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NOTES OF JOHN DANIEL
CONSISTING OF A-P PARTS

- A. Chronology entitled "Events Leading to Levitas Agreement" (11 pages)
- B. Chronology entitled "Events After Levitas Agreement" (6 pages)
- C. Undated notes beginning "go back to my chronology" (1 page)
- D. Notes of 12/21/82 conversation with the Administrator (1 page)
- E. Notes of 12/27/82 telephone conversation with Gerry Yamada (2 pages)
- F. Memorandum entitled "Meeting Regarding February 1 hearing on Contempt Citation" (2 pages)
- G. Notes of 1/4/83 conversation with Roger Allen Moore of Ropes and Gray law firm (1 page)
- H. Notes of 2/18/83 call between the Administrator and James Baker (2 pages)
- I. Notes of 2/23/83 talk with Roger Moore (1 page)
- J. Notes of conference call between Administrator, Craig Fuller and John Daniel (7 pages)
- K. Notes of 2/28/83 telephone conversation between Administrator, Richard Hauser and John Daniel (2 pages)
- L. Notes of 3/1/83, at 11:15 a.m., telephone conversation with Craig Fuller (1 page)
- M. Notes of 3/2/83, at 12:15 p.m., telephone conversation with Craig Fuller (2 pages)
- N. Notes of 3/2/83, at 1:35 p.m., telephone conversation with Craig Fuller (2 pages)
- O. Notes of 3/1/83, at 4:10 p.m., telephone conversation with Craig Fuller (2 pages)
- P. Notes of 3/3/83 meeting between Administrator, Assistant Attorney General Schmults and others (7 pages)

EVENTS LEADING TO LEVITAS AGREEMENT

Tuesday - Feb 1 - Judge Lewis holds hearing on U.S. v. House lawsuit.
DoJ does not argue points raised by Administrator such as deficiency of subpoena or Administrator's lack of authority by reason of withdrawal of CERCLA delegation resulting from President's Order.

Wed - Feb 2 - Anne visits Ed Meese to discuss Lovelle situation.
~~Feldman~~^{Feldman} joins discussion. AMG states non-concurrence in DoJ oral arguments of preceding day; she notes that DoJ more interested in arguing the Constitutional issues than winning the case.

Thurs - Feb 3 - Judge Lewis dismisses the lawsuit.

McGrath and Dickinson call Perry - DoJ not going to take immediate appeal; DoJ going to try new, creative approaches to compromising; AG told them to negotiate; if it doesn't get settled, then DoJ to appeal.

Perry told them they should not negotiate on the documents without first settling what House will do to remove contempt citation and resolution.

Fri - Feb 4 - (Lila Howelle asked to resign).

Sat - Feb 5 -

Sun - Feb 6 -

Mon - Feb 7 - (President removes Howelle).

Tues - Feb 8 - Deibinis called Perry and asked that Yamada come to DOJ to an "options" discussion. Perry asked to be a party to negotiating team. Deibinis advises that it will be handled by Schmeltz and Fielding because "this is the President's case".

Yamada went to DOJ to meet with Mary Walker, Ann Salis and others to discuss "options" that DOJ had developed. Walker there only 10 minutes, Salis conducts meeting.

Five options presented: ① turn over everything (which DAS would not accept); ② provide summaries of the documents; ③ provide documents under Committee Executive Session rules with confidentiality agreements; ④ return to court and ask for its supervision of review; ⑤ redacting or editing the documents before showing to Congress.

Yamada told them he didn't think much of the options, for Levitas would laugh at the one DAS was willing to offer. Salis was to brief Dickinson and Dickinson to brief AG. Yamada pushed to have the U.S. Attorney to decide whether to prosecute AMG, arguing that the decision should be easy, basing the conclusion upon the defects in subpoena. This would have effect of declaring issue moot. Then we could await new action of 98th Congress, or ⑥ go back to Levitas and negotiate. Salis said she would present these views to Dickinson.

Wed. Feb 9 - Washington Post reported that an offer to settle was made by DAS to Levitas. Yamada called Walker to complain that we had not been informed or involved and we had not given concurrence. Yamada stressed our continuing concern that AMG and her reputation be protected.

That evening, the President held a scheduled news conference during which he was questioned about EPA. He noted that negotiations were ongoing but said in effect: If there's any suggestion of wrongdoing we will not withhold documents from Congress.

Thurs - Feb 10 - At Dirksen request, Perry ~~went~~^{got} to DOJ to see her. She went over the five options. While she let him read them, she would not provide copy. After he took notes, she asked that he destroy the notes (which he did).

Perry insisted that contempt matter be taken care of first and at a minimum Levitas should obtain a resolution of whole House saying ANIG had complied with the subpoena and asking the U.S. Atty to return the referral to the House.

Friday - Feb 11 - DOJ was to go to House to negotiate but was cancelled (per newspaper accounts) because of snow.

Saturday - Feb 12 - DOJ (Fielding, Schmultz and Dirksen) negotiated on Hill with Levitas, Brand and Holman. At no time during the day or weekend was Perry or EPA advised of what was discussed.

