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M. Caldwell Butler Audio Diary with Thomas Mooney re July 23, 1974

M. Caldwell Butler

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July 23rd Meeting - Speaking about the recollections are Congressman M. Caldwell Butler and Thomas E. Mooney

T.M. - I think it would be wise if we put down our recollections of this day. All of those days went by so quickly.

MCB - Isn't that the truth, damn, I look back on it and I just wonder.

TM - I had the feeling that we were drafting for days but when I actually look back on it we were only drafting for a couple of hours.

MCB - Couple of hours

TM - Yes and it was just a - Wasn't that an 8 o'clock meeting?

MCB - Yes, that's my recollection of it, was that yours?

TM - Yes, it is. You will recall the first time we got together -

MCB - The fragile coalition -

TM - the fragile coalition, and I were even sensitive about taking notes. None of us even knew what the group was going to do

MCB - You took a few notes though

TM - I took a few notes about the Articles but I didn't take notes about who was there and what each person was saying

MCB - Well, I took a few then I got self-conscious and quit.

TM - Yes, that's what I did.

MCB - Well, let me go through my notes and see - now, July 20th, that's the morning that we had the breakfast with Cates, that was a long

TM - That was a Friday?

MCB - I believe it was. Looking back on it, I already regret - now really - how can you justify keeping people like that on the payroll when they do things like that - 40 pages of black and white paper. I've kept it together here in my file.

MCB - What day did you decide?

TM - July 23rd.

MCB - Yes, Monday afternoon the 22nd I have that's when I ran into Jim Waldie and he said Jim Mann was working on this thing
TM - Railsback got hold of me on Monday afternoon and indicated to me that he was having a meeting in his office the next morning at 8:00 a.m. and asked me to be there. He didn't say what he wanted then but I kind of suspected the topic of conversation. Monday evening when I got home late I put together some thoughts on possible articles of impeachment.

MCB - My recollection is that on Monday evening we had a Monday evening session on the 22nd, if I remember correctly,

TM - Yes

MCB - That's with Jenner and Garrison and Jenner had his concluding remarks beginning at 6:35 and that's what we had and it was after that, that afternoon or something that Railsback and Mann had started to exchange conversation and it was agreed that we would get together the next morning at 8:00.

TM - In Railsback's office.

MCB - In Railsback's office and it was after that that you started in on your own to try to draft something, was that it?

TM - Yes, that afternoon, Railsback stopped me and said he had a meeting in his office at 8:00 a.m. for Members only and to be there. I said I would and I thought that the probable topics of conversation would be the coalition of drafting the articles on impeachment.

MCB - Right, I see. So, what did you do that evening?

TM - That evening I got home late and after dinner I sat down and scratched out in longhand some thoughts as to possible charges and in particular, the cover-up, what did he cover-up, knowing some of the thinking of Mr. Railsback, knowing from Mr. Railsback that that was one area where he felt strongly but he hadn't made up his mind by that time. I didn't feel that that was the area that he was most concerned with, so I sat down and scarted some notes

MCB - I see and that was the green sheet you brought with you

TM - Yes

MCB - Now, and that, okay why don't we copy that, do you mind?

TM - NO, not at all.

MCB - Well, let's get a copy of that in a minute.
MCB - When we first got there, you were there, I remember when I got there, right on back there and I was the first one to get there I believe. Jim Mann walked in later and then Flowers and then sometime later Cohen and Fish came in the middle. Alright now, the first thing I remember is we were just kicking around and I have a note here that Mr. Mann said it was nice to find people with the same problem or something like that.

TM - That's right.

MCB - Now then apparently Mann Flowers and Thornton had a meeting the night before and agreed to abuse and obstruction as two general areas. Then

TM - Mr. Mann has something on paper which he entitled generally as "Abuse of Power"

MCB - Do you have a copy of that?

TM - No, I don't, that's one thing I don't have a copy of.

MCB - That's alright. Now, Gail we want to make a note again, because if I remember correctly he read this thing. He was real hesitant about it, not hesitant, but it took a long time to work him up to reading it.

TM - And then, Thornton had something different. He started to read his but said his was more on the cover-up rather than abuse of power.

MCB - Well, did you feel that what Jim had was abuse of power.

TM - Yes, that was my impression, but Mr. Thornton had something different in that I had read mine and he had said, well mine is similar to what Tom just read although I think in some ways this is better and then he read parts of his but that was it.

MCB - Jim Mann you are talking about?

TM - No, Jim Thornton. So there were two pieces of paper that we had and they were different.

MCB - And then I have something here that we had some kind of a discussion, I just have notes here that the general feeling was that Doar was trying to put the whole - of course we did have the copy of the draft articles before us by this time, didn't we?
TM - Yes, Mr. Doar had circulated draft articles.

MCB - Yes

TM - I think that was probably one of the things that prompted the meeting very quickly.

MCB - because of the imperfections

TM - Yes, the imperfections were pointed out as such that Mr. Railsback found it difficult to even follow.

MCB - I remember reading those over the weekend and that was my conclusion, totally inaccurate, shocking to think that was the degree of competence we had on the staff

TM - Yes, Mr. Wiggins said something to the effect that he was surprised that they even let that go out of the shop.

MCB - Yes, that's right, but I remember one of the questions we kicked around was to push the section of conspiracy, if you want to call it that, back into April and we felt it was hard as the dickens to get it started before March 21st. Do you remember that, Tom?

TM - Yes.

MCB - Do you member that, don't you think there was pretty much general agreement on that?

TM - Yes, I think we quickly agreed that that part of the case was very weak.

MCB - Just to refresh my recollection, as we finally put obstruction out of one or the other, was it tied to March 21st?

TM - No, it actually went back to June 17, and because they felt that Mr. Nixon did get involved a few days thereafter.

MCB - On the 25th of June?

TM - Yes

MCB - And they we got it, yes, that's right, that's okay. Then the other note that I have here is that first we read, I'm trying to find in here a notation of exactly what Jim Mann - right here - Jim Mann had his six volumes of counts of an article which we called Article I - abuse of power. I have here a notation - IRS was number 1, FBI was number 2, included was the Houston and Grey's interference with the FBI that would be number 3, number 4 I have obstruction of justice in the Ellsberg case by using the Department of Justice - that's just a general note, special investigative unit would be number 5 and
MCB - and 6 would be the failure to comply with committee subpoenas and for number 7 I have misleading statements. Now, that basically is ultimately what we came back to in the abuse of power isn't it?

TM - Yes

MCB - And then you had Doar was tied to the obstruction of Justice

TM - Primarily

MCB - Alright, now I have a notation that Thornton had read his draft which dealt with the firing of Cox, that he was headed in that direction. He was concerned about the firing of Cox. Was that your recollection.

TM - Yes, that's my recollection. I think he read that part primarily because that was one part that wasn't covered by Mr. Mann or myself.

MCB - Alright, so, what now, I'm going over my notes since you didn't take notes but they are not very good notes since I was self-conscious about it. I have a note here that we kicked around censure and somebody mentioned some article that Schlessinger kicked around, then we just abandoned that. Impeachment was the only hope, Right?

TM - Yes

MCB - And as far as drafting is concerned, that's the only note I've got. We read Mann's and then we read yours. Something in here about permitting his agents to hold out - well - I know that you read a draft, but that's all I remember.

TM - One of the things we talked was, does the punishment fit the crime.

MCB - Yes, that was a question that really had us working. That's right, Mr. Flowers said that. I turned it around and said, "does the crime fit the punishment" which was really what the question is, and Thornton said if this sort of thing continues, we, something about, we need to avoid continuing damage to the government. That seemed to be Thornton's thesis. His whole thesis was that the cover-up was continuing and that was what he was concerned about. That whole thought. All the things that we complained about were still going on with the abuse and cover-up. Jim Mann said that the American people are not yet educated to the threat to the American system from what was going on and that if we had the impeachment we could not put it.
TM - I was really quite impressed with our meeting, as a staffer to see these Members, together and talked on such a high plane about the danger to the government and danger to our Republic, our system of co-equal branch governments and I thought that was, to me, I was very impressed, as a matter of fact I had chills running up and down my spine as you delived and talked about this. It was on a very high plane.

MCB - You know, I had that feeling later that, well not later, but I thought as I looked around the room, after we talked about it that there wasn't any group of people that I had run into in the Congress that I had more confidence in.

TM - Yes that was some group.

MCB - Yes, it sure was. It sure was borne out by the way we dealt with it, the whole thing. The other thing we kicked around was Flowers idea that we had to recognize that the vote for impeachment will tie up the Congress for another year and that censure would save us that alternative and then I looked at Fish and we all talked about censure. Well, we all concluded that that just didn't meet the problem. And I'm sure glad because you know I had real reservations about this thing to digress for a minit until I heard the arguments the other night and the more and more they tried to argue against it, why the more convinced, the more confident I felt.

