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Text of Tape Compromise

Following is the text of the proposal submitted by Attorney General Elliot L. Richardson to Watergate Special Prosecutor Archibald Cox on Oct. 17 and designed to resolve the controversy over the Watergate tapes. With the proposal are comments from Cox and an exchange of letters between Cox and Charles Alan Wright, the President's chief courtroom

A PROPOSAL

The Objective

The objective of this proposal is to provide a means of furnishing to the court and the grand jury a complete and accurate record of the content of the tapes subpoenaed by the special prosecutor insofar as the conversations recorded in those tapes in any way relate to the Watergate break-in and the cover-up of the break-in, to knowledge thereof on the part of anyone, and to perjury or the subornation of perjury with regard thereto.

The Means

The President would select an individual (the verifier) whose wide experience, strong character, and established reputation for veracity would provide a firm basis for the confidence that he would put above any other consideration his responsibility for the completeness and accuracy of the record.

Procedure

The subpoenaed tapes would be made available to the verifier for as long as he considered necessary. He would also be provided with a preliminary record consisting of a verbatim transcript of the tapes except (a) that it would omit continuous portions of substantial duration which clearly and in their entirety were not pertinent and (b) that it would be in the third person. Omissions would be indicated by a bracketed reference to their subject matter.

With the preliminary record in hand, the verifier would listen to the entire tapes, replay portions thereof as often as necessary, and, as he saw fit, make additions to the preliminary record. The verifier would be empowered to paraphrase language whose use in its original form would in his judgment be embarrassing to the President and to paraphrase or omit references to national defense or foreign relations matters whose disclosure he believed would do real harm. Ther verifier would take pains in any case where paraphrased language was used to make sure that the paraphrase did not alter the sense of emphasis of the recorded conversation. Where, despite repeated replaying and adjustments of volume, the verifier could not understand the recording, he would so indicate.

Having by this process converted the prelimnary record into his own verified record, the verifier would attach to it a certificate attesting to its completeness and accuracy and to his faithful observance of the procedure set forth above.

Court approval of the proposed procedure would be sought at two stages: (a) in general terms when or soon after the verifier began his task, but without identifying him by name, and (b) when the verified record was delivered to the court with the verifier's certificate. At the second stage, the special prosecutor and counsel for the President would join in urging the court to accept the verified record as a full and accurate record of all pertinent portions of the tapes for all purposes for which access to those tapes might thereafter be sought by or on behalf of any person having standing to obtain such access.

Submission of the verified record to the court would be accompanied by such affidavits with respect to the care and custody of the tapes as would help to establish that the tapes listened to by the verifier had not at any time been altered or abbreviated.

Cox's comments on the proposal:

The essential idea of establishing impartial but nonjudicial means for providing the special prosecutor and grand jury with an accurate record of the content of the tapes without his participation is not unacceptable. A courtroom "victory" has no value per se. There should be no avoidable confrontation with the President, and I have not the slightest desire to embarrass him. Consequently I am glad to sit down with anyone in order to work out a solution along this line if we can.

I set forth below brief notes on a number of points that strike me as highly important.

1. The public cannot be fairly asked to confide so difficult and responsible a task to any *one* man operating in secrecy, consulting only with the White House. Nor should we be put in the position of accepting any choice made unilaterally.

2. Your idea of tying a solution into court machinery is a good one. I would carry it farther so that any persons entrusted with this responsibility were named "special masters" at the beginning. This would involve publicity but I do not see how the necessary public confidence can be achieved without open announcement of any agreement and of the names of the special masters.

3. The stated objective of the proposal is too narrow. It should include providing evidence that in any way relates to other possible criminal activity under the jurisdiction of this office.

4. I do not understand the implications of saying that the "verbatim transcript . . . would be in the third person. I do assume that the names of all speakers, of all perons addressed by name or tone, and of all persons mentioned would be included. [In a handwritten footnote, Cox added here:] The last is too broad. I mean to refer only to persons somehow under investigation.

5. The three standards for omission probably have acceptable objectives but they must be defined more narrowly and with greater particularity.

6. A "transcript" prepared in the manner projected might be enough for investigation by the special prosecutor and grand jury. If we accept such a "transcript" we would try to get it accepted by the courts (as you suggest). There must also be assurance, however, that if indictments are returned, if evidence concerning any of the nine conversations would, in our judgment, be important at the trial, and if the court will not accept our "transcript" then the evidence will be furnished to the prosecution in whatever form the trial court rules is necessary for admissibility (including as much of the original tape as the court requires). Similarly, if the court rules that a tape or any portion must be furnished a defendant or the case will be dismissed, then the tape must be supplied.

7. I am glad to see some provision for verifying the integrity of the tapes even though I reject all suggestions of tampering. Should we not go further to dispel cynicism and make provision for skilled electronic assistance in verifying the integrity of the tapes and to render intelligible, if at all possible, portions that appear inaudible or garbled?

8. We ought to have a chance to brief the special masters on our investigators, etc., so as to give them an adequate background. The special masters should be encouraged to ask the prosecutor for any relevant information. What about a request for consideration in the case of an evident mistake?

