. "Organization, Mission and Functions Manual: Federal Bureau of Investigation," United States Department of Justice, last updated September 26, 2014, <https://www.justice.gov/jmd/organization-mission-and-functions-manual-federal-bureau-investigation>.