TM - Sam Garrison's two assistants, who were working very closely with Sam, came up to me the other night and said you know we are very busy trying to prepare arguments against the Articles against Mr. Doar's brief but we are finding it more and more difficult and then they said they were undecided one way or the other but as a matter of fact they were working for Sam and doing a good job for Sam but they said, believe me, they said it's almost impossible to come up with some evidence to refute satisfactorily the charges made.

MCB - Yes, well I suspect Sam, given the opportunity now, would come up with a different view than what he had. Has he said that to you yet?

TM - No, he has not. Has he told you that?

MCB - No, he hasn't either. But, I shouldn't tell you this, but I was amused by it, not amused, interested. When I was making my speech, preparing my draft, I had it edited for comment by Sam and he came to look over my shoulder on another matter and he said and he pointed it out and he said, would you mind rephrasing it so that you indicate that what I'm doing is the professional responsibility I have representing my client, not necessarily my views and I tried to do that rather hastily. I suspect from what he said that he just can't wait to be unleashed. Okay, well, I think what I would like you to do right now is copy this thing.
Alright, so when we left that first meeting, Jim Mann took his work off and he didn't really leave anything with us, did he?

No, as I remember it the meeting lasted until about time for the meeting which was around 10:30. We got there around 8:00 and it started a little later as usual. I think on Tuesday, the Chairman had another briefing, informal, closed briefing for those Members who wanted to attend. And Mr. Mann had kind of said, well, we'll take abuse of power and try to develop something and you take the cover-up and obstruction of justice and try to develop something. With that he instructed me to try to get something down on paper and we would be back at 2:00 to discuss it.

Did you get back at 2:00?

Yes, yes we did.

Tuesday afternoon business meeting. That was a business meeting. I have nothing on this until the meeting in Railsback at 10:30 the next morning. Did we meet that afternoon? The next morning we went over the draft of Mooney's the next morning.

Okay

Did we have anything, did we have a meeting that afternoon?

We did try to have one. Most didn't make it. I was there and I believe there were one or two others. We never actually had a group meeting.

You know I have some recollection here of having walked in on having been there looking at something you had done before, because what we went over on Monday, the 24th which would be Wednesday morning, I remember having seen before in writing. So, let's see what is the second draft that you got?

Well, let's see, I left right after the 8:00 meeting and then had to put something down on paper. I have here two, actually three drafts of my effort to try and list here this rigorous task and come up with a good draft for the Members.

As a matter of fact I think you have got my name written on it, haven't you?

Well, when we get to the first draft that the Members actually sat down and discussed, I do have some with your name on it.

Okay.

This was when we were trying to get the first draft together.

This was your first draft?
TM - Yes. Do you remember the number on yours?

MCB - My numbers were 3's and 9's. That's about my writing.

TM - There's one of them here. Is that yours?

MCB - Yes, that's mine. So, we'll have to go with what we have. I see, so you think you had this ready for us on the meeting at 10:30 the next day.

TM - Yes, I didn't pass it out that night.

MCB - That's it. Yes.

TM - And you probably took it home with you and looked at it, because I was a little surprised and confused along with Mr. Railsback. The next morning when we met, Mr. Mann came in with this and we had this and Mr. Railshack and I were looking at it and this is before you got there. and we kept thinking that this was his abuse of power. That's where we started out.

MCB - Right

TM - Well what it turned out to be was

MCB - He rewrote yours

TM - He rewrote the one that I had passed out the night before.

MCB - Alright, now just let me see what I've got here.

TM - The last area that we were discussing at this stage also was the title page. Mr. Mann had a title page and we had a title page that we were knocking back and forth a little. We didn't spend much time on it. And then we decided to have a page and then somehow there was a slip between how that decision was made and when Donahue introduced his. Now the third title page, the one Mr. Mann had, it wasn't the one that we had, but its the one we had from some other counsel. It might be interesting to compare how these two really differ. These were the two actual working drafts as they came.

MCB - Yes, this was marked. I want to be sure that we can identify what we've got and I want to get her in here so we don't mess up on it.

TM - And that's what this set the stage for working procedure. This followed. In other words, Mr. Weaks then said to Mr. Mann to give us his version of it. And we would say something and he would rework it and so that was reworked. It was usually reworked. You would take it
TM - home with you or something and meet with somebody and rework it and then go and bring the reworked draft to the meeting where it would be reworked again by the group.

MCB - At times I'm having trouble reconstructing. I guess you are too. Well, let's go back. The first meeting we've already had, and you left with your penciled notations and he left with his. Then you took these three things - the three things that she walked out of the room with and you took your penciled notations, worked from there and then you prepared three different drafts yourself before you got what you wanted.

TM - Right, before I got this.

MCB - Before you got this and that's what you brought back here today to us and that's what I have marked item #2. Which ones are theses? And I remember now talking about - because Frank Polk was there at that meeting, wasn't he?

TM - No.

MCB - Frank hadn't gotten there, yet.

TM - You see Frank never showed until we were practically finished with Article I.

MCB - Yes, that's right.

TM - Because, remember, he had called at one of the meetings that we were at and said for the first time that now Mr. McClory had him drafting Article II, our abuse of power, title I.

MCB - Yes.

TM - Because at that stage we didn't know what articles we were going to read and

MCB - Okay, now let's look at this one here in terms of what we wound up with.

TM - Well, now this is what we have from the night before, but actually

MCB - Now, that's what I've been trying to pick out. Now that morning you reworked this thing and you put this thing together and then you gave this to us before we left there.

TM - Yes.

MCB - On the evening of Tuesday the 23rd.
TM - That's right

MCB - So we had this thing on the evening of the 23rd and we came in on the morning, the 24th and this is the only thing I have. This was the only thing I had. Mr. Mann hadn't given us anything of his draft.

TM - And then he did bring his redraft of that

MCB - Right

TM - and laid it on the table and that's what we worked on.

MCB - Now, just to keep things clear, the first thing we talked about, I will mark with a red 1. Now the one you have on top is number 2.

TM - Right, now I have, I think they are, I would have to look at them first. I mean once you look at them you can put them in order.

MCB - Right, okay, this would be number 2. 3. Well, that can't be because they are about, now let's go through it and let's be sure that they are straight. What have you got now.

TM - The one with the writing on the side, I think that has withholding from those agencies information

MCB - Right, alright I've got it

TM - How many pages is that?

TM - That's two.

MCB - Alright

TM - Have you got that

MCB - Yes, after that comes one

TM - Then we moved on down to section 3. Now that's Article I, the next draft of that, look at three.

MCB - Paragraph 3

TM - And you will see or should see what is pencilled in on the side of 1 became typed on three

MCB - I see

TM - through false administration. We have a draft that incorporates those changes.

MCB - So that page only changed, right?
TM - Right.

MCB - Alright, now paragraph 5 of that second draft, draft number 3, see the next page after that is a part of a page

TM - Yes

MCB - Now that also took change at the same time, didn't it?

TM - Yes

MCB - I see, but that was an insert to paragraph 5, wasn't it?

TM - Yes

MCB - Okay, so that was number 3, wasn't it?

TM - Yes

MCB - Okay, now after that we go into

TM - We go into the third draft of that. It too is two pages.

MCB - two pages

TM - Now, following that are a number of loose pages that have really no place, they were just put there because I didn't have a chance to line them up. I think they might be separate thoughts, separate drafting.

MCB Alright, well I'm going to mark each one of those as a series number 5. We ought to understand that they are miscellaneous.

TM - Miscellaneous

MCB - But I am marking number 4 as the final product of that note, and you took your number 4. What I have here is number 4 and you came up with this item?

TM - Yes

MCB - Which I now mark number 6 from my own information and that's this thing right here.

TM - Alright

MCB - Now that's what you gave us on the evening of the 23rd.

TM - Yes
MCB - and we came up with that on the morning of the 24th.

TM - That's what you walked into Mr. Railsback's office.

MCB - That's what was walked into Mr. Railsback's office

TM - However, it said that Mr. Mann had put his down on paper, I don't know if we discussed this, if we did it was indirectly

MCB - Well that's right, Mann brought his on in there and threw it on the table kinda

TM - Until we figured out what it was

MCB - And we suddenly realized that he was doing the same job as we were and we thought he was on abuse of power

TM - Yes, we were getting ready to look over his article after but actually he was reworking the one that we were giving him.

MCB - Right, okay, now so I'm going to mark that Mann deal number 7 so we can keep it all straight.

