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Fragile Coalition Interviews - Group - Tapes 2&3, July 11, 1975

M. Caldwell Butler

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Tape II, pl

A continuation of Tape I: those present, site, and time - same.

HF - I sat right next to Dennis and Wiggins, and I had never seen two people, no matter what came up in that evidentiary presentation, who were less moved.

TR - It seemed that St.Clair by his demeanor kinda acted like Wiggins should cave in. [?]

WF - No, I think those guys and some other politicians had given him too much credit. I think we had virtue on our side. We had it. They knew it. They were on a losing team, and they found something they could grab hold of in St.Clair.

CB - That's what I thought.

WF - They got him where he [St.Clair] was the only one out there.

TR - Carlos Morehead was another...

HF - St.Clair killed himself. All that talk about national security....

JM - I'd just sit and fume.

WC - I was fuming all along. Caldwell and I were talking most of the time in this entire proceeding, and yet I didn't know what you [CB] were going to do. You shocked me one time on Kalmbach.... I felt sorry for him. He was a pretty decent fellow, and he was on the rocks like everybody else. I heard your comments, Caldwell, you said, "Bullshit, he's stuped, even when they tell him what the facts are, he would still simply go out and do it." Your reaction was that the guy is not that dumb.

CB - That's right.

WF - You know I still can't believe that they haven't indicted Bittman.

TR - I don't get it either.

CB - and O'Brien, that poor fellow.

WF - It was the soldier with the commander-in-chief. Pat Gray was a political operative to start off with. He wasn't a career civil servant; I put them in a little different category. In fact, Gray was not one of our witnesses and I never did see him in the place, so I didn't feel the same way about him as I did about Peterson.

JM - Maybe not, but he was a career man, wasn't he?

WF - Gray did something and then they wack him in as an FBI man — that was something!

Tape II, p2

TM - For the second meeting of the coalition, I came up with draft five, and to this moment, I have not been able in my own mind satisfactorily to conclude whether or not the group met Tuesday afternoon. The first meeting was with the definite intent of getting back together at some point. I recall drafting in my office when Railsback called and asked, "Would Hutchinson fire you if he knew that you were working on articles of impeachment?"

HF - Certainly.

TM - And that kind of took me by surprise.

LAUGHTER.

TM - Do you have any indication that he is thinking that way? What happened, I believe, was that one of the Post's writers, Cannon, had contacted Railsback, saying he had learned that there is a group of members gathered and were drafting articles one and two. And that this was a quiet, silent, secretive group. By noon the press had had this and of course it was overshadowed that same day when Hogan had his press conference and announced his position.

JM - As a matter of fact, after our first meeting, didn't we sneak out the back door because the press was outside?

RT - Right.

WC - May I go thru my notes on what happened, Tom? That first meeting I arrived about 8:30. It lasted to about 10:00. Railsback and I went to a caucus and we were late getting there. There was a unanimous consent that Garrison should take over as chief minority counsel, and Railsback and I asked to be recorded as "no" on that. So at 10:00 they were still caucusing with the Republicans there.

HF - I was not there with you at that time.

CB - I wasn't there either.

WC - The meeting of the Judiciary Committee started at 10:30 or so. They were anxious to get the caucus over to get down to the meeting, and at 11:35 I have a note here: "meeting of Judiciary started. A mess." "No one knows what is going on."

CB - It was supposed to be an informal meeting.

WC - At 11:35 Hogan received a call from Jerry Ford, the vice-president.

TR - I don't remember that. /^{WC -}Hogan had scheduled his press conference that afternoon, and he got up and walked out and then we had a general discussion.

WF - You didn't know what Hogan was going to do then?

Tape II, p3

TR - No, I met with Hogan that morning, Tuesday. I tried to convince not to come out against impeachment precipitously, and he would not give me any clue. I met with him in Mooney's office.

WF - He was really playing games, wasn't he?

TR - Yeah, he wouldn't give me an inkling what he was going to do.

CB - Here is what my notes say about that meeting. Big news was that Larry Hogan is getting ready to have a press conference and announce how he is going to vote. While he was sitting there the vice-president called him. There is a pretty little girl over there who is coming in and out and upsetting everybody, and she came in with the word for Hogan that the vice-president was calling him. Well, Larry was obviously a little bit upset. We knew the vice-president was calling him and I will anxious to find out which way. He came back, and then went on and made his statement.

WC - That afternoon I had an interview with a guy from the Bangor Daily News that took most of the afternoon. Hogan at 3:00 made his decision to vote for impeachment and was immediately attacked by Dean Birch, who was running the president's campaign, as a purely political decision. I have here: at 5:20 we resumed a meeting and a reading of the resolution—that is a pretty cryptic thing—I am not sure which meeting we were referring to.

CB - I will tell you — if you want me to interrupt —that was the business meeting where we decided on the rules of procedure. It was where we came in with our coalition and we were going to take over and vote on everything at one time at the end of it, and Kastenmeier said....

WF - That afternoon earlier we had been in a Democratic caucus, backing Rodino. Don't you know that was a real heart-rending thing back there?

CB - And that's why we didn't get together again that afternoon because we had to avoid the Democratic caucus.

WF - We had made more or less a commitment to these guys. We could handle the Democrats and we thought it was all in our best interests to vote one time and not be peppered by the whole lot of 'em. I think I was thinking more about you than anyone else, Caldwell, because, as I said, a pickup truck in Roanoke can get up here in three hours.

LAUGHTER.

CB - I was on your side.

WF - And only but a day to get up from Tuscaloosa.

TR - And only two days from Moline.

Tape II, p4

- TM - Anyway, that afternoon I was drafting, and Railsback called and asked would Hutchinson fire you? No, I said, I don't think he would, and then he said that Cannon had the story. "He is going to print it and use your name." I said that I'd prefer that he not use my name -- just refer to a staff member who's helping them draft. I recall we had a schedule to get back at 2:00; I had not finished the draft yet, and I called your [TR] office and asked if anybody was there. Bill Hermelin said that no one had arrived yet.
- TR - I wasn't there. We had a meeting at 3:00. We were an hour late, and it wasn't a full meeting. I was there and I think one other, but I don't know who it was.
- TM - My recollection is that it may have been around 3:00. I did have something, draft 5, that is in the book here. It is actually the first draft that the group received. Now I got back to Railsback's office and there may have been one other person there. Finally the meeting took place, and you said, as I recall, "Well, here it is." This was number 5, as written here, but really draft number one. "Make sure the Members have it; make sure the coalition has it, so that they have a chance to look at it."
- CB - We had overnight to read it.
- TM - So I delivered it to everybody's office, making sure that everybody had it. We can move thru pages 2 and 3 of the outline very quickly. The group never really discussed that draft, but Wednesday morning we got into draft 6, which was really put together by Mr. Mann. Railsback and I were at the table. It was the 8:00 meeting on Wednesday to discuss article one.
- WC - It was not an 8:00 meeting. At 8:00 that morning was the Wednesday group meeting.
- TM - It was 10:30 when we met in Railsback's office.
- WC - 10:45 to be exact.
- CB - No, that is when you arrived.
- LAUGHTER.
- WC - I was there on time for that one.
- TM - Well, I was very confused at that point, because as I understood the meeting on Tuesday....
- WC - As a point of reference to time: at 11:05 you will recall we were sitting around discussing and we got a call that the Supreme Court had just ruled that Nixon had to comply with the subpoena.

