Gormley: Was there any doubt in your mind that you and your fellow prosecutors could successfully convict Mr. (Richard) Nixon for criminal conduct?

Wine-Banks: In one word - no. There was no doubt

When President (Richard) Nixon resigned, we already had compelling evidence of his guilt in the conspiracy to obstruct justice. To pay hush money. He was also responsible for misusing the CIA to try to stop the investigation by false claims of national security, so they were trying to get the FBI to drop-off. He also encouraged perjury of many of his staff who then actually committed perjury. So there was a lot evidence.

He could have been indicted for all of those things. He could have been indicted for fraud in connection with a donation of his Vice Presidential papers and for misuse of the IRS to persecute the people who were on his enemies list. The younger people here probably don't know what that was, but it included the list of politicians, government officials, Democratic donors, a lot of reporters, anyone who in any way crossed President Nixon was on that list. And he was ordering the IRS that they be audited and otherwise abused by the IRS.

And although we had very strong testimony of that from John Dean (White House Counsel for President Richard Nixon) and Jeb Magruder (Deputy Director of Richard Nixon's Committee for the Re-Election of the President) particularly, that wouldn't have been enough to convict him. And we held ourselves to a very high standard, more than an indictment of almost any other defendant. We felt we had to be almost assured that we would be able to convict before we indict…way beyond a reasonable doubt.

We got that in July when the tapes were disclosed by his aide Alexander Butterfield (Deputy Assistant to President Richard Nixon). We subpoenaed the tapes. We subpoenaed nine carefully selected tapes, because we wanted to be sure that we could prove
to the court that it was to prove a crime. And as you heard in the first panel, that is what got us the tapes. Congress did not receive a response to their subpoena because theirs was not for the purpose of convicting of a crime.

So we got the tapes. We had the March 21st tape in which John Dean lays out the entire conspiracy not realizing that the President knew about it as of the day after the burglary. Then we got what was known as the ‘smoking gun’, the June 23rd tape which has the President saying “Oh, well, we better use the CIA to stop the FBI.” It is very clear that he was involved from the very beginning and all of the criminal acts of his colleagues and his subordinates.

But we didn't get those tapes without a fight. We had a ‘Saturday Night Massacre’ in October of 1973 when he (Nixon) fired Archibald Cox (the first Watergate Special Prosecutor) but that required that he fire the US Attorney General Elliot Richardson and the Deputy US Attorney General (William Ruckelshaus) because they refused to carry out his direct order to fire Cox because there was no cause. The US Department of Justice then fell into the hands of US Solicitor General Robert Bork and he carried out the firings.

So we had very breathtaking evidence. There was no question that at that time we knew that the Committee to Re-Elect the President and the White House were directly involved in the cover-up.

Just as an aside, because we are in President Ford's Museum, during the period prior to this, shortly after he (Gerald R. Ford) became Vice President, my trial colleague Richard Ben-Veniste and I were at a black tie gala and the new Vice President was there. Richard and I discussed should we tell him some of the evidence we have because he was vigorously defending the President. And then we decided, no, because of Grand Jury secrecy it would be illegal for us and also very inappropriate to share the information. But we did talk to him, and I actually got to dance with the Vice President.

Gormley: Did your team plan to indict Richard Nixon while he was till President or were you waiting for him to be removed from office?

Wine-Banks: Well I would say planning is maybe too strong of a word. But we were considering indicting the President. First, while he was still President, we had a discussion about it. And in March of 1974 we returned indictments naming him an unindicted co-conspirator not as a defendant. We needed him to be an unindicted co-conspirator
so we could introduce all of his conversations as evidence against the other defendants.

The young lawyers on the team, which all of us were at the time, were very much in favor of indicting. We felt that was the appropriate thing, that his guilt was as clear as the guilt of his colleagues who were being indicted. And after this huge reversal when Nixon was refusing to give us the tapes and then fired Cox, public outpouring...we received more mail and telegrams and phone calls than we could possible handle saying “this is an outrage.” President Nixon knew he had to give us the tapes. That was a very key episode.

But Leon Jaworski, who had become the Watergate Special Prosecutor after Cox was fired, was very opposed to indicting the President. We argued with him that equal justice under law, which is the role of a prosecutor, required that we go ahead indicting him. And no man is above the law and therefore he should have been indicted we argued. Plus we were afraid that the jury in trying the other defendants might acquit them because it was unfair to convict the people who worked for him (Nixon) and carried out his orders without indicting him.

But we didn't get to do that so we did the unindicted co-conspirator which is, actually I think, a very good result. But we did a second step which made it even better and in retrospect was probably the right way as a mature person that I was then I think that Leon was right...impeachment was the right process, not indictment.