TM - Okay

MCB - Now, that's my copy right here. It's got Mann written on it.

TM - Well, that's my copy

MCB - And you're not ready to surrender it because that's the only copy you've got.

TM - Yes, but if you want to make a copy

MCB - Okay, fine.

TM - So, I guess if this is six, that would be seven.

MCB - Now, wait a minute, here's my copy of that isn't it, or is it? Yes, here's the one I had at the meeting, isn't it?

TM - That's probably the one of Mr. Mann.

MCB - Oh yes, that's right. Okay, so now although Mann had his there and we talked about it, it was really worked on from yours that morning, wasn't it? We worked with the Mooney draft.
TM - Well, we had, my recollection was that Mr. Railsback, I mean Mr. Mann had sent over ahead of him, his drafts. They came in by his messenger and were delivered directly to Mr. Railsback and Mr. Railsback pulled them out, glanced at them and then handed them to me. I thought they were abuse of power but Railsback and I noticed rather quickly that they were a rehash of what had happened before. So then Railsback was trying to take that Mann draft and work it in with the draft that I had so then when I went back to work on the next draft I had taken, not my draft but the one from Mr. Mann had drafted and I have here a note on the one draft marked Mann all my penciled notations. I think the draft we were working from, the Mann draft.

MCB - Okay, if that's the way you remember it

TM - Now, this is, here I don't know whether you want to get into this, but there are really two things being discussed, actually there were two things being discussed plus a third. The one thing was a title page.

MCB - Right, the resolution part of it was resolved on article I

TM - Yes, and that was in Mr. Mann's approach although it was never agreed to.

MCB - Alright, now, Mr. Mann's approach was what on the resolution? Let's call that the preamble for the resolution, I think that's best.

TM - Yes, well he didn't, I don't know where he got it, it differed primarily in that, it spoke on the title page of the House Resolution 803 that it authorized the committee to set up an investigation and subpoena power and then some technical impeachment order type of letter. The other one that the group adopted had the differing in the sense that it also in adopting the boiler plate language of impeachment added that a committee shall be created.

MCB - Yes, to go to the Senate

TM - To go to the Senate

MCB - We agreed on that I thought.

TM - Yes, it was agreed on

MCB - It was represented to us that this was was the traditional impeachment language.

TM - Yes, I have gotten that from the legislative counsel's office and everybody agreed to go along with it.
MCB - and when the Donahue substitute showed up

TM - the third version

MCB - out of the blue

TM - The third version of the traditional boilerplate language showed up and it was not really too significant. It didn't really mean much but

MCB - I just remember some kind of a discussion about Walter Flowers and he wanted to take the word "all" out of that thing. He said all the people in his district didn't feel that way.

TM - Yes

MCB - But we really did spend some time on that. Let me see if I've got some notes on that. The irony of this was, well, I see now, yes, it was after lunch now when we got back together again of that same day. And that was when Frank Polk showed up, no, there was a telephone call to Frank Polk that afternoon and McClory was doing his abuse of power

TM - And that really set the stage for abuse of power, too. The idea of throwing it around McClory's approach.

MCB - Now, let's finish the morning before we go to the afternoon but it was the afternoon that we talked about the preamble and that's when we struck all the people. But what got us into trouble was when we finally realized that the rule was such that we really couldn't alter or amend the resolution when it got to the full Committee, wasn't that it?

TM - We realized that the rules adopted by the Committee only permitted the debate and discussion of the amendment of the articles and not the preamble.

MCB - And Harold Donahue, at that point, had his imprint on history.

TM - Yes, and we discontinued the discussion of the preamble at that point.

MCB - I don't know yet where the Donahue substitute came from. I mean where the Donahue resolution

TM - I have no idea.

MCB - It just came out of the blue because I didn't feel like I had seen it but
TM - You hadn't

MCB - No, but I did feel like if it had reflected a good deal of our - I mean I could have almost lived with the Donahue resolution as it affected us, didn't you feel that way? But

TM - Well, yess, but you recall when that came about. Well, let's see, we're talking about the Wednesday afternoon

MCB - That's right, because we had to meet Wednesday night at 7:30.

TM - Mr. Rodino had called Jim Mann to see how the group was coming. Are you going to have something before the full Committee.

MCB - I thought Rodino was looking directly at us. What he was doing was to Jim Mann to find something that he could take from us back to whoever he was meeting that would be mutually satisfactory, right.

TM - Well, my understanding was, no one knew for one whether we were going to have anything before Thursday's stuff and there was some debate as to whether there should be articles laid before the Committee so that they would have something to talk about. Well, apparently Rodino at some point decided that that was a must and early on Wednesday he started to call Jim Mann

MCB - Don't you remember we had that business meeting where that question was laid to rest where we adopted the rule that required having the articles before us for debate.

TM - Yes

MCB - Well, when we adopted the rule Rodino stuck with us on the vote.

TM - But, he, as it turns, I wasn't aware of it, but the fact is that Mr. Rodino was looking toward the coalition to come up with a draft article.

MCB - Right, and we were looking toward ourselves and just couldn't get one together.

TM - We weren't even sure at the time that that was our responsibility to do it. This was always a spur of the moment thing, to get together and put something together. Nobody really thought that we had a deadline although we knew generally that we were under a lot of time pressure.

MCB - Worse than that, Jim thought that he had control of the Democrats and that the rule would not be passed if it required us to come up with one on Thursday night.
TM - Yes, I recall you telling Mr. Mann that you weren't too impressed with his control of the Democrats and that you had hoped that would improve or this fragile coalition may be even more fragile.

MCB - Yes, because we were leaving that meeting and I believe that was Wednesday afternoon, late Wednesday before supper but as I remember correctly, it was late when we left because everybody was tired and we decided we wouldn't meet that night and we said that we would probably meet the next morning. That was 10:30.

TM - Yes, but the action that Donahue had introduced and laid on the table was Article I was the coalition's third or fourth draft of Article I. There were some changes. There were a lot of work changes.

MCB - It looked familiar.

TM - Very familiar and obviously taken from the coalition's article, but they had thrown in a couple of other things. Suppressing the evidence I recall was one paragraph that we hadn't worked on at all. But it was very similar to what the group had put together but then we took that and made a draft of it and continued develop Article I.

MCB - Well, yes, this is what I was going to say, I saw Jim Mann and Railsback and you saying we were going to meet tonight but you had given us your draft and I remember saying to Walter Flower, "maybe we'll just go and rest on our laurels this evening after we've taken a beating and he saw the humor in that. But Jim was embarassed and I think in the long run I think it was helpful. So that was, on the next morning, on the morning of that Thursday, when we came in we had Jim Mann's and your approach and as it turned out both of them were close enough in structure.

TM - Yes

MCB - So what we took was your version of obstruction and impressed it upon Jim Mann's article, right.

TM - Right

MCB - Alright, now let's take a look now and see what we did to that. My number 7 is what Jim Mann gave us. I remember we read it paragraph by paragraph.

TM - Let me see now, okay. I think this was Wednesday morning wasn't it?

MCB - Thursday morning.
MCB - Wednesday morning the 24th, that's right. Jim Mann his, which mine is number 7.

TM - Right

MCB - And you had yours, which was number 6 and I was trying to remember which one we started reading on, do you remember? We did one of them, didn't we? We just started reading it before the Members.

TM - Yes, I think I started to read. He asked me to read his out loud.

MCB - Out loud?

TM - Yes. I read it out loud, paragraph by paragraph and the group would stop and discuss certain parts of this and go down and amend it accordingly. I think it was at this point now, I'm trying to figure out what point you drafted that one paragraph, the literary achievement of congressional history, however, my notes don't indicate that that has happened yet.

MCB - You know what I'm going to do. I'm going to go on over to the Floor and vote. I'll let you organize your thoughts on this when I'm gone and turn this off and see if you can find a copy of the final copy which we finally adopted.

TM - You mean Article I?

MCB - Yes, Article I as it was finally adopted. How about if we

TM - This was the only draft that we discussed on Wednesday morning, the Mann draft.

MCB - Wednesday afternoon, well, Wednesday morning, that's right. But Wednesday morning we went over the Mann draft paragraph by paragraph, didn't we?

TM - Yes we did.

MCB - Alright now, let's go through that and see what we did with that. We didn't pay much attention that morning to the preamble to it.

TM - No, we didn't really even get to the preamble.

MCB - We read it over paragraph by paragraph, do you have the final thing in front of us?

TM - The final what.
MCB - The final Article I

TM - As was introduced by Donahue or as it was decided.

MCB - As it was introduced by Donahue would probably be better or the Sarbanes Substitute, either one.