Tape II, p5

TM - Then Mr. Mann sent over by messenger a package that we thought was going to be his first draft of article two, abuse of power, and we opened it up, and it turned out to be a re-draft of number 5 of article one. It took us a little bit to figure that out. We weren't sure it was following the same format or what, but we finally figured out it was not the abuse of power, which he was supposed to do. So we have to turn to Mr. Mann in a little bit concerning draft number 6; he had probably reworked draft 5 that previous evening.

JM - That's right, I was still at it; I wasn't ready.

WC - Jim, do you recall that we had to turn all of our drafts into you and we each initialed our drafts? And said we wanted them back afterwards.

JM - Yes, I remember that.

TR - Why did we do that?

WC - We didn't want them to get out.

HF - For control purposes.

TR - Ham, I don't remember that.

CB - That was leak-proof, too.

JM - The only recollection that I have is that I was still on article one — going thru to the finish and having another input into the product.

CB - You just don't follow instructions very well.

JM - That's right, too.

HF - Did John Doar work with you on the rewriting of draft 5 to 6?

JM - Probably. I had Bill Blunt too.

TR - Tell us about it, because that is very important.

JM - I refer to Bill Blunt, whom I have identified, and John Labovicz of the impeachment staff. They were on almost constant duty in my office. So every time I would come in with a new draft — Tom's number 5, for example, we would sit down and go over it and start working on it again. Whether John Doar was personally present at any given time or not was unknown. I notice particularly on article two the times and dates up in the right hand corners of the various drafts. That was the practice of the impeachment staff. So most of the typing was done at the impeachment staff headquarters. That wasn't so much the case with article one. But it was a mix of me and those two fellows and John Doar was in the wings all the time.

TM - Was he contributing or what?

- JM - We really need to interview John Doar; why not just call him and get his recollections? He came to see me that previous week before the committee drafts were made available to the members. Labovicz had also come to see me. John Doar had come to see me with those drafts two or three days before the committee got them, and he had the habit in this period to meet me at 8:00 almost every morning. He would call and say, "Can I come over?" And I said, "Yes." And that happened one morning during that prior week he came over and brought those drafts and wanted me to study them over and give my opinion about them. I don't recall reporting back to him on those drafts. I had the same reaction that Tom has expressed: I thought they were overstated and just kind of turned 'em off, and started to think about drawing other articles. During the process of drawing article one, I think his input was substantially less than it was on article two. My work was primarily with Bill Blunt and John Labovicz. And of course I have no recollection of what I might have done during the afternoon of Tuesday and prior to 10:30 Wednesday morning in the way of working on article one.
- WF - Well, article one didn't really constitute the problem that article two did.
- JM - That's exactly right.
- WF - I know that all thru the thing we were worried about article two in stating in common parlance a viable course of action [?].
- JM - We mentioned just a minute ago, when the tape went out, that even in our initial meeting we spent very little time talking about obstruction of justice. We went right into those nitty-gritty problems of abuse of power. So it was just kind of a drafting and language problem that caused me to think that I should continue to work on article one. I'm sorry to say that I am more of a last-minute man than most of you are; I really can't work until the pressure is on, so article two could wait.
- TM - At that time was there a Democratic group, a steering committee, to whom you were talking?
- JM - I recall absolutely no input from that group.
- TM - What group, for the record, are we talking about?
- JM - Well, I only visited with that group one time that I recall, could have been twice. I went to a room near Jack Brooks' office in the far corner of Rayburn and just gave them a progress report and went over the language I had, and they made one or two suggestions, but nothing of any substance. That was that.
- WF - Rodino's drafting group was Sarbanes, Edwards, Conyers, and maybe Brooks.
- TM - Was this draft 5 or 6 that you were talking about?
- JM - No, I am inclined to think this was on article two.

Tape II, p7

CB - You don't think there was anybody that edited our article one?

JM - No, I do not.

CB - It was accepted pretty much?

JM - I don't recall any other....

WF - Jim, I think we on the Democratic side need to volunteer more here because Tom's stuff here is orientated to the Republican side. I think we sloughed off some more important stuff on our side than even these guys know about — that was the kind of friction that was building up on the Democratic side probably aimed more towards me than you guys because I had been more outspoken and I had been more the cutting edge in making sure that we seven were in the driver's seat. Some of the guys were getting ticked off at me and I knew it. I think if there was an operable strategy it was to get at my position [?]. You were going to be the go-between on the articles because you had not made them mad at you, but I think some of them were suspicious of what we were going to do right down to the last minute.

JM - I recall one theme that ran thru the Democratic sessions, and we had two types of sessions. One was back in Rodino's office behind the committee room, usually at mid-day. And then we frequently had a early morning session in Jerry Ziefman's office back on the hall. There was one theme that built up during that time as we started off, when we more or less laid down the law that there wasn't going to be any radicalization of this process, and that there would probably be no more than the two articles — or three. The ones only that were found in the documents. And we thought we had agreement for a while that Brooks and Mesvinsky and Drinan or whoever else were not even going to introduce their articles on Cambodia, on taxes, and the like. We thought we had that kind of agreement. That started eroding and the chairman indicated he couldn't prevent them from doing that.

WC - Jim, did that start eroding after the procedural vote when Waldie and Kastenmeier kind of snuffed out Walter's theory about not going back to vote each separately? Is that when it came apart?

WF - I think some of them thought that they had lost me at that point. They thought I was going to end up voting the other way on account of this flap. I don't think that lasted very long.

JM - The erosion—well, you can see what folks went for those — affected some people that we really thought would not stick to the idea of not giving any credence to those other articles. We expected erosion from several people like Drinan, Holtzman, Conyers, Mesvinsky....

HF - But the Democratic caucus had agreed, had it not, to withhold votes on all articles until the final article had been considered?

JM - Yes, that was right.

TR - What happened?

HF - What happened with Kastenmeier?

Tape II, p8

HF - I was the one the one who suggested that to Rodino. I said that I think [?] it would make it easier and he would get more people on our side if there was just one vote.

WF - And we had tacitly assured you people that we could handle that. And then this caused a flap in our group. I just laid it out to them and they very reluctantly agreed to go along. I am not sure that Kastenmeier was in there at that time. Then when I introduced the resolution a lot of guys on our side played golf and all of the other fellows on your side wanted to make it rougher on you guys -- the Wiley Maynes. went along with the Drinans and the Conyers and the Kastenmeiers on our side. Eilberg was very cross with Kastenmeier; he thought he'd broken a deal that was an understanding.

TR - Exactly.

WF - Don Edwards walked past me, and I was down at that point, because I thought that we had been done in and we had broken faith with you people -- that is what bothered me. And this had been the first time that we had said we could do something and it hadn't worked out that way. And Don Edwards -- he is such a nice guy, even tho he is on the other side of most issues -- said, "Walter, I don't blame you." In other words, his old buddy Kastenmeier had violated faith and Don Edwards is not the kind of guy who would do this. And I said, "Well, Don, I try and not get mad but somewhere down the line I am going to get even." I hadn't done it yet.

LAUGHTER.

HF - You have a long memory.

JM - You will find frequently during that week the Democratic members met pretty often. Most of the meetings were merely for progress reports on the preparation of articles and questions. And of course there were two or three meetings on the specificity problem that arose.

