DECLARATION OF BENJAMIN WITTES

I, Benjamin Wittes, hereby declare as follows:

1. I am editor-in-chief of Lawfare and a Senior Fellow in Governance Studies at the Brookings Institution. I write about issues related to American law and national security. I submit this declaration to support the above-captioned petition to unseal material relating to President Richard Nixon that Watergate Special Prosecutor Leon Jaworski transmitted to the House Judiciary Committee with authorization from the federal district court for the District of Columbia in 1974 (the “Road Map”).

2. I am a Senior Fellow in Governance Studies at the Brookings Institution, where I serve as the Research Director in Public Law.

4. I have more than 20 years of experience studying these issues as a journalist, scholar, writer, and public commentator. Relatedly, I am a legal analyst on MSNBC.

5. Between 1997 and 2006, I served as an editorial writer for The Washington Post specializing in legal affairs. In that capacity, I wrote extensively about the Kenneth Starr investigation of Bill Clinton and the resulting impeachment of President Clinton. I also wrote extensively about national security legal matters.

6. Prior to joining the editorial page staff of The Washington Post, I covered the Justice Department and federal regulatory agencies as a reporter and news editor at Legal Times. In that capacity, I wrote extensively about national security legal matters.

7. I have authored five books, including Starr: A Reassessment, which examines Kenneth Starr's tenure as Independent Counsel in the investigation of President Clinton, and includes a discussion of the Road Map.


9. I am a frequent speaker on topics of detention, interrogation, national security, and investigations involving the presidency before academic, government, policy, and military audiences.

10. The Lawfare site in 2017 received more than 11.4 million visits, constituting more than 15 million pageviews from 6.4 million unique visitors.

11. This declaration is based on my significant study and writing about the history of criminal investigations of presidents, and specifically the history of impeachment
referrals to Congress related to presidential conduct. I have studied the accounts of the Road Map in both Leon Jaworski’s and Jim Doyle’s memoirs.¹ I have also conducted several interviews with Stephen Bates, Associate Independent Counsel who helped draft the Starr Report. Lastly, I have done in-depth research on legislative history of the independent counsel law.

12. This declaration has several objectives. First, it provides an overview of my understanding of the Road Map. Second, it recounts the continued contemporary interest in the Road Map. Third, it articulates why releasing the Road Map is important to the public’s understanding of the investigation currently underway by Special Counsel Robert Mueller.

OVERVIEW OF THE ROAD MAP

13. The 55-page Road Map drafted by Watergate Special Prosecutor Leon Jaworski provided factual information regarding the investigation into President Nixon’s involvement in the break-in and cover-up, with supporting documents but very limited legal conclusions.

14. As I noted in a Lawfare article recently, Judge John Sirica stated in his decision that the Road Map contained “no accusatory conclusions[,] . . . no recommendations, advice or statements that infringe on the prerogatives of other branches of government . . . [and] no moral or social judgments.” Benjamin Wittes, et al., How White House Threats Condition Mueller’s Reality, Lawfare (July 21, 2017).

15. My understanding of the Road Map is based in part on James Doyle’s book on the Watergate investigation. *Not Above the Law*. Doyle served as Special Assistant to the Watergate Special Prosecutors. In his book, Doyle provides a description of what the Road Map consisted of:

It was a simple document, fifty-five pages long, with only a sentence or two on each of the pages. Each page was a reference to a piece of evidence—sentences from one of the tape recordings, quotations from grand jury testimony . . . .

This is how the road map worked. One page might say, “On March 16, 1973, E. Howard Hunt demanded $120,000.” Then it would list page references to grand jury testimony from witnesses who saw Hunt’s blackmail note and references to the tapes where Hunt’s demand was discussed. The grand jury transcripts and the tape transcripts would be included . . . .

The strength of the document was its simplicity. An inexorable logic marched through its pages. The conclusion that the President of the United States took part in a criminal conspiracy became inescapable.

Doyle at 290.

