

*Faken from H. J. C. "Minority Memo on Facts and Law"*

I will refer to a few of those background contexts. Those to which I refer are illustrative only. There are others.

The first of them is the matter of our acquisition of an extra 15 minutes of the taped conversation of September 15. You will recall that there was a misadventure that took place when our tape people, pursuant to arrangement with Mr. St. Clair, went over to the White House to have taken off for them the tape of the September 15 conference between the President, Mr. Haldeman and Mr. Dean in the oval office. Unbeknown to us at the time, the Secret Service agents in taking off a tape for us from the original inadvertently started the recorder at a point 15 minutes ahead of the point of time that had been specified in the committee's subpoena. The time point you had fixed in your subpoena was the best that you could do based on the limited data you had which consisted of Presidential logs. What was revealed that was new? I call your attention to pages 1 and 2 of the transcripts of eight recorded presidential conversations which have been printed and published by the committee. Those 15 minutes cover all of page 1 and that part of page 2 running down to the bracket within which it is recited: "Dean enters room." You will find in that extra bit of taped conversation significant revelations which absent the Secret Service agents' misadventure, would not have reached this committee because of the President's refusal to supply all relevant taped conversations. In the middle of page 1 there are references to Dean working on the IRS to stimulate tax audits of persons listed on Colson's list of McGovern supporters.

There are other new matters—Watergate, coverup, concealment, containment. All these matters are pertinent and relevant to and needed by you in these proceedings.

What is more, they are adverse in content and support an inference that other taped conversations which the President has refused to produce would be similar in content.

Now secondly, the September 15 tape has another significance, and that is there are 17 1/2 minutes of taped conversation that took place at the end of that meeting which we did not receive from the White House at the time the Secret Service agents took off the segment furnished us as I have related. Ultimately, and again by chance, a very small portion of the 17 1/2 minutes was received through Judge Sirica by way of a transcript. That bit related to Watergate only. Thereafter, the limited portion relating to Watergate came to your attention when Judge Sirica examined that 17 1/2 minutes pursuant to the mandate of the court of appeals to determine whether there was any Watergate material in that 17 1/2 minutes. He reported in the affirmative. As a result, you had a very short page and one-half of excerpts from the last 17 1/2 minutes confined, however, to Watergate. But, a material portion of your investigation deals with abuse of the IRS. What happened? Within the past 6 weeks, the Special Prosecutor petitioned Judge Sirica to reexamine the 17 1/2 minutes to see if there was anything on abuse of the IRS in that 17 1/2 minutes. And the good judge did so, and he reported in open court that there were conversations respecting abuse of the IRS that was relevant to the impeachment inquiry. Mr. St. Clair, in open court and for the President, refused to consent to your being supplied with Judge Sirica's transcript of the portion of the 17 1/2 minutes relating to abuse of the IRS; furthermore,

Mr. St. Clair objected to delivery of that transcript to the Special Prosecutor and on behalf of the President appealed Judge Sirica's turnover order to the court of appeals where the matter is now pending. Judge Sirica also ruled, as I have reported to you, that the court of appeals mandate authorizing him to examine the tapes in camera was so limited that he was without authority to give the committee a copy of the transcript, much as he wished to do so.

Now, another pertinent event is the fact that by—again by happenstance, again by happenstance, we received from the Special Prosecutor by mistake on his part 160 odd pages or 180, of Mr. Ehrlichman's notes which had been filed with the court by the President in response to Mr. Ehrlichman's subpoena. You had subpoenaed the President to deliver a copy of those notes to the committee. We received from the President approximately the same number of pages but a large number of them were marked or blanked out. On the other hand, the 180-odd pages of the same notes received, by happenstance, from the Special Prosecutor contained far fewer blanked out pages. In the Special Prosecutor's copies, there is a host of material that is relevant and pertinent to these proceedings, and of a thrust adverse to the President's position, some of which has already been cited to you in the material presented to you last week, which is blanked out in the material received from the White House. Thus, here again, you have an example, a context, from which you may draw an adverse inference with respect to taped conversations and documentary material which the President has refused to produce.

I mention these three solely to say to you that it is true, as Mr. Garrison argues, that you draw inferences, adverse or favorable as the case may be, in the light of the context of the evidence before you. And here in the three instances (and there are more) in which this matter arose, this context, something that was relevant, material and pertinent and of adverse thrust to the President's position came to the attention of the committee.

Also in this connection I mention the President's edited transcripts. You may attribute the President's difficulties with the edited transcripts to the fact that maybe stenographers put headings on and just typed away. We must accord to the President the benefit of that doubt. But that is beside the point. The point here is that there were substantial omissions from those edited transcripts as well as material differences in text that were adverse to the President's position, as you know, so, when you consider the drawing of adverse inferences in the light of context, you must consider not only the eight recorded transcripts which we deciphered, printed copies of which you have, as well as the comparison of White House edited transcripts and Judiciary committee transcripts of the same Presidential conversations. Our transcripts as against the edited transcripts of the same tapes revealed in a good many respects material differences, including omitted materials, adverse to the President's position.

I attribute no evil purpose with respect to the edited transcripts but I do say that when you determine whether you are going to draw adverse inferences with respect to tapes and documentary materials refused to you by the President, you must do so in the light of the contexts to which I have led your attention, not to mention others that time does not permit.

*\* Albert Jenner explanation of the mysterious receipt of the Sept. 15 tape.*