

Part of the Richard Nixon Oral History Project

An Oral History Interview with EVAN DAVIS

Interview by Timothy Naftali
September 29, 2011
New York, NY



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Descriptive Summary

Scope and Content

Biographical Note

Evan Davis worked for the U.S. House of Representatives Impeachment Inquiry Staff in 1974, where he headed up a task force that investigated the Watergate cover-up. Davis graduated from Harvard in 1966 and then went onto Columbia Law School where he received his law degree and was Editor-in-Chief of the Columbia Law Review. After graduating from law school, he clerked for Judge Harold Leventhal on the District of Columbia Circuit Court, and then for Justice Potter Stewart on the United States Supreme Court. From 1985 to 1991 he served as counsel to New York State Governor Mario Cuomo. A candidate for the Democratic nomination for Attorney General in 1998, he is also a former president of the New York City Bar Association. He also became an attorney with the law firm Cleary, Gottlieb, Steen & Hamilton.

Administrative Notes

About the Richard Nixon Oral History Project

The Richard Nixon Oral History Project was created in November 2006 at the initiative of Timothy Naftali to preserve the memories and reflections of former Nixon officials and others who had been prominent in the Nixon era by conducting videotaped interviews. Naftali insisted from the project's inception that it be a serious, impartial and nonpartisan source of information about President Nixon, his administration, and his times. A second goal of the project was to provide public domain video that would be available as free historical content for museums and for posting on the Internet. Donors to the project neither requested nor received a veto over interview questions or interviewee selection. Accordingly, the project includes interviews with former staff members of the Nixon administration as well as journalists, politicians, and activists who may have been opposed to the Nixon administration and its policies. Taken as a whole, the collection contributes to a broader and more vivid portrait of President Nixon, the Nixon administration, and American society during the Nixon era.

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Suggested Citation

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The following is a transcript of an Oral History Interview conducted by Timothy Naftali with Evan Davis on September 29, 2001 in New York City.

Naftali: Hi, I'm Tim Naftali. I'm Director of the Richard Nixon Presidential Library and Museum in Yorba Linda, California. It's September 29, 2011, and I have the great honor and privilege to be interviewing Evan Davis for the Richard Nixon Oral History Program. Evan, thank you for doing this.

Davis: My pleasure.

Naftali: Give us a little bit of your prehistory before you joined the inquiry staff.

Davis: I was born in Manhattan, so I'm a real New Yorker, but when I was very young, about a year old, I was yelling and screaming so much as a kid in this small Manhattan apartment that my parents felt it was really important to move to the suburbs. So we moved to Connecticut when the suburbs were really quite rural, and I grew up in Riverside, Connecticut. I went to public schools in Riverside through junior high school.

And then the high school in Riverside was this building that had six or seven stories with three-minute or four-minute passing periods between classes, and while at that time I was quite good at going up and down stairs on crutches, I was not going to be able to do that in three or four minutes with crowds of high school students. So my parents thought I should go to a prep school, and I went to Exeter. I was at Exeter for three years, and I had to climb stairs there, too, but the schedules extends through the day and it was easier to organize.

I enjoyed Exeter a lot. I often think today most of what I know really comes from Exeter because I actually worked hard at Exeter. Law school, too. Harvard, not so much. Then I went to Harvard and graduated in '66. I went to Columbia Law School, and I enjoyed law school a lot, and I became Editor in Chief of the *Law Review* and did well at Columbia. And I first went to clerk for a judge on the D.C. circuit who was a former Columbia student, also had been Editor in Chief of the *Law Review*. Every year took a Columbia clerk. Harold Leventhal.

Harold Leventhal was an interesting judge. He'd been involved in Democratic politics, had been the lawyer handling the Fannie Lou Hamer issues of the seating in the Democratic Convention. He'd been an oil and gas regulatory lawyer, Federal Power Commission lawyer in Washington, and became a wonderful Circuit Court judge with a specialty in administrative law. So I clerked for him for a year, then I clerked for a year for Potter Stewart.

Potter Stewart had been involved in Republican politics. His father had been mayor of Cincinnati. He himself had run for the Cincinnati Council. He'd practiced law in New York City. So Harold Leventhal from the Democratic side and Potter Stewart from the Republican side were both similar in their approach to issues, in their love of writing, for example, and crafting opinions. So it taught me that there is a little bit of difference between judging and politics since these people came from two very different political backgrounds.

Getting a clerkship on the Supreme Court is a total lottery. There are many, many, many, many people qualified to do it, and you're just luck, and I had the luck to get to clerk for Potter Stewart.

After that I went to work –

Naftali: We've actually had an opportunity to ask somebody else, Professor Fisk, for – what term did you clerk?

Davis: I clerked the October 1970 term. We had some very important cases. We had the Pentagon Papers case. We had the Cassius Clay case. We had some federalism cases of importance, *Younger v. Harris*. We had a very important segregation, school-busing case, *Swann v. Charlotte and Mecklenburg*. We had a very important gender discrimination case, *Griggs v. Duke Power*. We had very important First Amendment cases. I happened to be there during a very interesting year on the Court. They're all quite interesting but mine was especially interesting.

Naftali: Would you like to preserve some of your recollections about the Pentagon Papers case?

Davis: It's a little bit off topic, but I know the justices did not feel comfortable with – at least Potter Stewart did not feel comfortable with meshing the demands, the legitimate demands of national security, with the open transparency of the judicial process. I think as the case progressed to higher and higher levels the government was willing to provide more information about what it saw as securities concerns, and this information of necessity has to be provided in a very secret way.

So for example the law clerks were not allowed to look at this evidence. The justices had to view it individually. And I think that raised discomfort. And I think it helped move Justice Stewart and some of the other judges to the conclusion that the government should be cautious in designating things classified, but when they designated them classified should take every conceivable step on their own, because once the cat was out of the bag it was gonna be very hard for the judiciary to solve the problem for them.

So that was a basic attitude, I think, that the justice had. I think it's reflected in some of the concurring opinions. Everyone wrote their own opinion. It was in that sense a difficult case because it didn't really fit the typical judicial process.

Naftali: Given its importance in the history of civil rights, could you just comment a little bit on the *Mecklenburg* case?

Davis: That was a case where I think the, the judges were more than usually inclined to defer to the judgment of the trial judge, the District Court judge. Because the district judge was there courageously defending the Constitution in a difficult circumstance, and I think they maybe bent over backwards to support him in the courage of his defense of the Constitution.

Naftali: What comes next for you?

Davis: So then I went to work for the New York City government. I started out in the budget division where I was the first person to be General Counsel of the New York City Budget Bureau as it was then called, now called the Office of Management and Budget. And after a year there the corporation council brought me up to be the Chief of the Consumer Protection Division in the law department.

So when I went to work on the impeachment inquiry I left being Chief of the Consumer Protection Division to go to work on the impeachment inquiry.

Naftali: Tell us how that happens. Who calls you?

Davis: So I had had this job through the Lindsay administration, Norman Reddick was Corporation Counsel, a guy I admired a lot and enjoyed working for, and Lindsay, his term was over. Abe Beame had become mayor, and I wasn't, you know, violently opposed to Abe Beame in any way, but it just didn't seem it was gonna be quite so exciting.