9. The narrow scope of the prospsal is a grave defect, because it would not serve the function of a court decision in establishing the special prosecutor's entitle-

Proposal and Cox's Reply

ment to other evidence. We have long pending requests for many specific documents. The proposal also leaves half a law-suit hanging, (i.e. the subpoenaed papers). Some method of resolving these problems is rquired.

10. I am puzzled about the practical and political links between (a) our agreeing upon a proposal and (b) the demands of the Ervin Committee.

11. The Watergate Special Prosecution Force was established because of a widely felt need to create an independent office that would objectively and forthrightly pursue the prima facie showing of criminality by high government officials. You appointed me, and I pledged that I would not be turned aside. Any solution I can accept must be such as to command conviction that I am adhering to that pledge. A.C.

Letter from Wright to Cox:

Dear Mr. Cox: (16 Oct)

This will confirm our telephone conversation of a few minutes ago.

The fundamental purpose of the very reasonable proposal that the Attorney General put to you, at the instance of the President, was to provide a mechanism by which the President could voluntarily make available to you, in a form the integrity of which could not be challenged, the information that you have represented you needed to proceed with the grand jury in connection with nine specified meetings and telephone calls. This would have also put to rest any possible thought that the President might himself have been involved in the Watergate break-in or cover-up. The President was willing to permit this unprecedented intrusion into the confidentiality of his office in order that the country might be spared the anguish of further months of litigation and indecision about private Presidential papers and meetings.

We continse to believe that the proposal as put to you by the Attorney General is a reasonable one and that its acceptance in full would serve the national interest. Some of your comments go to matters of detail that we could talk about, but your comments 1, 2, 6 and 9, in particular, depart so far from that proposal and the purpose for which it was made that we could not accede to them in any form.

If you think that there is any purpose in our talking further, my associates and I stand ready to do so. If not, we will have to follow the course of action that we think in the best interest of the country. I will call you at 10:00 a.m. to ascertain your views.

Sincerely,

Charles Alan Wright

Letter from Cox to Wright Oct. 19:

Dear Charlie:

Thank you for your letter confirming our telephone conversation last evening.

Your second paragraph referring to my comments 1, 2, 6, and 9 requires a little fleshing out although the meaning is clear in the light of our telephone conversation. You stated that there was no use in continuing conversations in an effort to reach a reasonable out-of-court accommodation unless I would agree categorically to four points.

Point one was that the tapes must be submitted to only one man operating in secrecy, and the President has already selected the only person in the country who would be acceptable to him.

Point two was that the person named to provide an edited transcript of the tapes could not be named special master under a court order.

Point three was that no portion of the tapes would be provided under any circumstances. This means that even if the edited transcript contained evidence of criminality important in convicting wrong-doers and even if the court were to rule that only the relevant portion of the original tapes would be admitted in evidence, still the portion would be withheld. It is also clear that, under your Point 3, the tapes would be withheld even if it meant dismissal of prosecutions against former government officials who have betrayed the public trust.

Point four was that I must categorically agree not to subpoena any other White House tape, paper, or document. This would mean that my ability to secure evidence bearing upon criminal wrongdoing by high White House officials would be left to the discretion of White House counsel. Judging from the difficulties we have had in the past receiving documents, memoranda, and other papers, we would have little hope of getting evidence in the future.

These points should be borne in mind in considering whether the proposal put before me is "very reasonable."

I have a strong desire to avoid any form of confrontation, but I could not conscientiously agree to your stipulations without unfaithfulness to the pledges which I gave the Senate prior to my appointment. It is enough to point out that the fourth stipulation would require me to forego further legal challenge to claims of executive privilege. I categorically assured the Senate Judiciary Committee that I would challenge such claims so far as the law permitted. The Attorney General was confirmed on the strength of that assurance. I cannot break my promise now.

Sincerely,

Archibald Cox,
Special Prosecutor

Letter from Wright to Cox, Oct. 19:

Dear Archie:

This is in response to your letter of this date. It is my conclusion from that letter that further discussions between us seeking to resolve this matter by compromise would be futile, and that we will be forced to take the actions that the President deems appropriate in these circumstances. I do wish to clear up two points, however.

On what is referred to in your letter today as point three, that no portion of the tapes would be provided under any circumstances, the proposal of the Attorney General was simply silent. That would have been an issue for future negotiations when and if the occasion arose. Your comments of the 18th, however, would have required an advance commitment from us that we cannot make on an issue that we think would never arise.

In what you list as point four you describe my position as being that you "must categorically agree not to subpoena any other White House tape, paper, or document." When I indicated that the ninth of your comments of the 18th was unacceptable, I had in mind only what I referred to in my letter as "private presidential papers and meetings," a category that I regard as much, much smaller than the great mass of White House documents with which the President has not personally been involved.

I note these points only in the interest of historical accuracy, in the unhappy event that our correspondence should see the light of day. As I read your comments of the 18th and your letter of the 19th, the differences between us remain so great that no purpose would be served by further discussion of what I continue to think was a "very reasonable"—indeed an unprecedently generous—proposal that the Attorney General put to you in an effort, in the national interest, to resolve our disputes by mutual agreement at a time when the country would be particularly well served by such agreement.

Sincerelyq,

Charles Alan Wright