WF - So many of our meetings, as Jim as said, were times taken off the front end of the schedule of the committee time; that's particularly because our drafting effort was alos a last minute effort. We walked in with article one about thirty minutes late because it had to be redone at the last minute. I know this put the TV announcers and commentators in a heck of a bind, because we'd schedule a meeting for 7:00 but not emerge into the main committee room until 8:15 or 8:30.

JM - Getting back to article one. I had no independent recollection of having met with any group of Democrats. I am certain I didn't, frankly, to approve that language. But I did with John Doar and so he had an input.

WF - Jim, I don't think they really cared, do you? The main line Democrats weren't really concerned about what it was as long as they got their articles.

Tape II, p9

TR - How did Donahue come to introduce it then?

JM - All right, Tom can reconstruct that as well as I can. The best available drafts we had at the time of the Donahue introduction, which was even before we started the general session, came from us.

WF - Donahue offered it to precipitate the general discussion. It was primarily our [coalition's] work.

JM - That was the best draft we had up to that point.

TM - The one he actually introduced was 7, 8.... It was taken from our draft 6. And this was another constant problem. There was a discussion earlier, "Can we give these articles to Rodino?" You [TR] would say, "Listen, I am under some pressure. Rodino wants these articles, because he has to have something to lay on the table."

JM - That's right.

TM - And Mr. Flowers would say, "Well, wait a minute." There was considerable discussion of that these early meetings, on a Wednesday afternoon.

WC - Of course we weren't sure of Rodino's use of Bob McClory.

TR - Yes, sure he was [?]. But what were the mechanics of getting our draft to Donahue for introduction? Did it go to Doar or did it go to Rodino or who?

JM - It went to Doar.

WF - Donahue didn't even know where it was. Hell, he was just a warm body -- and he wasn't even very warm. He just happened to be sitting next to the chairman; that was the only thing he ever did.

LAUGHTER.

JM - We had our draft number 6, the best possible version of article two [sic?] to that point. And those were made available to John Doar to the committee, which was prepared for Donahue's introduction. I don't recall that there was ever any reluctance about making those drafts available to Rodino.

TR - No, I don't think so, not at that point.

JM - The idea was as a matter of fact quite the contrary. We did as close as we could to what we were going to propose on the table to begin with. That was the motivation I had -- to get those drafts to the committee for that purpose. And so they were laid on the table as the Donahue resolution.

TR - Did the Democrats caucus about that particular article, in other words did they have a meeting to see if they could all support it?

Tape II, p10

WF - No, I don't think there was ever any question about it.

JM - There is no question about it, that was the beginning point, and everybody knew it, because we didn't include Cambodia, didn't include this or that. They just accepted what we had readied.

WF - Those guys would have voted for anything.

TR - Sure.

TM - Did the choice of Donahue have anything to do with the fact that he would not be running for re-election?

WF - He was a neutral guy, a ranking Democrat. That's it. He was next to the chairman. Peter used him to introduce all kinds of resolutions. It was kind of understood that this thing was just something to get it kicked off, wasn't it, Jim?

JM - That's exactly right.

CB - How was Sarbanes selected?

JM - All right, I was going into that right now. We then continued to polish our draft of article one, but we didn't finish it until Friday morning, when I walked into the committee meeting in Jerry Ziefman's office. A crowd gathered, we were sitting around on sofas and desks and chairs, and we just kind of looked around the room. I in the meantime had given some thought as to who was a kind of moderate sort of fellow who could handle it to propose this substitute, and I suggested Paul Sarbanes.

WF - It had to be somebody who was willing to do it.

JM - That's right.

WF - Somebody who would be satisfactory to us; we didn't want Waldie or somebody that would radicalize things.

JM - You all check me out on this. Somehow I recall a little scene in Rodino's office when we did that. It was immediately before the session and I remember almost where Sarbanes was sitting. It wasn't a very large group. Before I said it was in Ziefman's office, but it was in Rodino's office behind the chamber with a relatively small group there. It might have been that Democratic steering committee.

WF - I don't think it was the whole Democratic caucus. Sarbanes was nominated by a few of us there.

Tape II, p11

JM - The drafting committee, we three, and the chairman -- I suggested Sarbanes and he readily accepted.

WF - He was willing.

TR - That's a good choice, because in retrospect I watched him debate Wiggins.

JM - And he hadn't even read the damn thing.

TR - I'm telling you he's very, very capable and smart.

JM - He's got brains.

TM - May I call your attention on page 4 of the outline at the bottom -- the points of discussion. This is a very significant change with draft 6, and the coalition misses it totally, and we regreted it later on when we had to argue the policy question. But we just missed it.

TR - We got killed on it.

TM - First of all, the draft 6 that came back differed from draft 5, which reflected the discussion of the first meeting of the coalition. It broadens "to take care of that" in the introduction. You can see where the thing's broadened.

WF - That's what Jim's talking about there. We'd all been to the superintendency issue.

JM - I specifically recall with reference to language like that on several occasions very detailed, tho not exactly heated but serious, arguments with John Doar about language. This is his language.

TR - Yeah, sure it is.

JM - He insisted in various situations that this language is just not broad enough -- if we cannot prove this, we don't have a case. So you've got to allege this or you don't have a case, according to Doar.

WF - Yeah, I remember that.

JM - And this is a typical situation where that was his argument.

TR - I strongly disagreed with him on one point.

HF - This language, which is grounded of course on article two of the constitution, which specifies the oath, and then the "take care" clause, appeared in the very first proposed resolution that Mr. Doar gave us a week before.

JM - Right, I noted that.

Tape II, pl2

- HF - It reappears with only one variation in all their articles.
- CB - That is the first paragraph of article one that you are talking about?
- JM - It was Friday morning that we started detailed debate. We were late, as Walter said. We had fiddled around back there, got the draft multi-copied, and ready to distribute to the committee, and got Sarbanes to agree. It was handed to us as we walked in, the Sarbanes substitute. If he had time to read it, it was just while walking from Rodino's office out to the scene, with no time to get cranked up. Wiggins started in on him, and he kind of leaned over to me to get some guidance. It is hard to give guidance under those circumstances.
- TR - But he handled himself well under adverse conditions.
- JM - He did a marvelous job. What transpired, Tom, between our meeting on Wednesday morning when we agreed in principle on draft 6, and the precise language which would be laid on the table Friday morning, I don't recall. Are there substantial differences between draft 6 and Sarbanes's substitute?
- TM - I wouldn't say they were substantial differences, but 6 is the draft wherein the group really didn't mark it up. When we did rewrite some, it was not so much substantive as it was just simply language and style changes that were being adopted now.
- TR - But you know it revolved around our unwillingness to accept any kind of unproven allegation, like clemency. We insisted on changing language that we thought we could not prove, and we insisted on using language like acquiescing in and condoning and approving, rather than participating or directing as a part of a policy.
- TM - The outline on page 5 is so detailed because that is where the group actually did the drafting. We can kinda just run thru this. The word "policy" is the key, because in draft 5 we had had "course of conduct," which would eventually get back into the final draft of article one.
- TR - We amended the draft.
- TM - The full committee did that. You [TR] may well have presented that amendment. But we missed this "policy" idea. But from the very beginning, as you point out, we were always willing to draw that line directly back to the President. [?]
- TR - Sure. But the key phrase was "has made it his policy."
- TM - And not impute improper criminal conduct of any kind. That was always the test. The group always asked, "Can we direct it back to the President?" Then the members of the group would talk and remember this and that. I was fascinated, frankly, that you folks would recall so many facts, so many details. We were not organized when Sandman and Wiggins attacked, but the group knew that the facts were there, but they had not had the time to put them together in organized fashion. But you folks were zinging in those facts. It was amazing — your factual recall.