I did not have a political job. I served at the pleasure of the Corporation Counsel, Adrian Burke, a former Court of Appeals judge had become Corporation Counsel, a fine guy, and there was never any sense that he wanted me to leave, but I thought maybe there'd be something more exciting. Particularly I had some friends who had started working on impeachment. Jan Orloff, married to my law school roommate, was working on impeachment. A classmate from Columbia Law School, David Hanes, was working on impeachment.

So I just decided to send in a letter, and I wrote, sent my resume, put it in an envelope and mailed it to the House Judiciary Committee. And about four or five days later I got a phone call saying that Bob Sack was going to come to talk to me. So there in my office in the municipal building Bob Sack appears. We chat, and he must have given a fairly good report because the next thing was to talk to John Doar. Went down to Washington, talked to John Doar, then I was hired.

And I started I remember shortly after my birthday. My birthday was January 18, so a little bit after January 18th I started in Washington.

Naftali: What do you remember of your interview with John Doar?

Davis: Not anything too specific. He wanted to know about my background. He asked the kind of questions that you've just asked about my life story and how I'd gotten to where I was. I believe he asked if I had any preconceived notions, and I said I did not. He asked about, you know, my job and the kind of cases I had as I recall. I don't recall it being a very long interview, 20 minutes, something like that, and I don't recall more beyond that.

Naftali: So you get the job, you move to Washington. What's your first assignment?

Davis: So the first assignment after I get moved in, I move into a little room at the Congressional Annex, Congressional Arms apartment, a sort of furnished apartment kind of thing, and stock up the refrigerator with food thinking I might cook something in the kitchen there. The food was never touched. At the end of the time I was there the food was still in the refrigerator because there was no time to cook anything.

So I get there and I think my first assignments – I don't remember particularly, but I think it – they were organizing a group that was going to pour over the record as it existed, the various hearings that had been held, particularly the Senate Select Committee hearings, and to digest and absorb and learn very well this record. And there were five or six younger lawyers who were gonna be doing this. We were going to be putting into a chronology, making lists of things, thinking about the testimony, and I was put in charge – and I think it happened fairly early on – of this group of young lawyers digesting the current record and putting it together.

And that process continued for three, two, three months, something like that, getting all of those papers together. And then we started writing memos about this material and what it showed. And we started thinking about additional information that would be required. And we started thinking about witnesses that we might want to interview. But the start

was definitely – particularly I remember the Senate Select Committee hearings. Green volumes, and there were – I don't remember the exact number, maybe ten, each about this thick.

Naftali: How did you know what you were looking for?

Davis: Well, I wasn't so much looking for any particular thing but wanted to fully understand what everyone had said, and then I would see what emerged from that as relevant information relating to the President's conduct in those instances. So I think I read the testimony of some of the key people like Haldeman and Ehrlichman and John Dean, you know, a number of times, and we also were working at the same time thinking about what was an impeachable offense.

And Joe Woods did a lot of work on that topic. There was a memo written, I don't remember the name of it but it was a fairly elaborate memo about what was a reason for impeachment. And so that sort of meshed into what I was doing.

Naftali: May I stop you there? Bill Weld and Hilary Rodham worked on that. Did you participate at all in that process?

Davis: I participated in the discussions. I did not participate in the research. I remember discussions about, for example, whether we were talking about obviously what high crimes and misdemeanors means in the Constitution, that phrase. I remember talking about, and my having a view which I think others shared, of the need to read that phrase in connection with what the Constitution says about the duties of the President, particularly to take care that the laws be faithfully executed.

And so that high crime or misdemeanor, I recall thinking personally and discussing with others, could well be something that a President was uniquely able to commit. A Constitutional crime that the President was uniquely able to commit because others didn't have the obligations or the power that the President had to essentially subvert the Constitution; and that therefore defining the Constitutional crime of high crime and misdemeanor would take into account the functions, roles, duties and powers of the President.

I remember personally feeling that we should set the bar high because I felt that remembering back to my government courses and all that kind of thing that the President needed substantial room for independence of action, so that it had to be something very, very serious of the same kind of seriousness that a statutory crime would be, but that it couldn't be defined simply as a statutory crime because it was a Constitutional crime given the role.

So I remember talking about it having to be serious; it having to be to some degree persistent; it having to have not a public purpose, the subversion of Constitution, but some kind of private purpose would compound it.

And I remember us talking about the standard of evidence and thinking that it should be a high standard of evidence, of proof because, well for the same reasons that, to use a very parochial example, when lawyers are disciplined for misconduct because you lose your job and your livelihood and everything, you get disbarred, it's clear and convincing evidence that's required. And it's not protecting the lawyer unduly, but it's just recognizing that the lawyer has to have room for zealotry in the advocacy of a client, President needs room, so it should be a high bar.

Those are the kinds of discussions I remember. But I did not do the research, others did, and I did not draft the memos. But I did participate in those kinds of talks.

Naftali: For us to get a sense of the staff, because there were over 100 of you, these kinds of conversations, were they, did you have – there was a senior leadership, and did they include others? I mean it wasn't all 100 of you or – I was thinking you had about 40 lawyers. It wasn't all 40 lawyers. These groups – were these informal groups over lunch, or was there, did John Doar put together a group of lawyers that would discuss this kind of thing?

Davis: I think some of it was at the level of kibitzing. There was not an anti-kibitzing rule, and of course with all these interesting topics all around you, you do want to kibitz. Secondly, the work that everyone was doing was interrelated. Knowing what you were looking for in the factual record was obviously tied to how you were going to think about what might be an impeachable offense, so you could see whether evidence existed of that kind of offense.

So there was a need for everyone to be – I don't recall it being meetings in John Doar's office particularly or anything like that. I recall more informal meetings but people would get together to talk about these issues. I remember attending meetings at which Owen Fiss and Hilary and others were present, even though that wasn't my area, to some extent to listen but also to volunteer my own thoughts.

Naftali: When did you start to focus primarily on the Watergate side of the issue as opposed to abuse of power, agency abuse?

Davis: Very early on. My assignment and the assignment of this task force that I headed up was Watergate and the cover-up. That was my assignment. And I was not – another person who was very active in the same area was Dick Cates. And Dick had a broader role, and Dick did a lot more over the period. You know, we're talking in total about six months that this was. It seemed like in many ways two years, but it was only six months.

And during that six-month period Dick did a lot more conferring with members and going over information with them and answering their questions, members being members of the committee. I did not do that. I worked with this group within the staff on the Watergate and the cover-up, so I looked at the evidence, I participated in talking to relevant witnesses, I participated in drafting Articles of Impeachment related to that topic. But that was my topic.

Naftali: What did you know about it starting out?

Davis: Well, the thing I – you mean before I came? Obviously, you know, I read the newspapers. I particularly remember – it's one of those not on the level of, you know, the assassination of President Kennedy or the Challenger crash, but at a level not too far below that, the firing of Archie Cox. I remember listening to television, watching on the radio and feeling that there needed to be a continuing process, whatever it was going to be.

And you remember that incident when first one and then another Attorney General resigned. It indicated a serious problem. So that's what I remember mostly. I was by no means a buff of Watergate facts. I was a consumer advocate. I was one of the, probably the youngest division chief in the history of the law department so I was on a learning curve in that job that was stressful. And I was arguing consumer cases, doing anti-trust cases for the city and learning a tremendous amount, so I didn't have time.

But I think one of the things that when I decided that impeachment would be an interesting thing I thought about, at least subconsciously, helping to fill the gap created by the firing of Cox to have a process that would provide the public with some kind of resolution.