16. The Road Map became the template for the provision of law requiring independent counsels to file impeachment referrals when the independent counsel develops evidence that “that may constitute grounds for an impeachment.” See 28 U.S.C. § 595. It thus represented the only model even theoretically available to Independent Counsel Kenneth Starr when he referred impeachment material to Congress in 1998—though as Stephen Bates makes clear in his declaration in this matter, it was not in fact available to the Office of Independent Counsel when sought. Congress appears to have given very little thought to the question of how to enshrine in law a requirement for a Road Map-like referral, leaving open the possibility that independent counsels would take very different approaches to referring impeachment material to the legislature.
THE ROAD MAP'S RELEVANCE TO CURRENT QUESTIONS OF URGENT PUBLIC CONCERN

17. I have written extensively regarding Robert Mueller's current investigation of President Trump. Between 2017 and the present, I have written dozens of articles on the subject, which have been published on Lawfare, The Atlantic, and Foreign Policy. I have been interviewed on the topic regularly, including appearances on MSNBC and NPR, and have been quoted in articles by the New York Times and the Washington Post.

18. In an article I recently co-wrote regarding Mueller's ongoing investigation of President Trump, I argued that the sort of report Muller submits on the results of his investigation will be determined by how he "imagines his role as special counsel." Benjamin Wittes

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2 See, e.g., Benjamin Wittes, An Old OLC Opinion on Whether the President Can Be Subpoenaed, Lawfare (Aug. 12, 2018); Benjamin Wittes and Susan Hennessey, Seven Frequently Asked Mueller Indictment Questions for Which We Don't Have the Answers, Lawfare (Oct. 28, 2017); Benjamin Wittes and Susan Hennessey, Robert Mueller's Show of Strength: A Quick and Dirty Analysis, Lawfare (Oct. 30, 2017).


4 See, e.g., Benjamin Wittes and Susan Hennessey, Congressional Republicans Are Pulling a Bait-and-Switch in the Trump-Russia Investigation, Foreign Policy (Dec. 22, 2017); Benjamin Wittes and Susan Hennessey, The Unsolved Mystery of Michael Flynn's Plea Deal, Foreign Policy (Dec. 8, 2017); Benjamin Wittes and Susan Hennessey, Congress Is Dropping the Ball on Trump's Obstruction of Justice, Foreign Policy (Oct. 6, 2017).


8 David Nakamura and Josh Dawsey, Trump Gears Up to Strip More Clearances from Officials Tied to Russia Investigation, Wash. Post (Aug. 17, 2018).

19. As my co-author and I discuss in that article, Mueller could see himself as a traditional prosecutor and follow an orthodox path where the public will only learn about what he knows if indictments occur. *Id.* Alternatively, we argued, Muller could also take the path that Watergate Special Prosecutor Jaworski took, transmitting to Congress something akin to the Road Map. Such a document might include only “bare-bones factual information intended to point committee members to the relevant evidence so [members of Congress] could draw their own conclusions.” *Id.* A third alternative available to Mueller would be the not-so-popular path that Kenneth Starr took in the President Clinton investigation of “grandiose...truth-reporting.” *Id.*

20. In short, our article posits that whether to provide an elaborate narrative report, or a Road Map-style report, may represent a decisive fork in the road for Mueller.

21. Given this potential dilemma, it is particularly striking that the Road Map — in stark contrast to the Starr Report — remains secret. There are, in effect, two models of independent prosecutors transmitting grand jury material to enable Congress’s consideration of potentially unlawful action by a president. One of those, the Starr report, is well-understood and generally regarded in a negative light. The other, Jaworksi’s Road Map, is widely understood to have represented an appropriate course, yet its details remain secret more than 40 years after its transmission to Congress.

22. In light of the Road Map’s high potential relevance to the public’s understanding of the historical and legal frameworks relating to the Mueller investigation, its continued secrecy deprives the public of information regarding a vital historical precedent. As an
expert closely following and contributing to these contemporary debates — in my capacities as a scholar, writer, and editor-in-chief of Lawfare — I believe that releasing the Road Map would significantly enrich the public’s understanding.

23. Based on my work on the independent counsel law’s history, on the Starr investigation and its impeachment referral, and on the ongoing Mueller investigation, I believe that the Road Map has significant contemporary relevance to public and press understanding of the investigation of President Trump. If the many press accounts that Mueller is preparing “a report” are accurate, the Road Map provides one foundational model of what sort of report he might be contemplating. It is a model very different from what many commentators and journalists appear to be expecting. Yet it is a model that history has treated kindly. It is also a model about which, because it remains under seal, our understanding is extremely limited. In my professional opinion, it is time for that to change.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 2, 2018.

Benjamin Wittes