Tape II, p13

WF - Rails, you impressed me very much Wednesday night, your rat-a-tat-tat, and I know for a fact that yours wasn't prepared about an hour earlier than that. You didn't have any idea what you were going to say. I think you just regurgitated, that is exactly what you did.

WC - I thought it was more like a bowel movement.

LAUGHTER.

WC - We got the other end.

WF - It was very, very impressive.

WC - It was. I have a note here, Caldwell, that you turned around and congratulated Tom after his statement.

CB - I felt that all our weak hitters had come up before Tom, as my wife told me later — that as far as the Republican party is concerned, we weren't looking so hot until RAilsback.

WF - Tom was the first guy who had to cut the mustard out of our entire group. You had pressure on you there.

TR - Sandman was damn good in his forceful way, and here I was unprepared!

HF - Tom, you had given virtually the same talk to the Wednesday group meeting that morning, and somebody in the audience suggested to you that your opening statement be just that.

TR - But I wanted it typed. I didn't even have anything typed.

WC - You were pretty anxious over that. I think we got together shortly before, and the press was hounding us. We didn't want to go back to his room. We didn't have time.

TR - Yeah, we were meeting in our office. I didn't have time to do anything.

CB - We were meeting in your office and somebody kept bringing you drafts of if and you finally started to walk around and worked on it a little bit.

TM - We were at the table, and he'd get up and walk around and make some noise — I guess getting ready for his speech that night. The group met until 6:30 and we were scheduled to go on national TV at 7:30.

WC - And you[TR] were getting really anxious.

TR - And then I heard Sandman. I did not mind any of the rest of them, but then Sandman — I could just see the Republicans out there cheering. McClory was a marshmallow at that point. He was going to vote for impeachment, but he didn't say that. He didn't even really hint that then, on article one.

Tape II, p14

TM - You will recall that on Wednesday we got a call from Frank Polk. He said, "I am working on the draft of article two, or something for McClory." I went out and took that message.

WC - You mean article three.

TM - It was McClory's own article two.

JM - McClory has a letter dated July 25th, sending a copy to Caldwell Butler, and I'm sure to others too. That was Thursday, even before we got back to article one.

TM - There was a discussion whether or not to include Mr. McClory or ask him to join the group. It decided to send him a draft; I believe Jimmy Butler attended that meeting.

WF - Yes, your son was there.

CB - He carried over the McClory copy and he was greatly offended when McClory didn't come out and get it himself, some guy grabbed it out of his hands.

WF - Why did you guys want McClory to come down?

TR - The more the merrier for us.

CB - I think we analyzed the situation and felt that he wouldn't make any positive contribution to the deliberations.

[DELETED here are six individual comments on McClory].

TM - Going down page 5, look at C-2, the Watergate Special Prosecution Force. My recollection of the first meeting is that Mr. Thornton brought this up and then we didn't have it until draft 5.

RT - I believe that was in my original draft.

WF - What do you mean by Watergate Special Prosecutor?

RT - The obstruction of Cox's efforts to investigate the Watergate matter and the concern about his discharge and the other activities in October. It was a part of a pattern that I did see that you mentioned a moment ago as being a continuing obstruction of justice and abuse of power which I did view as constituting a threat to our system of government, which requires that proceedings be brought. In that regard, my original idea was to have a single article. That was, I believe, discussed by others too. I did think, Bill, that it was more appropriate to have the final element, that of the failure to comply with the committee's subpoena, as a part of either the obstruction of justice or the abuse of power. And if you recall, as it finally turned out, I made an effort to tie it back to article one by amending that article. The reason for Watergate was that it was part of the continuing pattern that I thought was important.

Tape II, pl5

- TM - There was some discussion about that at first; you wanted to make coverup and continuing coverup a part of it.
- RT - It relates to the idea that I had that the nature of the process of impeachment was a safety valve to protect our system of government. That was the reason we had to go thru it: the danger was still there and that it was continuing.
- TM - Back up just a moment to B-3 on page 5, wherein we talked about judicial proceedings and eventually about congressional proceedings. I recall a discussion about what we meant by judicial proceedings and we talked about the grand jury, the trouble of connecting a President up directly with the grand jury. Obviously he never appeared before it, but the group, I think, spent a considerable amount of time in talking about, "Can we link him directly in these instances of counselling false testimony?" There was some hesitancy to include "congressional proceedings." It got in there, but I think the group convinced itself that "judicial proceedings" was the proper term.
- WF - We came around to "congressional" on the basis of co-equal branches and the fact that we certainly occupied the same status as judicial proceedings, in fact an even higher one.
- CB - We talked about the counselling of McGruder to perjure himself with reference to the Senate Watergate hearings.
- JM - That's right.
- TR - Yes.
- HF - When you say "congressional," you were referring definitely to the Senate Select Committee?
- CB - Right.
- WF - We added "approving, condoning, and acquiescing in" because we weren't sure that he had counselled, but darn sure approved and condoned.
- TR - Exactly.
- WF - In terms of what we had in his discussion with Dean of September 15th.
- HF - The giving forth of misleading statements to investigative offices is followed by an "or," and I think that in the first part we were thinking of Peterson.
- RT - Yes.
- HF - Getting information in the oval office and transmitting it.

Tape II, pl6

- WF - Yeah. The inquiry prosecution force had not yet evolved into the Watergate special prosecutor at that point, but it was a Justice Department force.
- TM - This is the one where the group really took a great deal of pride in it. We worked on this thing. On the outline it is D, and in the drafts it is D also. My recollection is the Butler influence here, for we had some trouble spelling ...
- CB - Surreptitious.
- HF - You are talking about draft 6?
- TM - Draft 6-D.
- CB - Here we got into "approving, condoning and acquiescing" -- that was supposed to catch everything.
- TR - Which was wise.
- TM - I think that since the group wrote that from scrap almost, we took a great deal of pride in it. I don't think we would ever have approved that one to be amended in the full committee or anywhere else. We were very, very happy with that.
- TR - Right.
- TM - "Endeavoring to misuse the CIA" was in draft 5, but in draft 6 it appeared separately for the first time. Looking at E-2 now, Mr. Mann may want to comment on that since you were the one who separated that.
- JM - Well, it didn't fit into C of course, in interfering with the conduct of investigations by the FBI and so forth.
- WF - We'd probably be stronger. We could make a firm case on that. We had the evidence; it was adequate. I don't think any of us thought it would be a sufficient article on its own, but it was darn sure good standing there with the other stuff and could be proven completely.
- HF - Getting the FBI off the scent.
- WF - Plus the Ellsberg case.
- HF - I think we were careful with the choice of the word "endeavor" because the evidence was so inconclusive.
- TM - Do you recall the discussion about Daniel Ellsberg? We were reluctant to put his name in there.
- TR - Sure.

Tape II, pl7

WC - I think it was Walter who probably expressed the most reservation.