Naftali: The viewers of the Senate Watergate Committee were faced with this dilemma: were you going to believe John Dean or Richard Nixon, which is a very tough challenge. When you started out, because you didn't have any tapes when you started, as a lawyer how to make the case that – or at least to figure it out, because you weren't quite yet making a case – how were you going to think through the process of finding the President or John Dean the more credible witness?

Davis: So a lot of what was done in the beginning is to look at the testimony of all of these witnesses and find the points of intersection or contradiction, corroboration or contradiction. And particularly focus on points of corroboration. And those would be pretty hard factual elements because they were corroborated. And to see what picture was painted by the corroborated points, where Haldeman's testimony or Ehrlichman's testimony or Dean's testimony was consistent.

And we did have certain things before the tapes came along. We had logs, we had meetings, we had public statements, we had the like. And my recollection, too, is the tapes came along fairly early in the process. I can't give you the exact date, but it was fairly early. And in terms of watching the Senate Select Committee the December before, I had occasionally watched it. I don't think I – I don't remember watching John Dean's testimony. I do remember the news flashes about Butterfield's testimony because that was very dramatic.

I didn't happen to be watching it, but it was on the news and it was certainly – and the headline in the *Daily News*, you know, "Nixon Bugs Himself." You know, that's a – I noticed that headline as a lot of people did. But when I got there I was trying to grasp these facts focusing on where people agreed and where they disagreed, and if they disagreed how you could resolve it, but where they agreed what kind of picture did it paint? What did all these factual data points add up to in terms of the kinds of inferences they would support.

Obviously absent the tapes, you know, there was a lot of circumstantial evidence, but if you add up all the circumstantial evidence and one circumstance after another points in the same direction, then it becomes weighty evidence. It can become clear and convincing evidence. So I did that, and we all worked very hard on it, and then we – at one point I was able to talk to John Dean and interview John Dean, and I felt he was – I felt he was truthful but looking out for himself was the way I felt about John Dean.

And, of course, his performance giving that account from memory and then when it was compared to the tape being so accurate was rather – my memory is not like that at all. I could not have done that. I just have – but the tapes did corroborate what he said, but still medium I felt that he was focusing on his own interests, but his own interests coincided with his accurately recalling the meetings he had been in.

Naftali: How helpful were the materials from the Watergate Special Prosecution Force?

Davis: They were somewhat helpful, but the Special Prosecutor had a slightly different take on things than John did. John was very good friends with Hank Ruth, who was a very important person on the Special Prosecutor staff. And they'd gone back to civil rights days I think it was, maybe even to the Neshoba County case together, but they knew each other well, and John had a lot of confidence in Ruth, and I think Ruth liked John.

But Hank Ruth, as I heard it – I did not participate in these discussions, but I recall John saying that Hank Ruth felt that the thing was to prove airtight a criminal obstruction of justice, one incident of clearly obstructing justice in an airtight way, and that the Special Prosecutor people felt they had done that with regard to the money on March 21st, the Howard Hunt, the 'Howard Hunt's gonna blow if he doesn't get the money' thing. And they felt they'd built a very strong case, including against the President – I think they may have referred to him as an unindicted co-conspirator or something like that – on that.

And John didn't agree with that on two counts. First of all he was not infatuated, and this comes across in some of the reports and so on, with the notion that a President is a co-conspirator. Because a President has so much power that really the, in a conspiracy it's just the one person agrees with another to do a wrongful act and then does something to further their agreement. Well that's not the way John thought the White House or a President worked. The President was the person in charge, these people were his agents, and he didn't see criminal conspiracy law as relevant.

The other thing, though, was that he did feel, too, that impeachment, because of his feeling that it was a constitutional crime but had to have the seriousness and persistence of a – it had to be something more than just one event, because taking a President from office is such a major event and potential blow to the country and everyone would agree not to be done lightly – at least at the time no one thought it should be done lightly – that there had to be something of a persistent problem that went over time, that didn't show an error that was transitory, but something that went on.

So John felt that there had to be a pattern or picture, I don't recall the word he used. And I agreed with this, too, myself that there had to be some kind of pattern. So the Special Prosecutor, being prosecutors, you know, you prove someone committed a crime. On March 21st you said this and that and forward it went, and that we felt our task was different, to see whether there was this kind of pattern of persistence.

So that's one reason why we kept the focus not just on March 21st, which was certainly a factor and as you know we cited to the Committee the difference between the way the President ruminated in his nightly recording about what he had learned on March 21st and what he told

Henry Peterson the next day about the situation; and that if he had told Peterson what he had learned, Peterson could have prosecuted people.

So that was not irrelevant. But we looked back and we looked back hard, and I looked back hard at what happened in June, July. The break-in was in June, and the President was in Florida, and he came back to Washington and there were a series of meetings, and various things happened. And there was a lot of agreement about what happened in the Senate Select Committee testimony that created a picture of, albeit at that time circumstantial, the direct evidence more being in March, but circumstantial as to what went on.

And I recall, too, that there was also in the musings that went on later the President reflected back on what had happened earlier and had referred to the plan of containment as having been the right plan. And so the word containment is just a fancy word for – or a more, not fancy word, a more negative word for cover-up, because containment means you're protecting certain people. And so we view those reflections as evidence that combined with the circumstantial evidence ultimately we thought created a picture all the way going back to June.

And my big thing that I remember, the one, you know, in six and a half months when the amount of work we did was so great, that it does cloud your memory a bit because your memory becomes selective. With so much happening around you, you just select things to remember, and there's a lot of things that you can't keep in your head. But one of the things that I've always remembered is how firm I was that we had to get that tape, that tape of the conversation between Haldeman and the President.

There was one on June 20, I think it was, where the 18 1/2-minute gap occurred, so you know, whether – no matter what you prove about the 18 1/2-minute gap, there was a missing piece. But then there was another meeting shortly thereafter, and we had to get that tape because that tape would indicate whether the, would be direct evidence to either support or refute this reminiscence evidence and the circumstantial evidence. And so ultimately that tape was ordered by the Supreme Court, the Special Prosecutor case, and it said just what I thought it was gonna say.

I thought that the circumstantial evidence was clear and convincing and that therefore, you know, it's like the old story they tell the jury. If someone comes in with a wet umbrella, you can infer that it's raining outside. And this was the equivalent.

Naftali:

Let's help the viewer. The challenge for you was that you knew from General Walters that the CIA had been asked to tell the FBI not to touch,

not to investigate the Mexican money and Kenneth Dahlberg. And you knew that the President's Chief of Staff, H. R. 'Bob' Haldeman had asked the CIA to do this. And you knew that Haldeman and Ehrlichman and the President had met to discuss this. But you couldn't prove –

Davis: What was said.

Naftali: That the President had actually said to them, "Do this."

Davis: And there was other circumstantial evidence going on and then the reminiscence of how the right plan had been what they did and to contain it, but you didn't know the exact words. You had, I would have said you had enough to be quite clearly and certainly sure myself, but you didn't have what's called direct evidence.

Naftali: But again to probe, because it's important, this is because you and Mr. Doar – you weren't alone in this – felt that someone of Haldeman's stature would not be asking an agency to do this unless he had the support of the President.

Davis: Right, and more than just that one fact, that the follow-up facts supported the notion of a policy and plan of containment of this problem directed by the White House over these following months, and that that evidence suggested that at such an early-on meeting this plan would be formulated and that the President would be in meetings with the people who implemented a containment plan, would be aware of or direct the formulation of the plan of containment.