So we used a little known tool called presentment and got the court's permission for us to reveal secret grand jury testimony to Congress. We created in effect a roadmap to impeachment, giving them the key bits of evidence and the storyline that they could follow for impeachment. And I do think that that was the right thing to do.

We had a second discussion about indicting the day he resigned, which by the way we had no advance knowledge of, although clearly Leon Jaworski did. We did not. And when we heard about the pardon we were in the office preparing for trial, which was to start that same month just a few weeks later, and Maureen Dean, John Dean's wife, called because John Dean was working with us and said “Are you included in this, are you included in this?” which he wasn't. Which was also viewed as another reason why it was unfair to proceed against all of these defendants when Richard Nixon had been pardoned.
But we discussed then indicting him now that he was a private citizen, and didn't have the protection of the Presidency. We had heard the rumors that there might be a pardon and knew that we would have to act fast. But while we were discussing whether we could and should, Leon said that we could not do it until we sequestered our Jury, because the indictment would possibly bias the jury. And if we waited until the publicity died down, it would take too long to try the case. Although, we all volunteered to come back from whatever life we were in, to try it if we had to wait a year or two, he refused and said “We have to wait until after the trial starts and the jury is sequestered.” And of course, very quickly after that, he (Nixon) was pardoned which took away the ability to indict him.

We did investigate whether we could undo the pardon or challenge the pardon and concluded that the President's power to pardon is absolute and that there was no way that we could challenge it. And so the trial went ahead for the others.

Gormley: At this point, inside the Watergate special prosecution force, after Ford takes office, is there a suspicion that he may grant a pardon - we haven't gotten to the pardon yet - were you preparing for that possibility?

Wine-Banks: As I said earlier, there were rumors rampant not only that the President was considering pardoning his predecessor but that Leon Jaworski was working with him and consulting with him. And that created great suspicion and mistrust within the office.

But it did seem that Leon was honestly considering our arguments in favor of the indictment. As I said, we had to act quickly or it wouldn't happen, so we really didn't have any advance knowledge, just like everyone else in then country, heard the rumors that it might happen and learned of it when it was too late to do anything about it.

Gormley: After news broke that President Ford had pardoned Nixon, what was the reaction of the Watergate Special Prosecution Force to the Pardon?

Wine-Banks: Well, I think as I said, we were preparing for trial and were working with John Dean and learned about the pardon when Maureen (Dean) called to tell him that the President had been pardoned, President Nixon had been pardoned, and to ask whether he was getting a pardon, too. We were of course, very upset about
it because we were still hoping that we could, through the system of justice, bring out all of the facts and try the President so that there would be no doubt about the evidence. And that ability was taken away. As I said, we had done a lot of research, and just as John concluded, we concluded that the power was absolute, and that there was no way to challenge it. President (Ford) could do what he did.

If you want me to go on to talk about our reaction to it, first I want to say, that at the time we learned about it, whatever feelings I had were solely as a prosecutor, where our role is to do justice, equal justice under law. Since forty years have passed and I met Benton Becker about a month ago, in Pittsburgh and have had several discussions with Ken, my opinion has been modified greatly. I thank Benton and Ken for that and for the perspective that they bring to this issue, having been there (well, Benton) with the President.

But if I look back to how I've felt then as a prosecutor trying to do justice, I could see President Ford's thinking. I truly believe, as has been made clear, throughout history, no one ever questioned his integrity. That he clearly believed that the factors he needed to consider, were very different than the factors we needed to consider; that he had to keep in mind the best interests of the nation; and the political interest of the Presidency and of his ability to accomplish any agenda that he might have to implement while he was President. If there was an indictment and trial, it would hamper the Presidency. So, those are very appropriate for the President to consider.

I'm sure that he believed that (as Steve said) that healing the nation was a very important outcome and that the only way that it could be healed was for him to pardon Nixon. But as a prosecutor, I had a different opinion, because I believe that the healing is that truth heals. Having the evidence in a court, you have rebuttal and cross-examination, everybody presents their viewpoint, that through that dialogue, truth is known. And that going ahead with a trial, would have been a better option.

President Ford could have pardoned him after the trial when all of the facts were known. Although, there was this implied admission of guilt, through the Burdick case, that's not the same as his having really admitted guilt. He did not. He said “mistakes were made.” He didn't admit his role. Although, it is laid out in the indictment, it's still not the same as either a plea of nolo contendere, or a plea of guilty, or a trial in which he's found guilty.
So, while I understand and admire President Ford for what he did, I think that a trial would have been justice healing and that we could have gone ahead with that. Because it leaves the law not being implemented in an even-handed way to pardon one of many defendants who are guilty of the same offenses, the same actions. But I thank Benton Becker for putting it all in context and for making me believe that President Ford acted to restore the integrity, which he did, to the Presidency which was desperately in need of that at the time.

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