CB - I think he [Nixon] was also endeavoring to misuse the CIA, when he was trying to get them to talk about Mexico or something.

JM - That is really the main offence there.

TM - Moving on to F, "destroying and concealing relevant material" -- we were thinking about the 18½ minute gap but there was considerable discussion as to whether to put the word "destroy" in there.

TR - Well, what they were doing again is using imputation rather than direct evidence of his involvement. There was no evidence that he did anything about the destroying, but he certainly did conceal after knowing.

CB - That was Peterson's stuff too, right? Withholding relevant material evidence.

HF - Did anything ever come of that very technical session we had about the tape and about Rosemary Woods and the opportunity to erase it and the conflict of testimony as to whether it had been erased five times? Did she ever get into trouble?

JM - I read last week she has an office across the street from the White House and is sorting out the President's papers.

WF - Who all do you think really erased that tape?

CB - Rosemary.

TR - I think Rosemary at the President's request.

RT - I think so, too.

WF - I would rather bet that Nixon did it and she was helping him.

CB - When would you say Nixon or Rosemary did it?

WF - Down in Florida.

RT - I think that the tape erasure was deliberate.

TR - Yeah.

CB - I would say the same, that Nixon himself did it, if he had the mechanical knowledge.

HF - That's the trouble, because the machine was so complicated.

Tape II, pl8

- WF - I bet he needed her help to run the machine. That is the only thing. He just decided that he couldn't trust anybody else to do it. Ya got to handle it yourself! You know, that's what blew the tapes wide open because you got to the point where he couldn't get control of the tapes himself, except this one time. Anywhere else he had to go thru somebody else to get the tapes.
- TR - That's right.
- TM - Looking at G, the clemency charge. I think, Railsback, you were most concerned about that.
- TR - I didn't know the edited transcripts themselves dealt with clemency, and they were so ambiguous and so subject to different interpretations, that I was very bothered about charging him with really offering clemency. Altho he hinted about it, he discussed it, and....
- HF - I wasn't that concerned.
- RT - I was. I know you weren't; we discussed it.
- WC - I included in my statement about the code words that were used -- you know they didn't talk about "clemency."
- WF - That became sub-paragraph 9, didn't it?
- JM - That was included in "favorable treatment and consideration."
- TR - I agree, I like that.
- RT - I expect we spent quite a bit of time on that.
- HF - I wasn't happy with the final thing, we just weren't that sure.
- TR - That's what I mean.
- WF - I voted to strike that when I made my motion.
- TR - You did. We were both concerned about it.
- HF - The cases we had were an example of the other side when he [?] and the President and Ehrlichman in July were walking along the beach in California, and he said, "No, we can't offer clemency."
- TR - See, it was muddled up and it was very cloudy. There were some other instances where he appeared to be sanctioning it.

Tape II, pl9

JM - And Bittman lied like hell.

CB - Of course he did.

WF - Well, I think you were right, certainly in retrospect. That was a cold operation.

TR - Sure.

WF - Typical, you know, deception.

TR - I am sure sure you could have proved it.

WF - It was my feeling that it was not as strong as the other, and we were getting into trouble to put it into that category.

HF - That's right.

JM - I really don't mean that Bittman lied like hell. Bittman was at our hearing and when asked that question by St.Clair, he gave a partial answer that said something that clearly indicated that he wasn't being candid, making full disclosure, and I had the urge to follow him on the question, but I didn't and so we really didn't develop from Bittman what all we could have.

WF - I thought that Bittman was the true wadini[?].

WC - I spent a considerable time with Bittman on that one thing, about his approach to Colson.

WF - I didn't think the truth was in Colson.

CB - I don't want our little record here to indicate a weakness on this solicitation of false testimony. The examples just don't occur to me right now, but there were several cases where basically he told McGruder It's the bar association that he is really worried about. [?]

WF - "We will take care of that, too. We can get his license back too."

CB - Yes, all those discussions.

RF - He'll know who can get his license....

TM - "Tell him personally I said hello, that I inquired about his family."

CB - That is the Doar theory all along, a wink is enough if you wink at the right time.

TM - Looking at H, disseminating information received from the Department of Justice" — that's Peterson.

Tape II, p20

TR - Yes, it was a good, strong case.

WF - I thought we had him by the yingyang there.

TR - And you know from where? the edited transcripts!

CB - Right.

TR - They were stupid enough to leave that stuff in those edited transcripts.

WC - Do you recall Wiggins' arguments on this, though? That under existing law you could not support making false, misleading public statements that were impeachable unless you had a swearing on the Bible — that type of thing — and was before a magistrate. That is the only time a case had comedown that you couldn't be accused of making a false statement on the level of impeachable offenses unless he had actually taken an oath. [?] Do you recall that?

WF - I don't recall paying much attention to it, but I do recall the statement. But this H is strictly the Peterson meeting where he'd called Ehrlichman and Haldeman in from the ante-room. Isn't that what we are talking about?

TR - Yeah, but it was a series of meetings — at least two or three occasions he promised that he would preserve the confidence.

CB - "You can trust me, wait until I get Ehrlichman on the phone."

LAUGHTER.

WF - Ehrlichman was standing right outside the door.

TR - Henry Peterson, when he testified, tried to help in my judgment to kind of soften it.

WF - He did. When we pinned him down on "would you distinguish between simply sharing that information and suggesting that they take a course of action, which is what he did. He told Haldeman, "You had better get together with John and map your strategy about the money"— that was blatant. And also Kalmbach.

HF - Tom [R] mentioned briefly that it was all in the edited transcripts, and this has always amazed me. It took a careful reading, you had to read the edited transcripts of March and April of '73 back and forth, because matters came up and maybe a month later they were discussed again, and you had a series of meetings. But nevertheless, there it was, and it was given us and everything I had to conclude was that they never expected us to read it carefully.

Tape II, p21

- TR - I'll tell you what happened in my case. I read the transcripts very, very slowly. I came to that part and it kind of bothered me, and then I read on, and there was some more of it. I talked to Cohen about it, and I asked some questions of Doar about what might constitute a violation. Then the New Republic, Walter Pincus, came out with a whole column on this very thing. What a violation!
- WF - You guys read all those things, those magazines, all the time?
- HF - You see, Wiggins' argument have may some technical veracity, but the point is that there was Peterson, the acting Attorney General, the symbol, the chief law-enforcing power of the United States, used and abused by this man. You cannot go higher.
- WF - This was the most shocking thing of all. I asked Doar before they had a meeting with Kalmbach, if Kalmbach had ever received a phone call along these lines. I am not sure they ever really pursued that.
- DS - A second ago, when Rails had been mentioning some rather uncomplimentary thing about Peterson, you kind of smoothed it over. That's in partial contradiction to what most of you have said: most of you looked on Henry Peterson as perhaps the epitome of an excellent career man. How do you reconcile that?
- WF - I think that Peterson was just trying to put it in the best light for the President — that's all he was doing. He was a soldier, he wasn't a general, all thru the thing.
- TR - Yeah.
- CB - That was loyalty, but wasn't certainly misrepresentation or any kind of compromise of principle.
- TR - No, I don't think so either. If I implied that, I don't think I really meant it, but he certainly was trying to minimize the possible bad effects of it.
- CB - I think he's to be admired, though, for not taking the self-righteous view that the others did and which John Dean kind of lets you believe he did.
- TM - Letter "I". Just the term "White House," you recall that discussion? Page 3 of draft 6. We were talking about the White House as an entity, not the person of the President — the usage. Mr. Butler couldn't get over the fact that it kept reappearing. He said we had to get rid of the term White House and put in something more concise.
- JM - That's in the next draft.