Naftali: Because the assumption was that this kind of plan of containment could not have happened without the President's involvement.

Davis: Particularly since there were these meetings right at this time, and then immediately after various things began to happen and then other things happened. So again it's a picture – I remember one of the things I did towards the end was I prepared a list of 50 events between June and the following four or five months that were I thought only explicable in the context of Presidential involvement.

And I couldn't find any events that could only be explicable in the context of no involvement. So 50 items I felt was strong and justified finding, justified going ahead and drafting Articles of Impeachment based on Watergate and the cover-up; finding that the President subverted the Constitution by orchestrating, approving and condoning the plan of containment for his personal benefit.

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- Naftali: The President would later point to a conversation he had with L. Patrick Gray on July 6, 1972 as evidence that he wanted the investigation to go ahead. I guess this is the conversation where he says, where Gray warns him that there are people in the White House that are trying to set the CIA against the FBI. What was it that led you to see this particular conversation as not dispositive, as not evidence of the President's interest in the investigation going forward?
- Davis: Well we knew – I don't recall whether it was that discussion with Gray or a later one, but we did know in connection with one instance where the President had called up the Director of the FBI and told him to press forward with all vigor, that the President had a lot of information that we knew he knew that would have helped the Director of the FBI press forward with all vigor, and he did not convey that information. So that raised the question of whether these were words that he just wanted to be able to quote, because if he really wanted the investigation to go forward, he could have provided information that would be very helpful.
- Naftali: Do you remember when you listened to the tapes the first time?
- Davis: I did not do a whole lot of – obviously I listened to the tapes. How could you not listen to the tapes? But we had a very careful process for listening to the tapes that I was not involved in. And basically we felt that since the members were going to come over individually, and they did come over individually to listen to the tapes after they received our transcripts of the tapes, that it was very important that when they listened to the tape and looked at our transcript, our transcript would be accurate. They would say, "Yes, this transcript is accurate."
- And that was important because we prepared at some point a comparison of our transcripts with the transcripts produced by the President, and there were very material differences, very important differences. So the importance evidentially of our transcripts being correct was key. So the first idea was that people who had a good ear for music would somehow be able to listen carefully. Well that really didn't bear out.
- So what we did is we had a system as I recall, we had three people who would listen to the tape, and all three had to agree. I believe one was on the Republican staff, too. I don't remember their names. But in any event all three had to agree that that is what the tape said before it would go in the transcript. So that was the process, so I obviously read the transcripts that were produced, and I think we were involved in a little bit of doing this comparison between the White House transcripts and our transcripts.
- And, of course, you notice funny little things. When President Nixon went on television to say that he was releasing these transcripts he had all
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these volumes piled up behind him on a credenza, and it looked like it was thousands and thousands and thousands of pages. But when you get the notebook, some notebooks would just have a few pages in it.

And I also recall that in some of the transcripts they produced there were aside remarks that someone had made that got transcribed that were sort of, you questioned because it would say something like, "Take that out," or, you know, whatever. But that could, of course, just have been because it was felt to be nonresponsive or irrelevant then, but it was sort of funny that that got transcribed as well.

But the main thing was the differences, the substantive differences, between our transcripts and their transcripts. So given that this issue was going to be important and would be influential likely with the members, we did a lot of work on the accuracy of these transcripts, and my recollection is that members came over and listened and felt that what we had transcribed was correct.

Naftali: Now was the transcript or the tape the record? I mean if you were trying a case, which is the record?

Davis: So the tape is the official thing, and that's why the members came over to listen to it as they should. But if they feel that the transcript is validated, it then becomes easier for them to use the transcript. So of this interview we're doing, the tape will be the official thing, but if someone ever does a transcript, if it is valid and people look at it and it seems to conform to what is said, it's a substitute. So we worked very hard to be sure the transcripts were accurate.

And it was just another aspect, and a very important theme was the members did not want the staff to take over the fact finding and the investigation. They felt that was their job. That's one reason they would come over to listen to the tapes rather than just take our word for what they said. And that is also why we used this phrase as I recall it, Summary of Information. We gave them these books with Summaries of Information, and it would have a statement of fact, and it would have evidence that was confirmatory of the fact stated.

And so a lawyer would normally call these statements of undisputed facts because we tried to keep them undisputed in that they were corroborated by many sources, but the members felt it was their job to find the facts. And so by using a more neutral phrase, Statement of Information, it would be respectful of their right to go and look at the sources that were listed, the record as you put it, and make their own conclusion on whether this was a fact or not a fact.

So that phrase and these books I know came out to some extent in the way John had done cases in the civil rights division, but that phrase Summary of Information I recall as being deferential to the members. And that was an important thing from the staff point of view, that we were to provide them with materials and they were to draw conclusions, and then we were to provide them with a way to implement their conclusions in terms of drafting Articles and all.

Naftali: Do you remember some dismay on the part of the staff when the members didn't quite embrace the concept of Statement of Information, when they thought this is a little complicated?

Davis: I remember their thinking it was quite boring. One of the things I did was to be the reader of the Statement of Information. So we started the hearings, you know, with these books, and they all had the book, everyone there. And I remember there was this picture on the front page of the *New York Times* with the Committee up here and this table, the staff members here taken with a little bit of a wide-angle lens so it's all sort of bent around. And there's John. And there's me sitting next to John as the reader of the Statements of Information.

So, and I would read it. "On June 17th," you know, "1972 there was a meeting between." And this was discussed. And the statement that such and such was discussed would be based on various participants in the meeting, not just one, not just John Dean. All agreeing in one way or another this had been the topic. We didn't have exact words in a lot of cases, but.

And the members did get impatient. John's biggest challenge he has told me was the pressure to do it fast. We ended up taking, as I said, about six months. And there are a lot of people who would want it to be done much shorter than that, but John felt that it had to be done right, that it had to be a thorough look at what the record showed, that it – and I remember our feeling strongly that whatever conclusion we came to, it was important, important that it be solid enough so that it would attract bipartisan support.

And even before the smoking gun tape we did get significant bipartisan support in the committee for the cover-up Article, and for some of the other Articles, too, although I don't remember them as well. It wasn't what happened after the smoking gun tape came out and basically all the members were supportive of the Articles, but we wanted this to be, and John wanted this to be as I recall a Constitutional process so that you could say at the end of it the Constitution has a mechanism to deal with abuse of power and subversion of the Constitution in a serious way. And it has a mechanism that works.

And the mechanism obviously has a political component in that the public's feeling about how serious this is is a relevant factor, and the members know how the public feels. That's their job, to be in touch with the public. So it has that component but it has a component of fact objectivity to preserve the power of the President, which is equally important to preventing the abuse of the power of the President.

So we felt that was really, really critical. And I say we. It doesn't mean all 100. I don't know all 100, but I know that it seemed to be a consensus among the staff that we wanted to do that kind of job that would be bi-partisan. And so just a vignette that comes to mind is after the impeachment I had had friends who traveled around the world giving talks for the United States Information Service.

And at that time the United States Information Service had a program of people, Americans, businessmen, whatever, you know, would go and give talks at American embassies in various places around the world. They wouldn't pay your travel, but when you got there they would arrange for you to give the talk. So you paid the airfare and the hotel, and they arranged for you to talk, except in India where the United States had accumulated all these rupee balances under the Food for Peace program, so there they would use that to pay your hotel bill. But you still had to get to India.