TM - Okay, so you have a number of drafts before we get to the Sarbanes.

MCB - Right, I know. WELL, what I'm trying to figure out is, well, let's just go down here and see what we did. Let's just go down this one and reconstruct and see what changes we made in the Mann draft as we went along.

TM - Okay, I think a

MCB - In the conduct of his office, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of - we have a notation that we inserted "office of the President" We inserted "President of the United States", and to the best of his ability to preserve, protect, and defend the constitution of the United States, and violation to the constitutional law, due to take care that the laws be fit has prevented, obstructed, and impeded the administration of justice in that. Well, we left that pretty much in tact in this go around, didn't we? We made a lot of changes in that later.

TM - Yes, later on, but at this point we had it pretty much agreed to.

MCB - Alright, well then we got into the question of on June 17, 1972 and prior thereto. Did we knock out that prior thereto.

TM - Yes, and then there was a discussion about agents, too and we weren't too sure that that was proper. There was a general feeling that the agency theory imputing the illegality of the agency theory,

MCB - Something about imputing misconduct, right?

TM - Yes, I think that was one of the things that we as a group went through line by line and put this thing together from the beginning. Their intent was to draw a line directly to the President.

MCB - That's right.

TM - There was never at any time thoughts attributing actions to his agents.

MCB - That's right and we were sensitive to that even at this moment, weren't we?
TM - Yes, very much so. and it was that discussion of the agents that I think we scratched into burglary.

MCB - Yes, was that when, ah, Hogan wasn't there when we had that discussion on burglary, was he - ah, the illegality.

TM - Yes, a really significant development during this was the Hogan announcement.

MCB - Yes

TM - Now, Hogan was totally unrelated to the group.

MCB - Right, now remember we talked on who was present at this first meeting.

MCB - This morning's meeting on

TM - This morning meeting - on Tuesday morning.

MCB - Yes, I've got a list of those

TM - I know who they are but I didn't list them on paper.

MCB - Yes, we are talking about Tuesday the 23rd. I have Flowers, Mann, Thornton, Railsback, Butler and Mooney were first present and then Fish and Cohen came in later.

TM - So that was four Republicans and three Democrats.

MCB - Yes, four Republicans, that was really the

TM - So, by then the coalition was set.

MCB - That's right, that's exactly right.

TM - And Hogan was not a part of it.

MCB - Hogan didn't get into it until about Friday.

TM - Also, late on Tuesday, or maybe on Tuesday morning, there was a small mini-crisis that afternoon which I am not sure is relevant. I was in drafting another draft of Article I when I received a call from Bill Hermelin.

MCB - Who is he?

TM - Bill Hermelin is Mr. Railsback's AA.

MCB - Yes, go on.
TM - And he indicated, he opened the conversation by saying that Mr. Hutchinson, would he fire you if he found out that you were working on Articles of Impeachment and I kind of laughed and said, No, I don't think he would, AND WHY? And he said that the group agreed to keep this quiet, but apparently Lou Cannon, the political reporter from the Washington Post found out about the meeting this morning in this office. That he just called me and asked me to verify certain facts that he had obtained. And Mr. Hermelin said, "I don't know anything about it, you're going to have to talk to Mr. Railsback." Mr. Railsback called Lou Cannon and spoke with him, I guess at length as to the meeting, not so much as to its content but as to its importance and that if this thing is put on the front page of the Washington Post, the fragile coalition may discontinue at that point. I think Mr. Railsback was very concerned about that.

MCB - I remember Lou Cannon left word for me to call him back on that day and he called up here and then you referred him down here. But what happened after this conversation when you left our office. Then what did you do?

TM - Well, I did nothing but continued to draft and then Railsback called me and said that Lou Cannon had mentioned he knew that I was working on it and wanted to know if he used my name, would I get in trouble. I said I hadn't the slightest idea whether I would or not but I would prefer that he not put my name in the paper, and say one of our aides or something like that. But, I think it would have been a big story had it not been for that afternoon, Hogan unknown to everyone, announced that he was going to vote for impeachment. That took the sting or the pressure off the group for one and took some of the spring out of Lou Cannon's story on the front page of the paper on Thursday morning as Railsback had said it would.

MCB - That's right. Now, that makes better sense. We had a meeting that morning which I was late getting to. We also had Republican Caucus which I didn't get to just because I didn't enjoy it. Well, then we were waiting to see Sam Garrison, the Chief Counsel, that was Thursday morning. I went back to Henry Smith's office because I was supposed to be briefed on Cambodia that morning and Railsback and that crowd went to the Courts. Then we had a meeting of the Committee that morning which was, remember, the informal briefing, not even a court reporter there, which we wasted the morning talking about things.

TM - Was this Tuesday morning?

MCB - This was all Tuesday morning. This was just before the business meeting that afternoon and the thing that I have down there that the informal meeting Donahue was presiding, which I have a note here that Hogan was going to have a press conference today to announce his vote.
MCB - Even then he wouldn't tell it to us what he was going to do. So, that was that and at 3:00 Tuesday afternoon when he announced, it was a hell of a strong statement. But we didn't know he was a friend of ours, but you say that he took the pressure off of it.

TM - My impression was that that took the pressure off the group, and took the sting out of that story.

MCB - Yes, it sure did. Because that afternoon, I guess Railsback said that sure takes the pressure off of me. I didn't realize that was what he was talking about. It probably was.

TM - Yes, Lou Cannon's story. I think Rails really was concerned because the group did say, let's keep this quiet

MCB - Okay, so that really left the first paragraph of the Mann draft in tact, at this time.

TM - This was on Wednesday morning.

MCB - Right, then on June 17, 1972 and prior thereto and ah, I'll tell you what we need to do. Let's look at the draft that came right behind that and then that will help me. What is the draft that we came up with after that. Because I remember you took the Mann draft and kind of took it over, keeping track of it, from then on.

TM - This article, I don't know. This is probably it. It wasn't our draft. I think Donahue, wait a minute, here's one that comes before this. Well I think ah

MCB - Well, it would help my thinking if you could find me the thing. This is what we found and the one I left with, the Donahue draft

TM - I think that we wanted that

MCB - Alright, now, do you have the Sarbanes Substitute around?

TM - Yes, you have a copy of that, too.

MCB - Was that one that was xeroxed a few minutes ago?

TM - It should be around somewhere

MCB - Final draft of the Sarbanes Substitute with the Railsback amendment

TM - And then there were a number of Hogan amendments.

MCB - Alright, now the way we finally wound up with this is on June 17, 1972, agents of the Committee to Re-elect the President illegally committed burglary the way we started out and then somewhere along the line we got, it wasn't at this instance that we changed,
MCB - yes, we changed burglary. We talked about burglary for a little while and somebody said that they declared guilty to burglary at the time we discussed that. And what we decided was illegal entry was better rather than strictly calling it burglary or not.

TM - Right, I think Mr. Mann wanted illegal entry. Mr. Doar was stuck on illegal entry and we later changed that to unlawful.

MCB - Right

TM - Because the code didn't have such

MCB - There is no such thing as illegal entry. And ultimately we called it unlawful entry. So for all practical purposes we left when we got through the reference to June 17 and prior thereto agents to the Committee to Re-Elect the President. All of those things remain in there to this day. The problem that we had was what did they do. It started to be illegally committed burglary, then at this moment we changed that to having committed illegal entry and then we finally got through and in the final draft called it committed unlawful entry. In the Donahue Substitute it was committed as illegal entry but when Railsback got through with it we called it unlawful entry, right? So when it got to be the Sarbanes Substitute we called it unlawful entry.

TM - But the Sarbanes Substitute, what happened was there was a slip up there. I left Mr. Mann's office which was Friday morning and I was directed to draft what was to be the Sarbanes Substitute. And I was over in the legislative counsel's office putting it together and when I got to Committee and low and behold the Sarbanes Substitute had been passed out, and I thought where did it come from. I was suppose to be drafting the Sarbanes Substitute. Well, as it seems they were trying to get some changes over to me in the Legislative Counsel's office and didn't get hold of me and talked to somebody over there who told them that what I was doing had fallen through, which, you know, wasn't the case at all. So, somebody at the Committee took it upon themselves to type up a draft which they copied unnumbered lines and circulated it, thinking that I wasn't going to come through. So that's why we had the illegal entry on the Sarbanes. So Hogan cleaned it up when he offered several amendments.

MCB - Yes, I see, I've got it now. Okay, now that's jumping ahead of us a little bit.