Tape II, p22

TM - And then we moved on to the conclusion.

HF - That is well supported in the committee report by the extracts from the presidential utterances on television throughout the period of a year and a half.

TR - Yeah.

CB - They were all fish in a barrel.

TM - The conclusion you get in draft 6 is somewhat different, quite different in fact, from draft 5. Looking at number 2 under points for discussion: "an unindicted co-conspirator" was listed in this conclusion and that generated some lively discussion, it is my recollection.

TR - I surely don't like it, I can tell you that.

WF - Do you mean the question of whether we should leave it? I think we quickly came to the conclusion that it should not be in there.

TR - Sure.

WF - We couldn't accept some other tribunal, which this grand jury was.

JM - That is a detailed factual allegation, it has no charge....

TR - That's right.

HF - Let's carry that a little further, because we never really became public on this issue.

JM - Well, we did. In all my criminal law experience I have drawn thousands of indictments and that is why I probably may be in a minority on this. I think you have to allege general terms that deal with essential facts only -- no details. I don't know how this got into the draft.

HF - Is it not true that except for the fact that he was President of the United States, he would have been named as a conspirator? Right?

JM - Yes.

HF - It would have been done.

TR - Is that from John Dear?

JM - But on the legal question of whether the President can be indicted....

WC - That was a totally inoperative fact. Do you recall in the Mitchell-Stans trial in New York, when they were found not guilty, the press canvassed us: what is your reaction? It has no bearing whatsoever. The fact that they were found not guilty does not influence my action. And I said by the same token, if they had been found guilty, it had no bearing. We cannot base our decisions on what somebody else does.

Tape II, p23

WF - That's right.

CB - We are talking about the drafting session at which we marked up draft 6, but if I remember correctly, we really arrived with drafts 5 and 6 at the same time, and we had to decide which one was going to be the vehicle. But we pretty much read your draft 5 against draft 6, and systematically added several paragraphs to that.

TR - Exactly.

CB - So what we really came out was a sort of compilation of the two.

HF - What did you do next, Tom? How about seven? I never understood that.

TM - Look at page 6, the first part. The first few minutes of the Wednesday afternoon meeting the group focused on what they called the preamble, and at one time labored on the idea that would be part of article one. Mr. Flowers, I believe, indicated that. A couple of drafts by Mr. Mann had one, and I believe I had brought into the meeting one which was simply given to me by the legislative counsel, which simply gave the historical form or standard which we did amend. In particular, Flowers was concerned about "all the people." I think you [WF] said that had to come out: the word "all."

CB - That's right. I remember Flowers said tht all the people in his district did not feel that way.

LAUGHTER.

And then after we discussed this, we realized that according to most of the committee, the only things open for amendment were articles, and that the preamble was not open for amendment. So on that technicality, we had to forget about the reamble from there on out. That places us at the mercy of Harold Donahue, in regards to drafting the preamble.

TM - That's right. We went back and looked at the preamble.

CB - It wasn't too far off. We didn't find that out until we had gotten downtown.

TM - Moving on to page 7 of the outline and draft 7. We had some introductory language to the specific charges, the means used to implement this policy, having included but not limited to the policy [?]. We had in a kind of backhanded way got into that at some point. I think you [JM] had a problem with Doar or somebody; you were working at that and we finally ended up putting "one or more of the following," and that was the lead-in into the specific charges. I never understood at that time where the problem was coming from -- whether it was a problem of language or if it was substantive.

JM - You are talking about the problem "of the following or one or more of the following"?

Tape II, p24

- TM - Yes, those were concerns that we had whether or not we were going to have to prove all the allegation or if any one of them standing alone would be enough for impeachment.
- CB - I remember the discussion. We were very sure that if we failed to prove one of the charges, the article couldn't follow.
- TR - That's right.
- WC - The other thing we were concerned about was the actual proof for the Senate — that we had locked ourselves into the specific allegations, and your comment that you may have 105% of the evidence but it may not all get in. That was the other concern, that much of the evidence that we had was not admissible.
- TM - One point that we finally looked at were the specific charges, on page 7, point 8. That was pretty important. We kind of stumbled across that under the pressure that the group had, and the speed with which we were moving. We finally realized that was very, very important that we move to the disjunctive. There were no changes in draft 7 until we get to page 3 of it, and then strike "and" and insert "or."
- TR - Yeah, that was smart.
- TM - You know, we could have been nailed on that very easily. But we caught it.
- CB - Did the draft work on number 7 take place in Railsback's office? and also at the dinner at night?
- TM - Right — 7 and 8. We numbered them differently here, but frankly they were considered Wednesday afternoon and also Thursday evening. All day Thursday I believe you were in debate on TV and never got together until Thursday evening. That was the first time we went over to the Capitol Hill Club for dinner, and really I am not sure who exactly was there.
- RT - I know I wasn't, because I was going to have to make my talk that night, and I was panicky, because it was the same situation that you [TR] had been in the previous night.
- HF - I was not there.
- WF - Read your notes, Caldwell — what do you have on Thursday?
- CB - All right. "We had dinner at the Capitol Hill Club. Hogan, Thornton, Frank Polk, Railsback, Butler, Mann, and Mooney. Completed draft of article one, pretty much like Donahue had submitted it. We changed burglary to illegal entry, altho this is probably what they were convicted of, we struck out 'up to the present time,' with Thornton — I guess he wasn't there. We inserted 'one or more.' We had some kind of hangup on the Ellsberg question but finally decided to leave Ellsberg out of it, and finally we had some on number nine, that the perjury one. We added that language, 'or rewarding individuals.'"
- TR - May I interrupt about Ellsberg? I think our concerns about him were two-fold: one, the national security problem, and two, the fact that he was an SOB for doing what he did in the first place, and some of us

Tape II, p25

WF - We didn't want to look like we were supporting Ellsberg.

JM - I think we made a political decision on that one.

WC - Yes, his public image was such that it wouldn't help us.

CB - I think that's a fair statement. That's all I have on Thursday evening.

TM - It was kind of a relaxed polishing session.

WC - Specificity had not become a problem yet.

All - No.

TM - But I have a vague recollection that Mr. Mann also discussed article two. Back up a second. Remember Wednesday night just before we were breaking up at 6:30, that was the first time we saw your [JM] draft of article two, abuse of power. And Donahue eventually introduced that much later that evening.

JM - At that time we did not have the McClory input into that one.

TM- Now when was article two introduced?

JM - Well, it wasn't introduced until Monday.

WF - It wasn't introduced until we got thru with article one.

JM - But our first draft was the Donahue resolution.

WF - He introduced both article one and two, right? Not three?

TM - But at the relaxed dinner Thursday evening, you [TR] had a couple drafts of article two, which we polished off and then you went into paragraphs one and two. I don't have a very good recollection....

TR - I don't recall that.

JM - But I will when Tom starts talking about it.