And so I had these friends who went around the world giving a talk. They were experts on devising modern waste collection mechanisms in big urban areas. The routing of garbage trucks was their specialty, the efficient routing of garbage trucks. And they were very popular because all these cities have big problems with the routing of garbage trucks. So after the impeachment I wanted to take a trip, and so I contacted the Information Service, and they sent me to, they arranged for me to give talks in the places I wanted to go.

And the places I wanted to go, I wanted to go to Iran and India and the United Kingdom, and England. Those were the three places. My friends had been to Iran, they told me it was beautiful, Isfahan, you know. So those were the places I went. And the Information Service said, "We're very sorry. No one wants to have you talk in Iran. It conflicts with the program our embassy is putting on on the American Wild West."

And of course I'd forgotten, you know, you can be so naïve. That our ambassador to Iran was Helms, Richard Helms. The last thing he wanted was people talking about, as you said, that the President had told the CIA to – so that wasn't his favorite topic. So no speaking in Iran, the American Wild West. But in India they booked me into parts of India that

were quite anti-American in their traditional – Kerala state in the south is communist state.

And my message was the system works, the system works. And it was – they couldn't dispute it. They couldn't touch it. So there the embassy loved this because it was such a positive message about our constitutional system and how it works. The only problem I had in India is that sometimes after my talks I'd be approached by a group who was interested in impeaching Indira Gandhi, and they would come up and say, "Well, maybe we could talk," which of course I wouldn't do.

But it was basically that the system worked, that it was not seen as just a political thing that basically a serious inquiry had been made and a determination had been made about what was necessary to properly sanction with impeachment, should it had gone forward through the Senate, someone who had subverted the Constitution for their own purposes.

Naftali: Let's go back to the period just before the Committee votes. You spent six weeks reading the Statements of Information.

Davis: Is that how long it was? Was it six weeks?

Naftali: Six weeks. Six weeks.

Davis: Oh, that was longer than I thought, right?

Naftali: By the way, why was it decided to read it? Why do – do you know why John Doar decided?

Davis: I don't know why we read them. I think it was just to get the sense that this record had been put before the Committee in a way where they could read it and study it and confirm it. And if you just handed them the books that would be totally satisfactory because they might not read them. This way this is like introducing evidence in a trial.

When you introduce evidence in a trial you have a document or a piece of information. You do either read it to the jury – you do what's called publish it to the jury. That's the technical phrase, which can either be reading it or handing it to them and a pause is taken in the court proceeding while they read it. And so I don't recall the specific reason, but I think it was sort of this idea that we should publish this information to the Committee.

Naftali: Did you read this, the documents?

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- Davis: No.
- Naftali: So they were –
- Davis: So the notebook, you'd have the Statement of Information, then behind it would be the documents. So you would read the thing, and there would be time for them to be flipping through and looking at the documents, and each document was marked with a big black bracket to show the part that was relevant to look at to corroborate the statement made in the Statement of Information. But beyond that I can't remember why we read it.
- Naftali: Do you remember Mr. Doar's reaction to the fact that this was gonna happen on television?
- Davis: No. I'm sure it wasn't the world's most exciting television. There did come a point where the Committee members started to discuss that was very – I mean we all remember Barbara Jordan's impassioned and her voice of almost like the Grand Canyon as a metaphor for time. Her voice had that, and a number of other people, you know, on all sides. That was a very good debate. And I was there obviously listening to it. I remember that. But the other, I don't remember thinking about whether it was good television or –
- Naftali: Do you remember Dick Cates's role in giving seminars to help the members absorb this information?
- Davis: Right. I did not participate in any of those. Dick Cates's office was right near mine, and we were, he was aware of what we were doing and what we were working on and, you know, memos that we would write and all that kind of stuff. But my group, we did not have contact with the Committee the way Dick did, and Dick played a really important role in helping the members work through the information.
- I know that John has referred recent, you know, when I talked to him – obviously I've talked to him recently, and he has referred to Dick Cates as a hero in what he did of helping the members come to an understanding of, their own understanding of what the facts were, but helping them grapple with them. Because it was, you know, a complex factual story.
- Also Dick, I don't know the details of this either but I believe some of the permanent staff for Rodino were unhappy with the pace and so on by John, and Dick I think helped immensely in calming down that. I don't know the personal element of it, but I think he helped immensely. He had been hired I think independently, not by John but by the Committee, and so he had this slightly independent role that made him a very constructive force.
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Naftali: And he got along well with John Doar.

Davis: He did. He did get along very well with John, and they were both Midwestern litigators, and Dick I remember used to love to tell war stories about his cases, so we did find the time to hear a fair number of Dick's war stories, of things he'd won that, you know, were hard to win. And from all these guys, Dick Cates, but particularly from John I learned so much about how to litigate cases in the sense that from John particularly what I learned was that it's not for the lawyer to be the star, it's for the witness to be the star.

It's for the people with the factual knowledge to be the ones who convey their convictions and their – of what the facts were. I think Dick had the same kind of attitude; not the flamboyant lawyer but the guy who works with people to ferret out the facts. I remember Dick told me when you're trying to find out what happened you've gotta go and sit in somebody's kitchen and talk to them.

In their kitchen, you know, with a cup of coffee, about what went on. And not just bring them to their office and put them in a chair and – you've got to really – and you've got to make them the subject. And the other thing – so I learned that, and John agreed with that totally, that was his approach as well, to be the lawyer in the background. And I've found in my career that sometimes the lawyer who gets congratulated for being the great lawyer by the jury is the one who's just lost.

The other thing that John taught me and that impeachment taught me is the merit of close attention to facts and testimony such that you find things, either points of agreement or disagreement or sometimes things not said, like when Nixon did not tell Gray, President Nixon did not tell Gray what he knew. And that requires close attention to records and documents and testimony. And in today's litigation world it's hard to do that because of e-mails.

E-mails just generate such a mass of information that it's too much. If we had had e-mails – can you imagine if we had had e-mails? It would have been, six months wouldn't have been enough time. You can't digest. But you have to do them today because they often contain critical evidence. But it's just that attention to detail. And that's why I think John felt it was important to take the time. Because you can't do this in a month to do this right. If you're gonna really look hard and see.

Another thing John taught me as a litigator is that you have to be very careful not to create an expectation that something is going to be resolved through some topic where it's not going to happen. So everyone was

interested in the 18 1/2-minute gap, and I remember I said, “Well why don’t we send people over to Germany.” Maybe I wanted to visit Germany. I can’t remember. “And meet with the manufacturer of the tape recorder to understand, you know, exactly what it would take to erase.”

And John was not in favor of doing that, and I remember he said, “Because you’re gonna create an expectation that they’ll be an answer, and it’s just not gonna happen. You’re gonna go over there, and there’s not gonna be anything, and then you’ll have created an expectation and people will be drawing inferences one way or another from what you didn’t find rather than focusing on the evidence that really exists.” So expectation is important. Obviously it’s important in the political realm, too, of not creating political – but he was talking more about evidentiary expectations.

Naftali: When do you think you shifted, because it’s an important pivot, from being an inquiry to – I mean you say litigating? At a certain point he’s becoming a litigator.