TM - Yes

MCB - Well, now we get into the entry of the headquarters of the Democratic National Committee. Now I remember when it came to us - Jim Mann's Substitute - Jim Mann's thing which is my number 7 had illegally committed burglary of the Watergate Headquarters. Well we struck out Watergate, was that the one, did we strike out Watergate?
TM - Yes

MCB - for the Democratic National Committee in Washington, D.C. and next to that got to be, that got to be District of Columbia and then we said for the purpose of securing political intelligence. Now if I remember correctly Tom, we had a, we kicked that around for a little while, didn't we?

TM - Yes we did.

MCB - What was the story on that?

TM - Well, at first we kind of thought ah, well, that's what we did I guess. When we started drafting that we weren't putting motives in the articles because

MCB - Wait a minute. Go ahead

TM - I think we headed to a crossing of our drafts. Things that were coming back from Doar. He was attributing a lot of motives, political intelligence for his own personal political benefit whereas that time which the group was always striking out that the next draft that came back it would be back in again. And they were all struck about discussion but somehow it would always be back in.

MCB - Yes, and I think it all goes back to the fact that John Doar almost has a different approach to it.

TM - Well, I think he did. No doubt about it. I think that really surprised everybody.

MCB - His lack of confidence?

TM - Well, his approach to it anyway. We all came dangerously close to losing this thing on Friday night when Wiggins and Sandman tied into the majority and we were unprepared and had nothing to talk about and couldn't get specific, although the Members knew the facts. They didn't have them handy and they were fumbling around for it on national TV. I thought that that was a very significant meeting over at the Capitol Hill Club, attended by Jimmy Butler and two of Bill Cohen's children and his wife

TM - Right, and Flowers

MCB - Flowers

TM - and Mann

MCB - Flowers and Mann and Hogan and Froehlich and Railsback
TM - And Frank Polk, Bill Hermelin, Mooney

MCB - and Butler.

TM - The group was shaking a little bit.

MCB - Yes, you know I had characterized that as a state of panic.

TM - I think it was that.

MCB - And you told the girl from the New York Magazine that it was chaotic.

TM - Yes, it was chaotic. Everybody was nervous. Everybody was worried. We weren't getting any help from Doar. Railsback and Cohen originally wanted to go over there, not to discuss things so much but to start actually drafting specific articles of impeachment.

MCB - Yes, I know. But I take credit for that. I came in there and just threw some cold water on it and then just gave it up.

TM - You did indeed.

MCB - And I was so grateful because I thought I was going to have to argue that over.

TM - Yes, you were very helpful. You and Mann were the calming factors in that group at that time. Everybody else, especially Railsback and Cohen and Flowers, I think they were really ah

MCB - Uneasy. I remember now, Flowers came in and said that Sandman was the biggest hero in the district.

TM - Yes

MCB - He also said that the people in his district thought that if Nixon was impeached McGovern would be President. So, anyway Sandman did have us in a state of panic at that time but I'm sure glad that we held the line on that.

TM - But I think at that meeting that the whole group had calmed each other down and that is important.

MCB - Once more demonstrating the value of alcohol. Well now the second sentence getting back to the Mann Substitute, item #7, subsequent thereto and up to the present time is the way Jim Mann had it. We had up to the present time and we took it out. Did we take out this time? Or was it later, are you following me?

TM - Partially, I'm trying to think of the next draft that we came up with

MCB - Yes, that's what I'm looking for.
TM - I think it's draft one.

MCB - Now, that's the one I'm talking about. That's Mann.

TM - That's article one.

MCB - Alright, yes. Now wait a minute, we've lost. Tell Bill Wallace to bring that thing in here. Did he bring it in here? I have a draft one of my own.

TM - You see there is a draft one and a draft two and I think where we went to after this is a draft one. We were again close to the actual thing, that's why I put it in my bill folder. This draft I don't think we made very many changes.

MCB - From what Jim Mann brought?

TM - Between what Jim Mann brought and what we came up with on the draft.

MCB - Alright now let's take a look now. I have what Jim Mann brought and that's number seven, isn't it?

TM - Yes, look for draft number one. No, that's the final draft, that's the Mann draft. Oh, that's the one.

MCB - This is the work product. This will be number eight, shouldn't it?

TM - Yes

MCB - Alright now, this will be number eight. Now the preamble we didn't pay any attention to.

TM - Well, now, we came up with this late in the afternoon. It looks as if the paragraphing is very similar, if not identical

MCB - Alright, I guess what we did here. I've got some notations here, now let's take up to the present time. Subsequent thereto and up to the present time, we struck that out, didn't we?

TM - No

MCB - We didn't strike that out at the present time

TM - No, we struck it out in the afternoon we struck out subsequent thereto but we kept that in and struck out at the present time.

MCB - Right. Well, that's the next thing that I see so what we added here with Jim Mann's number seven with reference to this paragraph, we put what's left of it in tact. As made in his policy, we kept this still as policy, didn't we?
TM - Yes

MCB - And in furtherance of such policy did act directly and presently and through his closest subordinates and political agents to delay, impede and obstruct the investigation of such burglary and to cover-up and conceal and/or protect, we took in there at one time, didn't we

TM - That was in the last draft

MCB - Oh, I see, to cover-up and conceal those criminally responsible and reprimand the same and to conceal the existence of scope of related unlawful corrupt activities. We kept it that way.

TM - And there was some discussion. For some reason that known meaning went through that group fast. We didn't have very many changes.

MCB - In that paragraph.

TM - In that paragraph, right. But that afternoon seemed to have brought up a number of changes in that paragraph but I think we did get to it, mm you know how this group worked. We didn't start with that. We did read it out this very quickly when people started

MCB - Coming in, assembling, that's right.

TM - And then they really got to work on the next page and redrafting the A, B, C, D, and E.

MCB - That's it, you've got the picture.

TM - And we never had time to get back to it.

MCB - Okay, but now we also had some discussion about the means used to implement this policy have included and we knew we were going to have that problem. But we just discussed it. And we knew we were going to have the problem of how not to pin ourselves down.

TM - But that afternoon we did come up with what became of it

MCB - Alright, now, so then we go to the first paragraph. Making false or misleading statements through lawfully authorized investigative offices and employees of the government of the United States. My notes also indicate that that's probably what we wound up with finally.

TM - Yes, except for the Hogan amendment. Hogan added making or causing to be made

MCB - He had that on the Floor, or the Committee

TM - The Committee, yes.
MCB - But, this was language that was in Donahue's Substitute and in the Sarbanes.

TM - Yes

MCB - Okay, so we go on to number 2, or B, sometimes we call it 2 and sometimes we call it B. At this time it was B, wasn't it?

TM - This is where you started to take over the drafting. You started here and you flowered indeed. But you started putting together this approving, condoning and acquiescing in. You spew that out. That was immediately bought by everybody and the only real problem thereafter was keeping it out of every other paragraph because remember we were groping for language and someone would repeat your

MCB - I see we have it in paragraph 5 too, don't we?

TM - Yes, and they would have had that in a couple more if they could have, I think.

MCB - One of the other problems was spelling acquiescing.

TM - Yes, I believe that was a problem.

MCB - But, that's right, I remember going through this draft. I wish I could find, ah, well maybe I can find it tonight somewhere. I had made some notes myself. Because I remember when you got through with this thing and brought the draft back to us, we left out something about perjury. Do you remember, I had condoning perjury?

TM - I had a note on one of mine too regarding perjury but we never got that one put in the right place.

MCB - Yes, not yet. But, okay, the second thing is paragraph 2. This particular thing was counselling witnesses to give false or misleading statements to investigative officers in duly instituted judicial proceedings. And you have in respect to the burglary. And we struck out in respect to the burglary and that's when we started dealing on this thing approving, condoning, and acquiescing and counselling, right?

TM - Yes

MCB - And then we got to the question of false or misleading in duly instituted judicial proceedings and we added congressional proceedings, right?

TM - Yes

MCB - And those were the big changes in that paragraph.
TM - And there was considerable discussion as to instituted judicial proceedings. In other words, they weren't sure that Nixon had ever appeared himself before a grand jury but then we got into the language of counselling witnesses, having them say, I don't know, I forget, I don't recall.

MCB - Yes, that's it. Regarding the evidence.

TM - Yes, the evidence. We do that often, really, when we are in doubt as to whether something lead directly to the President.

MCB - You know that's the thing that surprised me as we got into this thing, how much of it we had in our subconscious that we could summon pretty fast.

TM - Yes, I know I was surprised.

MCB - It surprised me.

TM - And they do right now, the facts about that night.

MCB - Well, now wait you were right there most of that time.

TM - Yes, I was in the room but I hadn't been able to sit down and digest that and I had to read that black book, of course which Doar passed out most recently on the case.

MCB - Well, it's there.