Sunday - Feb 13 -

Monday - Feb 14 -

Tuesday - Feb 15 - McHeath called Perry to apologize for Newsweek quotes about Anne. McHeath said he would not participate in negotiations, this would be up to Olson and Dinkins. (From our knowledge Olson never participated, rather it was left to Fielding, Schmeltz and Dinkins).

Fielding Office
Fielding McHeath

In the evening Schmeltz and Dinkins came to EPA to see AMG, John Daniel, and Perry. They described the "redaction" procedure which would permit the Committee to ^{have} redacted (edited) copies of the documents. AMG objected because no privilege was being preserved yet there would be the appearance that something was being hidden; large agency resources would be required to follow the process;

When we questioned Schmeltz if new instructions would be issued by President, he said no. When we pointed out that the proposed agreements were inconsistent with the President's instructions, he testily replied that we were only "trying to make it difficult."

Perry asked twice for copies of proposals they were exchanged but this was denied. Schmeltz mistakenly left copies of DOJ and House proposals which we review. They

Wed - Feb 16 -

Thursday - Feb 17 - AMG and JED met with Meese and Fielding and Deaver to discuss the negotiations. AMG stated her objections to the direction negotiations were going. She stressed that we should give up all the documents now; that the political problems created by the appearance of hiding something were too great. She stated that we had seen the drafts of DOJ and House last evening and found both unacceptable. She insisted that we be able to discuss with the President. A few testy words were exchanged and Meese made clear he didn't want this argued out before the President and that Fielding as White Counsel would determine the legal issues of the privilege matter.

AMG and JED met with the President (together with Baker, Meese, (Deaver for part), Fielding, and Fuller. AMG made pitch to President that this is no longer a legal or Constitutional issue, but a political one and that his interests were not well served by the appearance that we had something to hide. She agreed with his press conference statements on the 8th that when there are allegations of appearances of

wrongdoing, then no document should be withheld. He appeared to agree with AMG, but then Fielding stated that an agreement was going to be reached today and that we should await that to see if the documents should be released. The President decided that we should wait to see what agreement was reached today before doing something else.

(No agreement was reached on Thursday).

Friday - Feb 18 - In late afternoon, Steve Reifer (off of general counsel) received call from Ann Baker saying that an agreement was reached and was to be signed. No details were given.

AMG received call from Baker. She tells Baker that President "not getting the full picture"; "he's being poorly served"; "My judgment is that these bad stories will continue for a year. The only way to stop them is to turn the documents over"; "I've got to live with the results," but "I can't live with either of the agreements they've got"; "He wants me to do a job. Under either agreement that job won't be done well. The stories will continue"; "Will you

9/

promise me that the President will be told that it will go on and on?"; "I'll do what you ask me to".

→ See insert "A"

Late Friday evening while preparing to go to the CPAC dinner, Dick Dorman called AMG to advise that an agreement had been signed and was being announced by Schmults and Levitas. A copy of the agreement was delivered to AMG at the CPAC dinner.

Sat - Feb 19 - Perry learns of the agreement through newspaper. Later in day Dinkins called to advise of signing and went over points of agreement.

JED got copy of agreement from AMG.

Sunday - Feb 20 - Wedding day.

JED gave copy of agreement to Roger Allen Moore at reception.

A-9

Insert "A"

During afternoon, Dirkeni (white at Justice Building)
talked to Perry to say she was leaving the
negotiations to go to Texas, but she would not
tell Perry what was happening.

11/
On March 5, 1983, I questioned Perry about information he had received from Dinkins during the negotiations. He stated that on several occasions Dinkins discussed the five options, but she (~~was~~ anyone else at DoJ) "never called to say what they were negotiating, what stage it was in, or to ask whether we agreed to anything." Eventually he would inquire about the details, he was told that it was "being handled by the White House - this is the President's case".

EVENTS AFTER LEVITAS AGREEMENT

Mon - Feb 21 - AMG to Times Beach, Missouri

Tues - Feb 22 - AMG to Arizona

Wed - Feb 23 - AMG in California

Thurs - Feb 24 - AMG in California

AMG and JED speak to Fuller. AMG says she wants to meet with the President. Among other things AMG tells Fuller "This whole scandal will continue until documents turned over and I don't think the President is well served." "I didn't think things would improve with the Levitas agreement". "I think we ought to turn these God Damned documents over or we're going to bring this President to his knees."

Craig responded: "Personally, my heart goes out to you. And I don't like asking you to lie. I'll join with you on the documents question."

Later that evening AMG returned to Washington.

Friday - Feb 25 - AMG and JED met with the President (and Vice President Bush, Sen. Paul Laxalt, and Fuller.

AMG again stressed that stories won't go away until we turn over the documents. Nothing is left ~~in~~ the of executive privilege in the Lorton Agreement. The President is not being well served by continuing to withhold the documents.

The President inquired as to what Bill (Smith) said about this. AMG responded that she had never had a chance to speak to him. The President then instructed Fuller to get Anne a meeting with the AG. Laxalt separately told the President that Anne was right.

Later that afternoon, Fuller called to say a meeting with Smith was scheduled for that evening.