TM - You were talking about drafts 7 and 8, and you instructed me to pencil in the changes made there on Thursday night and gave it back to me in Bill Shatuck's [?] office around 8:15, just prior to the beginning of the meeting that evening. So I went back to my office and penciled them in and handed you the penciled-in version of article one that you would bring to a meeting Friday morning in Mr. Mann's office, the first time we met there.

TR - I don't even remember that. Listen, I think it would be a good idea to interview Hogan and Froelich too.

Tape II, p26

- DS - Yes, we had thought of that. Perhaps one of you could set the stage by writing to them. That is important to get their recollections.
- CB - When did they join the group and so forth?
- HF - I heard Froelich on the floor of the House, just sitting there, saying to somebody — a kind of tip-off to me — several days before this, that he was really bothered by the interference with the agencies, particularly the CIA. This was really the thing, it seemed.
- TR - Yes, that bothered him all right.
- TM - Do you recall Wednesday afternoon, after the McClory-Frank Polk call, I think, that we did talk about bringing other people into the group and at that point you [TR] got up from the table and walked behind your desk and called Froelich?
- TR - Yes, I did. When I first talked to him, he did not respond affirmatively, but he was not disinterested, in other words, he didn't turn it off but he couldn't come over that first time I asked him.
- WF - Now Polk came in strictly at McClory's request to do his work, didn't he? He was working in McClory's office. I hadn't known that before.
- HF - Yes, Frank Polk was working with McClory.
- WF - Polk sorta appeared with us from then on, didn't he? He was very helpful, too.
- TR - John Davisson [?] — wasn't that his name? — wasn't he helping you and got into trouble over it?
- WC - I tried to get Davisson to prepare some stuff for me and Garrison found out about it, and asked him to stop what he was doing or get off the staff. And I told him that Garrison did not have that power, that he couldn't decamp at that point. He was to complete whatever I had asked him for. I was still doing the agency theory.
- DS - Was there a similar problem with Tom here?
- WC - No. See, he [TM] was not on the impeachment staff, while Davisson was. That became the question once Garrison succeed Jenner. I guess my antipathy to McClory goes back to his shift around on a Friday. He wanted to take over the Republican leadership role and he was going to be the new leader of the Republican Party as such, and Hutchinson was no longer. He would be ranking — it's been a long-standing thing, since Hutchinson and McClory came on the same year and flipped a coin and Hutchinson became ranking.
- TR - I didn't know that.
- HF - I didn't either.
- WC - And because of the lack of leadership, McClory was simply going to take over the reins. That's the Friday when they thre^w Jenner out. There was

WC - a resolution, which we all signed, I can't recall what it said now, but it had something todo with Garrison taking a more active interest. I was just going thru my notes here, and it was on a Monday that they finally canned Jenner, and McClory made a statement. I complained to Wiggins, "Damn it, I will never sign another thing again if that is the way you are going to treat a representation you made. I wasn't told!" So it was kind of McClory taking over and really trying to take control of pulling us all together and scuddling Jenner, which really didn't hurt too many peoples' feelings.

WF - You all remember Jenner's presentation after Doar's rambling statement where really zapped in and Jenner put us all to sleep. He knew how to lull ya. God Almighty!

LAUGHTER.

HF - It is too bad because these two guys had a tremendous opportunity to pull it all together, but they became advocates, and they didn't do it.

WF - They didn't do it at all.

HF - But they had it there.

WF - Jenner pulled it apart. He set us back, I thought. I remember thinking, can he really be a successful trial lawyer?

CB - I got notes like that all the way thru.

WF - What kind of cases did he handle? He must have had a good firm, you know.

TR - One of the best. But it must also be said in fairness to him that maybe he was preparing a good record.

WC - But he did make a good speech about the Constitution, that first day when Doar made his presentation.

TR - It was extremely tedious.

CB - I think he demonstrates the value of regular attendance at the American Bar Association meetings, a good contact man.

WF - Throughout the whole thing, I kept thinking that these guys don't understand that we are lawyers. They are spoon-feeding us like we are numbskulls and they can short-circuit some of this stuff and keep our attention better. This is what concerned me so much thru this whole thing -- it was too darn elementary. They assuemd we knew nothing and could comprehend nothing.

DS - I wonder, could there possibly have been the forethought of the Senate trial, where there would not be so many lawyers? And the American people who were not lawyers?

Tape II, p28

TR - Yes — a good thought.

HF - I think it is part of the whole way that Peter Rodino decided to conduct the thing — throwing this mass of evidentiary material at the committee, not ever letting the committee to come down to making a decision on it.

TR - I think it was a good idea, too.

WF - We would never have seen the forest for the trees; they almost got the forest lost in the trees. There was so much mess out there....

CB - That is where I have to take a little bit of issue with you all about Doar's and Jenner's presentation. They became advocates. They became pretty weak advocates. But that is the only time that they ever closed the gaps for us.

JM - That is exactly right.

CB - And it wasn't totally effective by a long shot.

WF - I agree. Cates was a guy who would establish a theory, but it was all on the sidelines. You had to meet with him independently.

TR - Which a lot of us did.

CB - I don't think it was totally objective.

TR - Oh, no.

HF - He was not.

RT - I would like to say as far as my own view of the case was concerned, I think it was vital that we be given the entire mass. I still don't think the simple, quick presentation to us of the articles that we would wind up with and the supporting data for those articles would have by itself completed the picture.

HF - If we had one day on taxes [?], that might have been another article. As it is, the way things turned out, all those characters in that scene of the IRS and everything else, all who could have been indicted — what might have been the grounds? There were a lot of areas that we got very short shrift in the evidentiary presentation.

WF - True.

TM - Well, the last day, on page 8, part F. This is the meeting that took place in Mann's office on Friday morning when he brought with him the typed up version of what the group pretty much decided on Thursday evening at dinner. My recollection is that we were there at 10:30. Mr. Mann, Mr. Doar, and Mr. Polk and myself had a brief discussion.

Tape II, p29

TM - That is my recollection — 8:30 [?], and Railsback hadn't shown up or any other Republicans and we sat waiting around about 25 minutes, and then you [JM] said you had to go over to talk with the Democrats and you and Doar and Polk left. You said to wait there until the Republicans came and tell them to sit tight. You'd be right back. Then Railsback comes in and discusses some points with Butler who has appeared. They wait on you couch in your office for about 45 minutes or so, almost an hour. You finally returned and then you had a brief discussion about the finishing touches on article one. You instruct me to go back and prepare 50 copies for the Sarbanes substitute, which I did, and I got in there a little later, about 11:15. By that time somebody had already distributed a draft, a "final" draft, which really wasn't the final draft. Rather than hand out the one I had prepared — and then they would have two "final" drafts — we just decided to go with the less final draft, which necessitated a number of amendments to bring it back to what the group had actually agreed on.

JM - Yes, time ran out on us.

TR - Just a comment on H on page 8. As I understand it, Hogan was concerned about too many harsh allegations against the FBI, and he introduced an amendment to alleviate that.

HF - Had you met with him or did he just see the Sarbanes substitute and started thinking himself?

TR - No, he had brought this up every meeting we had. He was very much concerned about the allegations about the FBI.

HF - He was a former FBI agent.

WF - Don Edwards is too.

JM - And George Danielson too.

TR - Danielson wanted to add the words "congressional" to the allegations.

HF - When did you meet with Danielson?

TR - This was done in the full committee. I didn't.

HF - They were spontaneous amendments that they made at the time we were considering the substitute one?