TM - I knew it was there.

MCB - Well, you know I read it after we sat there and kicked those things around. Now number C looks the same way, interfering the conduct of the investigations by the Department of Justice, Federal Bureau of Investigation and the Watergate Special Prosecution Force. And that was just accepted as it was.

TM - Yes.

MCB - And then we got into this classic American prose that you hear.

TM - Yes, we kicked around something prior to that, we were going to say something paying or

MCB - Oh yes, originally we had the paying of money for the purpose of obtaining the silence of participants in the Watergate burglary and other - that was our point of departure, right?
Okay, here's what we did. The first thing that we did was added we went to approving, condoning and acquiescing in, right?

Then we added with substantial sums of money. And then for the purpose of obtaining - oh, wait a minute - we also went into the surreptitious payment.

As you can see that's another one. I take credit for that one too.

You should, indeed.

Surreptitious payment of substantial sums of money

You were warming up on that top one there and when you got down to D you really going strong.

Alright now, for the purpose of obtaining the silence and participants in the Watergate burglaries and other illegal activities. That's about - we kinda quit on that one at that time, didn't we? We turned it around to say individuals who participated in such burglary or other illegal activities.

When did we do that.

You did that without talking to anybody.

I did?

Yes, when you came back with the next draft you just turned that around.

Oh, okay. In other words it was more grammatical.

Yes, that was more to do with constructions. You know we were concerned about. Well we got into it later a little bit more. I'm going to talk about that in a second. But just let me mention about it now. Do you remember when we got into that when the draft came back again we got worried about all the people involved and so we rewrote that paragraph to say after we said obtaining the silence and then we got into the question we wanted a little bit more than that and so we inserted for influencing the testimony of.
TM - No, that came at the next meeting. You'll see our next draft

MCB - Okay that came at the next meeting so let's but for this purpose we hadn't gotten into that. We were satisfied to say the silence of the witness and then move on, was that right?

TM - Yes, well apparently this was agreed to pretty much.

MCB - That's right. An effort to misuse the Central Intelligence Agency, an agency of the United States government. That's about all we

TM - After that appears in the next draft as is

MCB - That's right. Now here

TM - Yes, now we struck destroy and we really had trouble in making that draft

MCB - That's the destruction of, that's that deep six stuff and the shredding of the 18 1/2 minutes. I see, as a matter of fact, when that was written - so we agreed we kept it in there so we just said concealing

TM - Yes

MCB - of relevant and material evidence

TM - and we tack on what we had in A.

MCB - Tack on about making false and misleading statements to lawfully authorized investigators that was A. And so we said concealing relevant and material evidence from lawfully authorized offices in the same way as we did in A, that's right.

TM - And the purpose of that line was to go up and track A

MCB - But we struck out the word destroy if I remember correctly in that paragraph for the reasons you mentioned. We just didn't feel like it at the present although between you and me I am satisfied that he must have done it. I mean he must have said good, do it.

TM - Yes, plus they a letter to the Court wherein Buzhardt said the President said the tapes, I guess the counsels were very worried about them.

MCB - Yes
TM - And trying to keep a record as to its safekeeping, whereas Buzhardt wrote a letter to Cox saying the tapes were in the personal control of the President.

MCB - Yes, except he took them down to Florida and put them in his safe and he checked them in and out of that safe about five times in the middle of the night. He took them up to Camp David to work them over and he had ample opportunity to do it. It sure was to his advantage to do it. Well, I guess that's one of those subliminal reflex adverse interest that was drawn from time to time.

TM - Looks like we struck G, doesn't it?

MCB - G, now that's what you call prospective defendants and prosecuted, tried, and convicted to expect executive clemency in return for their silence or false testimony. Yes, well basically we didn't feel like we had the President on the clemency question. It worked back in later. But you know that disturbed everyone from the first. Rails was the one that just gave up and I give Railsback credit. He didn't want to throw anything in that he didn't think would be approved. And that's why he was pretty strong on his imputed responsibility, vicarious responsibility or whatever you want to call it. Now then H was disseminating information received from the United States Department of Justice to subjects of the investigation for the purpose of aiding and assisting their avoidance of criminal liability. That pretty much was left in tact, wasn't it? We were talking about that.

TM - We were going to change that the next time we got together. We dropped that from the resolution.

MCB - But we were talking about, that was the topic of conversation of Petersen's but then we turned it over to Haldeman and Ehrlichman that's what we were haggling about, right?

TM - That's right.

MCB - We were all offended by the fact that it really all came to the President and in his official capacity.

TM - Right.

MCB - And the next one was releasing false and misleading statements from the White House for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted into the allegations of misconduct at the White House and the Committee for the Re-election of the President. We really worked that one over, didn't we?

TM - We struck releasing and then making false and misleading public.
MCB - Yes, that's right, we elevated his statements to public statements

TM - In his capacity

MCB - Yes, that's another. I remember I brought you back to that.

TM - Yes

MCB - In his capacity as the President of the United States. And on the way found out that John Doar didn't like that. And it had in there where making statements from the White House while he was making them from all over the country so we just took that out and pretty fast.

TM - And the from the White House was the Mann, Doar insert.

MCB - That's right.

TM - And all that was deleted.

MCB - That was the thing that offended me throughout the draft, that was the thing that hit my eye when you brought me the draft articles. They kept referring to the White House like it was a person, an entity or government body. And just that people would draft like that horrifies you.

TM - Right, we knocked that out and then it would come back to us in another draft.

MCB - Yes, John Doar just doesn't have the vaguest idea of what, you know, can't you imagine tearing him apart on that. Well, it goes back to what Harold Froehlich said in our caucuses one time. You weren't there I guess, when he said that we were cleaning up their mess all the way along and that's what we are going to need to put this together so we can vote on it.

TM - That's right.

MCB - We've done all the subpoenas and we did it on some of the things and he was getting offended but I felt like in this instance we sure ought to do it and he eventually came around to that to his credit. And then we got into the question of after we had struck out the White House for the purpose of deceiving the people into believing a thorough and complete investigation had been conducted into and we said with respect to, allocations of misconduct and then we said, in this draft we said on the part of the personnel of the White House other than the Executive branch.

TM - And personnel of the Committee for the Re-election of the President.

MCB - Yes, that's right. And that was as far as we went.
When we struck it, that was it for

That was it for the eight or nine, what the so-called specifications for our reference. Six specific paragraphs

Then this is where they laid to rest that middle paragraph.

Yes. For all of this Richard M. Nixon is personally and directly responsible. For his part in it he has been found by a duly constituted grand jury in the District of Columbia to have participated in a criminal conspiracy to obstruct justice but not indicted solely by reason of his office as President.

Yes.

You know we worked our way back. We said, what in the hell does that have to do with it. So we took the second sentence out. And that's the way your scratch notes indicated.

Yes.

See how we scratched that out earlier and we said, well if we take out the second sentence, why don't we take out the first sentence. And then really, to this moment, you put down the original that came to Jim Mann.

I didn't put that in there.

Oh, this came from Jim Mann

Yes, that was never my draft.

I don't know where that came from. Do you think that was John Doar's old draft because Jim had been working with John.

Yes, or Mr. Sarbanes or whatever that other group was.

And then we go on. All of this has been carried on by Richard M. Nixon in a manner contrary to his trust as President. Now, don't you remember you said in violation of. I believe I said this. There was another word I liked, violated.

Yes.

I don't believe that stayed around very long because violated was what I had in mind.

Yes, we did have violated there first.

And then after you got home and worked on it, you wrote something else.
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TM - Yes

MCB - Something different, I'm not sure better.

TM - Yes, I'm sure it's not.

MCB - You wrote violative of his public trust. Now you remember we put public trust in there and his oath of office. We inserted oath of office as President. And then we said to the manifest injury of the confidence of the nation and to the great prejudice of the cause of law and justice and we put to subversive and suppressive to constitutional government somewhere and suppressive of constitutional government, leaving no recourse for the pursuit of justice but through the constitutional power of impeachment, and removed from office granted to the power of Congress set forth and then we specified three articles and then you added of the constitution of the United States and remember you said why do we need to mention the articles.

TM - Yes, Mr. Hogan himself, I think drew this up

MCB - Mr. Hogan. Was it?

TM - Yes

MCB - Well, later on you said that but at this moment you didn't have the timeliness to. Should not enumerate, right?

TM - I think so.

MCB - But at a later time you wanted to take them out and several people objected to it.

TM - Yes

MCB - And that was the end of that draft article...

TM - This finished one, this was the morning draft wasn't it?

MCB - Yes, this was the morning one, that's right, the morning of, Tuesday morning, Wednesday morning, July 23rd.