Davis: At a certain point we are presenting a case. Certainly when we’re drafting Articles of Impeachment. John as you know was reluctant. Certainly the staff never got to take any position, and John was reluctant to take a position, and he did not really do so until just before the vote where he clearly did take a position. But I think it’s not an appointed time. It is as the process goes forward the question is, is there a case for impeachment under the **[inaudible]**.

You start out, you don’t know. Is there a case? Is there not a case? You don’t know. As time goes by there’s more and more evidence that might be a case, but if you’re adopting this approach that John had of needing to see a whole pattern, a picture? So as time goes by the needle, you know, is creeping up in a sense of is there a case for impeachment, and it creeps up and up. So as time goes by you became more certain that there’s a case.

But then it’s when do you get to the point where you feel clearly and convincingly that there is going to be such a case? I can’t remember a specific point. I think it may be about the time I did this list of 50 things. I can’t remember the exact date of that list. It was certainly after that we reviewed all the evidence, talking to some of the witnesses, listening to tapes. I can’t remember the exact moment, but that was a moment, too, of the needle having gone beyond that there is a case.

I would say I arrived with an expectation, sort of like the Committee’s expectation, that it would be a quick process to decide whether there was a

case; that I wouldn't be down there for maybe a couple months, three months. That it would be a quick process. You'd look at things and case, no case, da da da. But it really did take this time to do that, both because we had a process for the comprehensive evaluation of the evidence and because we had to do other things that meant you couldn't spend all your time just thinking about the ultimate issues.

So for example I remember one week when I just thought my head was going to explode. There was just so many things going on. I felt that brain pain. Everyone I'm sure has felt it. You have actual pain in your brain from too much, you know, that somewhere there's another needle in your brain that's over on the red side, and it was because we were trying to get our information ready, trying to think about what it all added up to, and at the same time we had to draft justifications for the information requests.

We had made information requests that arguable were sort of self-justifying. You read them and that make sense, but the Committee wanted detailed essays about why this information was needed. So we were doing all of these things in an incredibly compressed period of time, and it caused brain pain. And that obviously meant it was more time than – so I don't see that we could have done it any quicker. I know that six months was a long time to have the country dangling, but we couldn't have done it quicker I don't think and done it in the way we did it with the solidity.

Naftali: I was going to ask you about Bert Jenner.

Davis: Bert Jenner was a litigator of a very different style than John. John, as I mentioned, was fade into the background, let the witnesses be the focus of the jury's attention. Both tried a lot of jury cases. I had not tried jury cases, but they had tried jury cases.

Bert Jenner, one of his trademarks was very brightly colored socks and John had told me at one point he used to get John slightly aggravated because Bert would turn to Bernie Nussbaum with John in the room and say, "Now, Bernie, you and I are litigators," sort of inferentially that John wasn't a litigator.

Bert was an absolute straight arrow kind of guy, not for distorting process. He was for letting the cards fall where they did and let that needle end up wherever it ended up. He didn't work as hard as the rest of us because his life, that's the way he was. He lived in the Madison Hotel and we all lived in these you know little hovelled furnished apartments. I forget where John lived, but John did not live in the Madison Hotel.

Bert was larger than life. Bert was extremely likable, very friendly would invite you over, very nice guy and no doubt a giant of the bar, no doubt. Just a founder of a really great law firm. So I can see why he would turn to Bernie and say, "You and I are litigators." John from Wisconsin, it was a little bit different. That was Bert.

I wanted to mention one thing that as this needle is progressing to where is there a case or not for impeachment. One thing, two things that were important for me and I think for others as well, one is the misuse of the concept of national security, which is very important and legitimate.

I can accept doing extreme things whose legality might otherwise be questionable in the name of national security. National security is a real thing that's important to the country and, obviously, it was important then. It's totally important today with all the threats we're under.

Therefore, to use falsely national security as a cover seemed to me a compounding problem, compounding reason to find subversion of the Constitution. I'm not sure that we ever focused on it too much, but I think we did. I think we certainly pointed to the and the staff was all totally...we had this thing where when we were initially listening to one of the tapes, somebody had written down, Earl Nash.

They had heard Earl Nash. It was in fact, the President was saying national security. National security was always this thing that was being used and it was a problem that you would use national security as a cover for things that didn't have anything to do with national security.

The other is, again, this is a big picture item, but overall indifference to the legality, overall indifference to the legality. One thing we concluded, we not only concluded there was a cover up. John ultimately stated that he had concluded that there was circumstantial evidence that the President had authorized an illegal surveillance program of which the Watergate itself was a part.

Not that the President knew the particulars of who was hired and this and that, what night they were going in, but he had authorized an intelligence gathering, inferential, circumstantial evidence of the kind you described, but part of one piece of the circumstantial evidence was this indifference we found in other areas to what the law was to whether it was legal or not legal, whether it was obstruction of justice or not obstruction of justice, whether it was proper or not proper from a legal point of view.

That, obviously, it's a compounding fact for finding a constitutional high crime misdemeanor because it relates directly to the duty to take care that the law has been faithfully executed. It's one of those and some people might say, "Well, that's a higher standard for a President and will be applied in a criminal court," but indifference to legality is a particular problem for a President in terms of his role under the Constitution. Those were some things, in my mind, you don't push the needle forward.

Naftali: Did the information from the White House prove useful in pushing the needle forward?

Davis: Yes, because of the differences in their transcripts from what was really on the transcripts.

Naftali: I was also going to mention the political matters memoranda that Gordon Strachan wrote.

Davis: I did not use those as much as those working in areas like the Plumbers, Ellsberg, Dick Kelso. I don't recall pouring over those memoranda at all. I don't recall using them in a significant way. I think others may have, but I don't recall them being a factor for me.

Naftali: In the final report, the staff I suspect and it may have been you, the staff makes a point. I'm not a lawyer so I'm probably going to get this wrong, but the President kept making case for protecting something because it was not relevant to Watergate in the tapes, in the transcripts he released.

Then when you listened to the tapes, you recognized that there were sections that he'd said were not relevant that turned out to be relevant. It wasn't just an issue of their transcriptions being perhaps questionable, but it was also the deletions themselves seem indicative of a continuing cover up.

Davis: Right.

Naftali: In the footnotes, at least in your report, you refer to this over and over again as part of a pattern.

Davis: What I remember, the report was more of a Committee product because it was the last thing that was written and the Committee was heavily involved whereas the Statements of Information, John's statement to the Committee at the end of the presentation of information, was more of the

staff product. I remember a book of focusing on eight transcripts that the staff prepared and put out.

My recollection, I've not read it recently, but for many years I haven't read it. I don't think I have a copy of it. To my recollection, it had both elements that you're talking about. Things that were deleted, but it also had phraseology changes that were important and material that were wrong and I also recall our having some reason to think –

I don't recall now what the details were, but that this was not just the lawyers putting together these transcripts, but the President himself being actively involved in the process of revising, reviewing, revising the transcripts, deciding what would be presented and I can't recall why we thought that, but I remember that so that it was not just a lawyers call, but that he had been involved.

I think it was a powerful piece of information for the public, for the Committee and what's persuasive to the public is relevant. That's the part of the thing, right, that the political process because it has to be something where the public feels that this extraordinary step is justified. That's where the Committee is making a judgment about what the public, how the public will react.

Naftali: Do you remember the pressure on Mr. Doar to express his opinion?