TM - There were amendments to the substitute. Look at the very last draft in your notes. A lot went into that.

TR - Yeah.

Tape II, p30

TM - I am not sure where it came from.

TR - I'll tell you where it came from. It was the 10th draft. Here is what happened. Sarbanes introduced his substitute. Wiggins really started to pin him down: you have to actually prove that the President had a policy, and Sarbanes squirmed but he handled it very, very well. He really didn't make it too evident that he was squirming, but Wiggins did a good enough job that I became completely convinced that we would have trouble showing that there ever really had been a "policy."

END OF TAPE II.

Tape III, pl

A continuation of Tape I: those present, site, and time - same.

TR - When I was listening to Wiggins and Dennis examining Sarbanes about the word "policy" in the Sarbanes substitute, it became very, very clear what they were trying to do was to make our whole case on article I depend on proving that Nixon had indeed had a "policy" from which all of these acts followed. You know we couldn't prove that. I was convinced that he did not have a policy, so that's why I very strongly felt we had to change that. And I tell you we got a lot of flack from Doar and Jenner about changing it. This is the one area where this group had a real fight with them over changing it back to "course of conduct." To be quite honest, I still cannot understand why they insisted on being so adamant about "policy." I didn't buy their argument at all. But they thought we finally just shoved this change down their throats. I think we were right.

WC - Yes, Doar insisted on "policy."

TR - Doar was adamant and so was Charlie Wiggins — for different reasons!

JM - I think they were a little bit over-stating.

TR - I'll tell you this. I sat next to Wiggins. We were right, because the next day, when I introduced that amendment, Wiggins and Dennis then went after me, and they said, "Under your language, does it follow that you have to prove direct involvement, does the President have to have actual knowledge?" And I just said that my amendment speaks for itself. I kept saying this is very, very clear. In other words, I was telling them, in effect, that you are not going to trap me, you are my good friends. I admitted that I did not believe in the superintendency theory, I did not believe that it was sufficient to impute acts of wrongdoing to the President under any kind of Madison concept.

WC - Let me interrupt you with a note of irony. Look at what has been taking place in respect to "CIA assassinations." Well, we were taking a lot of grief from the White House and from the Republicans for the notion that the President could ever be held responsible on the imputation theory for the acts of subordinates. But we now see our Vice-President suggesting in his report that while there is no direct evidence of presidential ordering of assassinations, very clearly this would have to be cleared and the President would have known it. It is just the opposite now. People are being attacked in the CIA report....

WF - We changed the whole course of human events.

HF - We have come full circle on superintendency. Certainly in the limited category of your top advisors, once you know about the action, you have a feeling of duty, an affirmative duty, to change the course of action.

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- TR - Now you are talking about knowledge, that's different. If he knew about it, then, as far as I am concerned, he had a duty.... I think what we did was just the opposite. When you are talking about a President, when you are talking about impeaching somebody, throwing him out, instead of being reelected, I don't think that you can hold a guy responsible who did not have any knowledge, did not condone. [?]
- HF - But it's still obstruction of justice.
- TR - Now wait a minute. There is a distinction where he has knowledge, or condones or approves.
- WF - I think we put an affirmative duty on him "to take care." If a guy is going to hold himself out and be President of the United States, he has got some obligations, some affirmative obligations.
- CB - You [TR] didn't state it that strongly.
- TR - I guess I didn't.
- RT - I think it is interesting that here there is a flow, just looking back thru the drafts. The words "course of conduct" that are used thru draft 5, and with draft 6, the word is "policy."
- TR - That's Doar. We wouldn't accept that.
- RT - But the interesting thing is that since the Railsback amendment was introduced, it did contain a "plan" in the disjunctive.
- TR - That "plan" was throwing out a bone, to be quite honest, as far as I was concerned. I didn't even want "plan" in there. We agreed with "plan" in the disjunctive "or plan." It was strictly throwing them a bone.
- RT - Their position was that it would be important to be able to prove bad, malicious motive — a malum — on the part of the President, and that there had to be more than just a course of action theory. That had to be premeditation. That is what they wanted and that is why "plan" more satisfied their position and yet did not offend your position.
- TR - Yeah, with the disjunctive.
- WC - As I recall, when you introduced that and Wiggins and Dennis jumped on it, you actually yielded to me to explain how come you used the word "plan." As I recall I tried to bail you out on that and said, "You used the word 'plan' because that is the word the President used in the edited transcripts."
- TR - Sure, a very, very good job. I just read that last night. You did a good job tying that language into the edited transcripts.

- WC - I had a different perspective on this from the outset — on whether or not a President could be held responsible for acts of agents, an agency theory. You simply can't have it both ways. You couldn't do what Nixon was trying to do by concentrating all the flow of the power thru Haldeman and Ehrlichman with the supercabinet that he had tried to develop and concentrate power in your executive office. And then when it came time to be accountable for what was happening, not be in a position to deny knowledge of whatever they were doing. I didn't think they could have it both ways. I just felt you could not just set up this man; you had a positive duty to know what's going on.
- HF - I think it's grounded in the language of the Constitution: to "take care" in the oath of office. You cannot just walk away from it.
- TR - Can I just express my different feeling about what you are saying? If I understand it, my feeling is that under article II, he does have a duty to faithfully execute his office. My feeling is we could prove he had violated his oath of office, because he did or did not do certain things we could prove. We could prove that he tried to misuse the CIA, we could prove he was a party to a misuse of the IRS, in other words, I am not conceding that a man can be impeached if his subordinates do something completely without his knowledge, even if those acts are wrong. You might say he should have known, I am saying the bureaucracy is so big that I don't think we should impute that.
- WF - I don't think we disagree. He has a reasonable duty to check on his subordinates. He can't substitute a lead wall between him and Haldeman and say it stops here. He has a duty to take care that his alter ego is doing what is right.
- TR - Then you are talking about misfeasance.
- WF - Approaching malfeasance.
- HF - He cannot position himself to avoid knowledge.
- WC - You are talking about an isolated example. Someone commits an offense and it might be on your own staff and you don't know about it. How can they hold you accountable for it? That's not what we are talking about. This is where the "plan" comes back. This was a course of action over a period of years, of holding meetings, and the tapes and so forth. That's what you have to consider. There is a difference, isn't there? The President used the word in his March 22, '73 discussion with Mitchell: "up to now our plan has been one of containment" and with additional references to "we are adopting a new plan now" to use executive privilege. That is how we bailed you [TR] out.

LAUGHTER.

- TM - Before the Thursday night meeting about article I, I had a difficult time convincing Doar about the use of "unlawful." We finally got that changed, from "illegal."

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CB - As opposed to "illegal"?

TM - Yeah, he had "illegal" and finally when I convinced Doar that we had to change that and called the court house and asked them to read me what these men were indicted for, the charge. The code uses the word "unlawful"; there is no such thing as "illegal" entry in the code. So we added "unlawful" instead of "illegal."

RT - In the line of the continuing nature of the offense, and "about continuing to the present time" had disappeared, and I was very pleased when that language came in there to tie it to the time of the offense.

TR - Did it come back in there, or had it left?

RT - It came back in the committee.

TR - Yes, I was against that.

DS - It's after 1:00 now, the rain has stopped, and it may be about time to break up until this evening.

END OF TAPE III AND SESSION ONE.