TM - And we all started to feel pressure from Rodino

MCB - Man, I'll say.

TM - who wanted something before the Committee and the afternoon meetings brought this home to roost.

MCB - One more thing now. This was Wednesday morning the 24th. Okay, that's it, now Jim Mann was suppose to come back with abuse
MCB - of power and all he said was he had three drafts of abuse of power and he was not satisfied with it and he didn't even give us anything to look at on abuse of power.

TM - I hadn't even seen abuse of power as yet and we wouldn't until late this afternoon.

MCB - Late that afternoon. Okay, so this is the day that we started out on national television.

TM - Right, at 7:30.

MCB - 7:30, so this is what we did in the morning and we all, we broke up at about noon and went to the first quorum call, didn't we?

TM - Yes, and I went back to the drafting room.

MCB - Yes, you went back to the drafting board and now my notes are - after that we had a - we came back in the afternoon and you had a draft for us, didn't you?

TM - Yes

MCB - Yeah, you had another draft for us.

TM - That was draft one

MCB - This was the thing that was numbered draft one and I've numbered this number 8 and that was the first time we saw preamble and we still didn't spend a lot of time on that if I remember correctly?

TM - No, we did not.

MCB - And it was in the middle of that conversation that Frank Polk called up and said McClory was working on a draft of abuse of power and we all laughed at that and said well if that will get him in line, we'll play with his.

TM - That's right.

MCB - Little did we know that he was going to go wild.

TM - I think we had a discussion as to whether or not to send him over a draft of what

MCB - That's right, I remember. Now, let's see if I can remember who was there because it was pretty well ticketed that you were there. I was the first one there. Because I came up here and things were so hectic that I went on down to Railsback's office where nothing was going on and I reviewed your draft. Railsback hadn't read it yet.

TM - That's right, Jenner was there. Flowers was there..
MCB - Flowers came in first, *unnamed* Railsback hadn't gotten there. He was over talking to John Rhodes.

TM - That's right. Remember he was hoping around during the whole meeting. He was trying to work on his statement for that night and

MCB - I was going to say, that's not the time when they started to make threats on his wife's life, was it?

TM - No

MCB - You know he had ants in his pants but he sat down and Hogan said - no, it was you and I and Flowers certain was there and then Jim Mann came in during this time and we had your draft and we started going back to it again.

TM - Cohen was there, wasn't he?

MCB - Cohen came in late but that's what I was saying because the time we were there the call came in for Frank Polk and we decided to send - that's right, we went over your draft before Cohen even got there because we were that well satisfied with it. And we made a few changes in it and a call came in from McClory and we had a discussion about whether we would call McClory and tell him about it and I'll accept the credit for this if that is the way it is but I said we don't want him in here because he talks so much.

TM - That's exactly right

MCB - And we'll never get anything done. So Tom said, should we send a copy of it and we finally agreed to send him a copy of it.

TM - We also at that point sent a copy to Doar, do you remember?

MCB - Doar by page, right.

TM - Do you remember we sent it over by messenger, and do you remember we had to take time out to write the note that Mann wrote to Doar. I wrote a note to McClory and put it in an envelope and Jimmy delivered both of them.

TM - That's right Jimmy delivered one to Evan Davis *aixm* because John Doar wasn't there and we went to McClory's office and he was insulted that some - McClory's AA came up and grabbed it from him and took it back in, so it never got directly in the hands of McClory. But then when Bill Cohen came in he was so mad that, he really was furious. We sent a copy over to McClory.

TM - He was, that's right. He was irritated. And he questioned, he wanted to know why did you bring McClory into this.
MCB - That's right, because he thought surely McClory would go on TV with it.

TM - And at this point, wasn't it Railsback who threw out the idea, let's call Froehlich.

MCB - Yes. He wanted to add Froehlich

TM - Yes, at this stage

MCB - And Hogan. Froehlich because he was in doubt because he hadn't made any announcement on it. And Hogan. I'm sorry I thought I suggested that I thought that Froehlich, now, what was the reason that I thought Froehlich wouldn't be helpful to us. I didn't have any real objections.

TM - But I think he did actually call him at that point, though.

MCB - Yes

TM - Because we were continuing to buzz through this and Rails was on the phone with Froehlich as I remember.

MCB - Yes, but we decided not to call Hogan for some reason. I thought he was too busy. I didn't think he would be a bit interested at all. I was really wrong about Hogan, he really got involved in this whole thing. He really made a contribution on the Floor today and I thought he just made his speech and

TM - The group was working very well ahead at this stage.

MCB - It sure was

TM - Compatible, and things were running smooth and I can understand the reluctance to bring in anybody because I think

MCB - That's right, I thought it was enough and the other part of it was the press was beginning to collapse on us, do you remember?

TM - Oh, yes, goodness there was a crowd out there and at one point you had to sneak people out the back door. I know Mann sent me out to see if there was anybody out there and waited till the second bells rang so he would have to run over there and say that he couldn't stop, so he could keep going.

MCB - Yes. Okay, let's go back and see what we did with Article I at this afternoon meeting. We went through it pretty fast.

TM - Yes, didn't we though.

MCB - I'm going to say that this is the time when we went through the changing of the preamble and I can't remember which one we liked. We
MCB - didn't like yours as much as we liked the one that somebody else brought in there.

TM - No, I think Jim Mann had one and we tossed them both about and you actually came out with the one that I brought in.

MCB - Is that it, this one?

TM - Yes, and we struck all of this out and there were a couple of amendments to it.

MCB - Yes, that's right. This is the more traditional one and we wanted to take out the words "all the people" I remember that. And it was, it was out of this draft when you brought it in there. So, we must have mentioned that somewhere, no, oh I see what you did. This is an old print or something, but anyway that's got what the committee should do and all that went by the boards.

TM - It just disappeared out of the draft and noone knew anything more about it.

MCB - To this day we don't understand that. Alright, now we went to his conduct in the office of the President of the United States, Richard M. Nixon. You see we had taken out something, in violation of his constitutional oath, faithfully to execute the office of the President and to the best of his ability to protect, defend, and serve the Constitution of the United States, advise that the Constitution that you take care that the law be faithfully executed and as prevented, obstructed and impeded in that. And that's still the same, isn't it? that first paragraph, and the second paragraph we have, we still have got the word "burglary" in there but I think that's where we went to places where we made changes before. No, it was different, we still have the word "burglary" in there.

TM - "Burglary" doesn't come out and I think that evening if you recall we had dinner at the CongressionalHotel, ah, the Capitol Hill Club and we started to discuss burglary versus illegal entry, Mann said that Doar was pretty well stuck on illegal entry and I was instructed to find out, maybe you brought this up, what is used in the code?

MCB - Tht was Railsback, wasn't it?

TM - Somebody said it was in the D.C. Code and that's where I went to check out the Code and I remember "unlawful" was the proper term.

MCB - Not "illegal"?
And he still had difficulty with doing it. Doar then went over to Sarbanes to talk about it. He said, well this is what Doar said they used in the indictment and I said well I would be surprised because that's not what they had in the Code. So I had to call back to the Congressional Hotel and the staff and have them read the indictments to me at which time for the first time I heard "unlawful" entry, as opposed to "illegal". So when we got that it was late on Friday or whatever

Yes, that was after Hogan got involved in it, because he got something from the FBI.

Okay, so the first sentence was left pretty much in tact except that we took the word "Watergate" out of it.

Okay, well then the real thing that we kicked around and decided to kick out "and up to the present time" on the next sentence. "Subsequent thereto and up to the present time"

Well, Thornton wasn't here at the time

No, he wasn't.

And he was the author of that particular phrase and in his absence I think the group

That's right you have got to protect yourself. So, that came up and then the other thing is we got to talking about closest subordinates.

And he decided to take that action personally and through his subordinates.

And if I remember correctly, closest came out of it and we called it close subordinate at one other time but how did it wind up ultimately.

Well, ultimately Railsback substituted his language.

I see

But even close came into Sarbanes draft but that was because of the mess-up at the last minute. But in the Sarbanes Substitute it came in as close subordinate.
MCB - Right now, that's up to the present time, right? Alright, subsequent thereto and up to the present time Richard M. Nixon. And so we took out "at the present time" because Thornton wasn't there to protect himself and we took out "closest subordinates".

TM - Hogan apparently was bothered by that.

MCB - Later on, but Hogan wasn't there this time, was he?

TM - Well, this is the afternoon of Wednesday.

MCB - Right

TM - I think he was, remember he joined us that night at the Congressional and he met with us before that. It is my impression that he came and this is when Hogan joined the crew.