Davis: It's something that I've been reminded of recently by talking to John because I have talked to John. In thinking about this and he reminded me that he had been pressured to express his opinion and he told me that he understands Francis O'Brien, said that he was part of doing that and John didn't deny that was the case and that John should express an opinion. In preparing for this, I did re-read his statement at the end there and it certainly expresses an opinion.

Naftali: But he didn't want to do that initially.

Davis: He felt that the Committee was really strong, that all this was their decision. You notice when he starts to express his opinion, there's some Committee Members who start to interrupt a little bit and 'where's the citation for this and for that.' It was not totally, I gather...I didn't go back and look at Sinclair, but from the comments that are made objecting to the objectors that when Sinclair spoke, nobody interrupted him.

I think John felt strongly the Committee did not want the staff or John or anybody reaching a conclusion for them, but he, ultimately, during the process he did not express opinions. We had this putting a record before the Committee approach. Then he expressed an opinion and then he obviously supported the Articles that were drafted to put before the Committee, which they voted on.

Naftali: Bill Wells said he knows that there was an attempt to put Republicans in most of the task force to keep a sense of bipartisanship, but he wasn't sure if there were any Republicans who worked on the issue of the cover up and the obstruction of justice. Were there any?

Davis: There were and, as I say, my recollection is that there was also a Republican on this tape group, but in the group that I was working with there were a couple of Republican members. It wasn't always that obvious who was Republican and who was Democrat, but I think Gerard Stamble was Republican, I think. I think there was another guy, blond hair – what was his name? It's hard to remember all these names.

Naftali: Were you their supervisor?

Davis: Yes.

Naftali: And who did you report to?

Davis: I would say I reported to a combination of Dick Cates and John and Joe, maybe Joe Woods, although, Joe was very heavily involved with the reporting. Lines were not very clear on the impeachment inquiry. I remember Bernie being involved in most everything. I certainly talked to Bernie. The official senior lawyers were Bernie, Joe Woods and I think Dick Cates.

Is that per your records – Dick Cates, Bernie, Joe Woods. John, Bert Jenner and then the next level down to senior associate counsels. Bernie, Joe and I can remember meetings involving all of them. Not really too clear who I reported to. I think I was a provider of information analysis and Fred Altshuler...you're going to talk to him at some point, I hope, out in California.

He was very instrumental in writing up Statements of Information and using some of the stuff that we developed. I didn't view him as a subordinate or anything like that. The thing I supervised was a group of quite younger people – although, Bob Trainer was one of them and he

wasn't that young – who were really working through the materials. This process of filling out chronology cards and chronology cards, they had the advantage of forcing you to really focus and read carefully. To read it and make a card about a meeting.

You had to have a card then for each participant in the meeting about what they said happened at the meeting. It was very good to focus. I can't say that I remember taking a lot of time and going back and using the cards as an original resource because by that time I knew the key meetings, thirty key meetings something like that. I knew everyone who had been at the thirty key meetings.

I knew from my memory what they had said and where I could find what they said, but having everyone do the cards was a very good sort of thing. Just like the tapes, another good advantage of this is that everything gets checked by so many different eyes that overstatement or misstatement is eliminated and we did not want overstatement.

It's something I continue to do litigating today because an overstatement just gets you into trouble. We wanted an objective view. So I do today and lawyers do today a lot of internal investigations. We're hired by companies to find out what happened and then to report to them on what happened. This is somewhat similar in that, typically, we would start by looking at documents, looking at prior testimony for their internal investigation.

We would then go on to ask witnesses about the documents and about prior testimony. We did that and it generally involves a big team of lawyers doing it. One of the reasons for the big is there's some duplication in it, but it leads to the multiple eyes coming up with both accuracy and things that otherwise might be missed.

Naftali: When you helped decide what the Committee would request, the subpoenas, how confident were you that you'd get anything?

Davis: Well, I can't remember exactly what I thought and I don't think I necessarily thought we were going to get a whole lot. I think we thought we would get something, but we didn't get everything we asked for by any stretch. There was an Article of Impeachment based on refusing to honor the subpoenas. I can tell you one story though about the subpoenas.

Very early on John and the Committee and I think the Chairman...I did not deal with the Chairman the way John did with Rodino. I think it was

early on decided there would be no effort to seek judicial enforcement of our subpoenas by the Special Prosecutor, so we never went to court to enforce the subpoenas. People said, “Why don't you go before Judge Scirica? He will definitely enforce the subpoenas,” but we didn't do that.

One day I got a call and Potter Stewart invited me to lunch. He also invited one of my court clerks at the time, Tom Rowe. That was really nice. I was in Washington and the Supreme Court was not far away from where we were and so it was very nice to have lunch. Potter, in most of the lunch was just...but I do remember at some point during the lunch he made a statement about the unwisdom of asking the court, any court, to become involved.

That's my recollection is the way he put it. Once you ask the court to enforce something, they decide the rules. They decide what they're going to enforce. They decide this and that and so as if to say impairment of the prerogatives of Congress under the Constitution with respect to impeachment because the courts will not just blindly sign a blank check for what you want they want even more justification than we gave the Committee.

We had already decided not to do that, but I thought it was interesting. This was before Nixon, the Special Prosecutor case, *The United States vs. Nixon*. That, of course, was different in that enforcement of the law in a criminal context is a high priority for a court. A higher priority for them than a Congressional Impeachment and so the Special Prosecutor got the benefit of the being in the Executive Branch himself and enforcing the law. Of course, they were the ones who came up with the June 23rd tape.

Naftali: Two questions – one, what was Mr. Doar's response when you told him about your lunch with Potter Stewart?

Davis: I never told him because we had already decided not to do that.

Naftali: But the Supreme Court didn't know that.

Davis: The Supreme Court didn't know that, but John didn't need to know because he wasn't going to do anything.

Naftali: But what I'm saying is that Potter Stewart, he didn't know.

Davis: He didn't know that we might go to Judge Scirica and –

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- Naftali: Because at this point the subpoenas had already been issued, correct?
- Davis: The subpoenas had already been issued and I believe if my memory is correct, there had been issues about compliance.
- Naftali: That's fascinating. The second question I have to ask you about is Garrison. Did you ever interact with Sam Garrison?
- Davis: Obviously and we would interact a little bit. I don't think he viewed me as a big central...I was this worker bee down there doing this little task force of people, assembling materials. I didn't interact with Sam a lot. I remember in general people became unhappy with Bert Jenner and Sam's role increased.
- Naftali: People became...I thought it was just the –
- Davis: Republican, right, Republican Committee members became unhappy with Bert and thought he was not sufficiently telling the other side of the story, I think. I remember Sam's role increased. I don't remember any particulars, though, of what that involved.
- Naftali: Back to the Supreme Court issue for a minute. Was there ever any consideration of waiting for the Supreme Court to rule because you knew that one of the things they were going to rule on was that June 23, 1972 tape?
- Davis: There was no option to wait any longer. We had just worn out, so when John spoke, as I mentioned, I did re-read that and it was nice because he talks about a hundred of us and how this is the product of all hundred, which is true. Maybe not all one hundred, but it is a very...he talks about six and a half months that we've been doing it and six and a half months was what we were going to get.
- Naftali: What was the feeling before the vote on Article One? Was there a sense that there would be a bipartisan majority?
- Davis: Yes, I think that either from discussions that people had had with various members there was a sense. I think the members were quite active in the drafting of the Articles and I have the recollection that you could tell from who was participating and helping to draft which Article, who was going to vote for it. I remember feeling at that point that there would be because of the people participating there was going to be bipartisan support.
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Naftali: How do you remember feeling after three Articles were approved by the Committee?