MCB - Okay, fine, alright. Closest subordinates and political agents. We all wanted to take out "political agents" by then, right?

TM - Yes, that would be correct.

MCB - And then to delay, impede and obstruct the investigation of such burglary and then we got back to where we had taken out burglary

TM - Apparently Mr. was having trouble with burglary. He was making notes on that.

MCB - Right, that's the best way to say that. To cover up and then we struck conceal and/or protect. We were having trouble with that, you know, cover up and conceal and/or protect those criminally responsible and we took out criminally, and I think that's how it stayed from now on, isn't it?

TM - Yes.

MCB - And then we had trouble with and/or protect and I think we just tentatively put that in and then poured that out while we were there, provided I didn't see it on another draft.

TM - Well, I had trouble with it, drafting it, I had to present this to Doar. This and/or just was never used. to use it and it creates more problems than it solves.

MCB - That's right - okay, so then we got off into conceal the existence and scope of related unlawful covert activities.

TM - And then, you know, the group just discussed that at some length. There was a question about the meeting then and I think
it was Flowers or Hogan who wanted to know exactly what that meant and there was some talk about Ellsberg and whatnot and then the group went on and on with this and talked about five to 10 minutes about this and finally Mann said, well let's get on and we can get back to that. We never got back to that.

MCB - The reason Jim Mann just knew that Ellsberg to Ellsberg which was very important to the Democrats that he was working with. And Walter Flowers and our people felt like Ellsberg was one kind of traitor that we didn't want to mention in any way, shape or form.

TM - That's right, it would bring nothing but trouble.

MCB - So, that's what happened to that one but you were exactly right we just kicked it around and when we saw there was nothing involved and that it wouldn't work. Jim Mann just said that we would take it up later and that's it. Now, I do remember the next paragraph, you know, the preamble to the specific paragraph. The means used, you know, this is the problem, we kicked around all the time the problem of how we were going to put in the position of proof in one not what would happen to us if we failed to prove one of these things, then the whole article would fall.

TM - Well now you said a draft at that stage if you will notice on page 3, we would have. On page 3 I stumbled across it. That was a very important, serious error we had in our draft.

MCB - Yes

TM - But then we inserted "or"

MCB - Yes

TM - But had it been left in that way we would have had to prove each and every caveat.

MCB - But we also, at this stage of the game, a draft we put instead of have included one or more of the following. You know the way you got it back this time it had included but had not been limited to the following. That's the language you used in drafting legalism all along, you know, including but not limited to.

TM - Right and that's what I put

MCB - And then we struck that out and put one or more of the following and that was what I thought was
TM - That was what Doar wanted and what Mann first set out to do - one or more or both or all or something like that and the group scratched out quickly the all and then they got back to one or more.

MCB - Okay, now, in making false or misleading statements to law - well that was practically old "a" which became paragraph 1 unchanged.

TM - Yes

MCB - Then we got into what had been paragraph "c" or "d" of the other one - no paragraph "f" of the other one, you remember, destroying and concealing relevant evidence and so forth. You moved that up there and made that number 2 where it had been "f" before.

TM - Right

MCB - And then we used the word "withholding" instead of "concealing".

TM - Yes, that stays in there.

MCB - That I do recognize the Hogan involvement in the use of that language.

TM - Now, let's see, this is the afternoon meeting.

MCB - Wednesday afternoon meeting, that's right, with Polk.

TM - With Mr. Mann and Rodino still calling and asking about a draft of Articles I and II and we hadn't even gotten to II yet, plus the Members had to worry about their speeches too.

MCB - I wasn't all that worried about my speech. I didn't realize, you know, people were asking me what I was going to do about my speech and I said - Oh my goodness, I'm not going to have anything to say in general debate and then I found out that night that I was expected to make a speech. So, I took out an envelope on the train home and - Alright, so we got withholding relevant and material evidence or information, did we stick that in there?

TM - Yes it was put in there.

MCB - And lawfully authorized investigative offices and employees of the United States. And, you know, that was where you were trying to tract the statute like you did before. No, track paragraph one.

TM - You know there might have been a defect there in withholding relevant and material evidence and the group thought that it could very well have been withholding of information that wasn't technically evidence had it been turned over, so then we got more information.
MCB - Alright now, improving and then of course the next paragraph is the one which you and I had written before. That one remained absolutely in tact, didn't it?

TM - Yes

MCB - Approving, condoning and acquiescing in, and then I see now in paragraph four which was old paragraph "e" endeavoring - no it was old paragraph "c", excuse me, interfering with the conduct of investigations by the Department of Justice, and we added on

TM - Endeavor to interfere

MCB - Interfering or endeavoring to interfere with, now that's what we talked about and we kicked that around and we didn't, we decided that we didn't need this interfering or endeavoring to interfere with, it was the same thing?

TM - Well what we ended up with interfering or endeavoring to interfere with, that's what's in the Sarbanes Substitute.

MCB - Okay, fine. That's where we added it, right there.

TM - That's where it came in.

MCB - You know my guess is that sometime during this afternoon what we were playing with there became the Donahue resolution.

TM - Oh, yes, it did.

MCB - You brought that draft of there and somehow Donahue got a hold of it

TM - But, of course he didn't have my corrections.

MCB - That's right. The corrections we are now making are the ones that really were corrections to the Donahue draft that came forth in the Sarbanes, right?

TM - Right.

MCB - This is in the afternoon. Now we didn't make any other changes in that subparagraph - 0 (c), subparagraph 0 (d) was now subparagraph 5 and that's the approving, condoning, and acquiescing in the surreptitious payment of substantial sums of money for the purposes of obtaining the silence, and then we got into

TM - I think it was you who approved this literary piece.

MCB - I somehow feel like
TM - If there is any pride of authorship that this group had, it was with this particular paragraph. There is no way that this paragraph was going to be changed.

MCB - For the purpose of obtaining the silence or inference in the testimony of, now that's, do you remember we had a real, we really had a real lot of conversation about that and I can't remember all of the things that we did, but you know we really had to obtain the silence of individuals who participated in the burglary.

TM - Yes

MCB - Now, we've got obtaining the silence or influencing the testimony of (that was added) witnesses and then we said potential witnesses or individuals. Now we really got it there. Now, that's the way we wound up with it.

TM - That's the last change on that draft.

MCB - And then you participated in such burglary and I didn't believe we made the change about burglary at that time.

TM - No

MCB - or illegal activities. It was still in there.

TM - Now, I don't think that has any changes.

MCB - No, the next paragraph (e) didn't have any nor (f) didn't have any, then it became 6 or 7 and then the big change was at the end of the old paragraph, now somehow this thing about making false and misleading

TM - Now I had put this in on 7

MCB - Yes, 7 now lets look at 7 and would - oh, yes, it was short, it was disseminating against information received from offices of the Department of Justice subject to investigation conducted by lawfully- oh, you put in there, conducted by lawfully authorized investigative officers and employees of the United States. That's what you stuck in there, wasn't it?

TM - Yes, for the purpose of meeting and assisting such subjects

MCB - Yes, such subjects in their attempt to avoid criminal liability

TM - Yes
MCB - And that's spelled out pretty clearly taking Petersen's information and feeding it to Ehrlichman and Haldeman, right? That's what we had in mind. Alright, now on 8 making a false or misleading public statement in his capacity and all the changes that we made before were pretty much approved at this time, weren't they? We discussed them a few minutes ago. Now, the big change was what you had just mentioned before when you added at the end of the paragraph this instead of contact.

TM - That's right.

MCB - And that makes all the difference in the world, at least as it is what you have to prove, at least in my view. Now, this is the thing that Jim Mann brought back, this paragraph number 9. They wanted to get back to clemency and do you remember we talked about that and Railsback still didn't feel good about that and we got the evidence out and read. As I remember correctly, and read the conversation where you said that the President of the U.S. was saying to John Dean and John Mitchell, just remember down the road, I know there is only one guy who can give you your ride out to pasture, and that sort of stuff.

TM - Magruder's wife asked how he was doing and give him my personal regards and whatnot, that kind of thing.

MCB - Yes, but we didn't want to use the word clemency so we said to govern to cause prospective defendants and individuals duly tried and convicted to expect favorable treatment and consideration in return for their silence or false testimony or rewarding individuals for their silence or false testimony.

TM - That was the Magruder job

MCB - Yes, that's it. That's what we had in mind. We knew Jeb Magruder had perjured himself and that made him whatever it was and then when the President - the notation was that Haldeman went into the President and said what are we going to do with Magruder and he had then been taking notes. Magruder and then in parenthesis, said he was going to blow the whistle on Magruder if he had to come up for confirmation before the Senate.

TM - Yes