Davis: The strongest feeling throughout this process is the feeling that isn't it amazing that you're involved in this historic process, but you can't work up a sense of total momentousness because you're so busy dealing with the day to day details of a historic process, but definitely, it was awesome to be involved in a historic process.

It was awesome to be a Supreme Court Law Clerk with all these big cases. So I remember the feeling that this was a moment in history very strongly, but I don't remember being able to appreciate that feeling because there was much to do, to dwell on it or to enjoy it.

Naftali: Where were you and do you remember when you heard the President Nixon was resigning?

Davis: Yes, I had taken a vacation with my girlfriend. We'd gone to a hotel resort kind of thing in West Virginia and we're driving back to Washington. It was on the highway and I heard that he had resigned and I didn't have any expectation that I recall about how it came out, but I recall distinctly saying that I thought that was a good decision to give him a pardon.

Naftali: I was talking about resigned.

Davis: That I don't recall. I was talking about pardon. Resigned, I was not surprised. The tapes had come out. He had no support. It just seemed inevitable. I don't recall feeling a sense of relief or elation, but it just seemed to be like I would feel now if the Articles of Impeachment had been voted on a bipartisan basis and further evidence come out and the Judge signs the Order officially making it a done deal.

I felt that way. I was not thinking about having a trial in the Senate or anything like that. I think it was because I felt that he was going to resign that it was just not going to be sustainable particularly after the Supreme Court decision and then the content of the tapes.

Naftali: Had the President not resigned that summer, at least what were you planning to do? Were you going to stay with the inquiry or was the staff actually dissolving?

Davis: I would have stayed. I would have to stay. You can't build up all that knowledge and say, oops, thunder, that the country doesn't need you. I

mean it's sort of an obligation to stay, but again, I don't recall thinking that was really going to happen after the point of the tapes and the Committee becoming unanimous and that the Articles of Impeachment would be voted. We'd done so much work on all the facts and all the information that we I don't feel we would have been scrambling to present a case had it come to that, but –

Naftali: What was it...no, go ahead.

Davis: When I've done cases here when I was a younger lawyer suddenly I would notice that the Senior Partner would lose interest in the case because they would know how it was going to come out at that point. This wasn't quite that, but it really became, as I recall, fairly clear.

Naftali: Did your Senior Partner lose interest? Did he think it was going to end? I'm talking about John.

Davis: You mean John Doar? I don't know the answer. I don't know the answer, but I think I did.

Naftali: So you didn't because was the staff's intended to continue?

Davis: We were all intact at the time of the resignation. I was in the building in my office at the time of the resignation. At the time of the pardon is different. That's what I was telling about. I'd gone away, but at the time of the resignation, I was there and I think everybody else was there. Then the resignation was like August.

Naftali: August 8th effective the next day.

Davis: August 8th and I stayed until towards the end of September something like that and in the period after August 8th, the staff did unwind pretty quickly.

Naftali: He resigned on TV August 8th left midday August 9th was the pickup and departure. Have we missed any anecdotes?

Davis: I told you about the pardon. I remember thinking in my mind that it made no sense and was not dignified for a former President to be making mattresses in some penitentiary. It just seemed to be wrong.

Naftali: It's striking how close many of the members of the staff remained. What was it about the climate of 1970 for Washington that annealed the staff together that brought you together so strongly?

Davis: Isolation, couldn't talk to the press, friends. We wouldn't talk about what was going on. Judges become very close to their law clerks because of the same isolation. We all became very close to one another. We all ate together all the time. No one had any social life. A unique experience that we all shared this whole process that really no one else knew about or could easily be explained.

I think that I changed my attitudes about certain things ultimately unrelated to the topic of the impeachment. For instance, I had worked in a Wall Street law firm and hadn't really liked it because it seemed very dull, but on the other hand, at the impeachment, I met these Wall Street type lawyers who are not a bit dull like Bernie and Bob. Then other characters like Dick and Fred and the others and it gave me a new respect for the private practice of law, which I had not been.

I was sort of on the road to being a permanent consumer protection division, kind of guy, but I decided to see if I could find a way to be both do things in government and part of the private practice of law because these people changed my mind about what it meant to be in private practice.

Naftali: Did you learn something about government?

Naftali: Did you learn something about government?

Davis: So my major contacts with government were two years with the Judiciary clerking; about two and a half years working for the City of New York; impeachment inquiry; and then five years as counsel to Governor Mario Cuomo. So I've seen government judiciary; in a city and the federal government in Washington; and at a state and Washington is far and away the most wrenching. Everything is sort of stressful. That's just Albany. Albany is very stressful too because it is highly competitive and partisan, unfortunately, environment. New York City was always very civilized. It was very – and the judiciary is totally civilized.

So the work environment in each area is different. In the end one of the things I learned about government through impeachment is that I wanted to be sure that if I was in government, I always had a good exit so that I could leave if I wasn't comfortable with what was going on without totally messing up my career. When I would get married, my family and that was a reason to look for a home base somewhere outside of government and then work in government but always have a place to go. When I went to Albany which was also as I said stressful, I could remember I'd come back

to New York and meet friends at the law firm and so on and it felt like an oasis of peace and calm and tranquility compared to Albany.

I was very glad I had a home base to which I could return. I think it makes you a better government person to have the additional backbone that comes with knowing you can leave without messing up your life.

Naftali: I've asked you before if I could ask you about you mentioned the fact that one reason you went to Exeter was you were in a public school where you had to use crutches to go up and down stairs. What was it like to be in Washington before the Americans with Disabilities Act made things more accessible?

Davis: Right so I got polio when I was five years old. So basically I've used a wheelchair but I used to use crutches much more than I do now. One thing that's been very lucky for me is as my, with increasing age, ability to overcome the normal obstacles that would otherwise be there is decreased; society has done more and more to remove the obstacles. So I've been very lucky. I was born at the perfect time because just when I need a bathroom stall that's easy to get into, there magically it appears because the law has been changed. So this is total good for which I am really appreciative because it means that I can always be out in the world. New York City, I drove a car and New York City is very good about giving a parking permit to someone that drives a car with a hand control that way you can park almost anywhere. Washington does not have the same benefit but when I went to the impeachment and also to some extent when I was clerking – when I was clerking, I would drive from my apartment to the garage under the Supreme Court.

Not bad, guards would help me get the car out; get the wheelchair out of car; and I'd be fine. Impeachment, no such thing but where I lived was so close to the place where the offices were and they'd say we didn't have time to do anything else, it wasn't a problem. So I didn't notice how far Washington was along when I was there as a clerk because I had such a convenient arrangement. When I was on impeachment because I didn't have time to do anything else but in general, I've just been really lucky that the country's interest in being accommodating and indeed the requirements to be accommodating has increased as I've needed more help. It's been great for me.

Naftali: Have we touched on all aspects of the story.

Davis: I can't think of anything else at this time. I'm sure that later things will occur to me but I think this is a good chance to talk about those six and a half months.

Naftali: In talking about gratitude, I think the country will be grateful to you for pushing so hard to make sure that the impeachment inquiries' history is preserved through oral histories like this.

Thank you Evan.

Davis: My pleasure. Thank you.

Naftali: Thank you.