AMG and JED went to AG's office where he was joined by Schmultz, Dinkins, Houser, Fuller and another attorney. AG was unsympathetic to AMG's position and said that asserting executive privilege had nothing to do with her problems.

Later that night AMG went to Colorado.

Sat - Feb 26

Sun - Feb 27

Monday - Feb 28 - AMG and JED talked to Dick Hauer regarding instructions to be give employees subpoenaed to appear before Dingell. Hauer stated that pursuant to instructions from himself, Schmulla and Deikins none of the redacted documents given to Levitas should be given to Dingell: "let him get them from Levitas". Hauer didn't want to start a "new" procedure with Dingell. AMG said she was going to tell her people that any document given to Levitas should be given to Dingell unless instructed otherwise. Dick said he ~~felt~~ "feels uncomfortable".

Later Hauer called back to say he'd talk to Fielding and any document given to Levitas in redacted form could be given to Dingell. He also said: "We don't want anything going to Dingell that hasn't gone through the 'process'."

Tues - March 1 - Fuller called JED re quote in Washington Post.

Late that night it's reported that Chairman Rodino instructed his staff to begin impeachment proceedings against the AG for "obstructing a lawful Congressional investigation".

During day Dingell wrote to the President saying Lavelle perjured himself and that President should release documents.

~~Wed - March 2~~ - at House Appropriations Hearings AMG says mission surrounding EPA will not change unless all documents are produced for Congress.

~~Wed - March 2~~ - Fuller called JED to discuss White House response to Dingell letter. Fuller to meet with Fielding to discuss the letter.

Wed. March 2 - Fuller called JED to say WH would respond to Dingell letter along lines of providing ~~info~~ access. He thought we would be able to support it. He said they see a distinction between complete access and some process.

Charg Fuller called again to say that Speaker in his press briefing that day was going to say: Congress can have complete access to documents in conjunction with oversight of EPA. Congress is not to be denied access to any document. This, of course, extends the Herter agreement to all committees of Congress.

Fuller noted that Speaker would down play the "process".

For AMG, I stated our non-concurrence. I said that we should regard that all documents would be turned over to Congress.

Fuller said White House position is that they'll get the documents, have possession of redacted documents and can see them all. He said he couldn't see how Dingell could object.

I ED reported by asking why Dingell hadn't already accepted earlier offer? Fuller wanted Anne to "stick with this" through today; they can't go any further for now.

Thurs - March 3 - AMG, JED, Perry, Yamada and Macbittie were visited by Schmeltz and Dinkins.

Schmeltz advised AMG that the Department of Justice was withdrawing from the Executive Privilege matter and would not be providing counsel to her or the President on privilege. Therefore, DOJ would not represent AMG in her appearance on Hill to answer subpoenas.

Schmeltz said that to his knowledge AMG was not under investigation.

Schmeltz said that DOJ's role had changed from representing the agency to now investigating it and that it would have to wall itself off from EPA.

AMG reminded them that they had earlier told her they could represent her even while she was under criminal contempt and now they say they can't.

~~Let~~

Go back to my Chronology -

Mae + Friedberg agreed Anne could announce any agreement.

When Schultz + Dinkens came over Anne told them she was to be allowed to announce.

When Dorman called on Friday, Anne asked him if he realized she was to announce. - he said no.

AMC to Baber (in his office)

I know you'll just think I'm a bitchy female
but I think we've got to turn over these documents.

Tuesday
12/21/82
AM

Anne - UNEP job - find nominee -
Milbauer -
Cahill -
Coleman Nee -
Jean Benish -

My job - give her further nominee
- advise the 2 Pauls, but they don't
have to interview out of loyalty

she talked to

- Rex Lee - Jim Watt had called him -
they are special friends.
she -

1 - Supranational effective

2 - substantial compliance

A) ① actual stuff - 6 days to respond; 787,000 documents available;
② ③ declining refusal.

B) ④ Congress legitimate oversight legislation + this didn't inquire until 1985,
meanwhile everything has expired. ∴ simply a fishing expedition

⑤ 787,000 documents conclusively available sufficient for Congress to review
for now.

⑥ No. of oversight hearings, spurious assertion of jurisdiction of Comm.

3 - what was acted on by Subcommittee, not acted on by Comm, was not
acted on by the House. (I'm the significant member of this argumentation).

4 - Danaher argumentation since resolution didn't cite a "willful" failure, it
was meant.

Advise them had better assert ^{credible} every defense available, if they don't
Anne will bring an ethics action against the lot of them.

Geny Yamada - 382-4140

12/27/82

11-3²⁰ spent w/DOJ

Marshall, Tom Sussman,

Loe Wise - Staff atty to Paul -
(didn't meet w/ Paul).

Went thru changes

some agreed to

others they'll look into + report back

big issue - Anne's P status

need Anne to show injury -

plus there are 4's only she can raise.

this assumes captain USA doesn't include ANIC or Adm.

EPA position - everything she's done is in her official

capacity, nothing she's done is in her private

capacity - EPA wasn't persuasive - DOJ adamant

Wise modeled then a revised 2nd draft, 3rd draft

to be given to them Tues.

DOJ went to file Wed - w/ Anne^{aparty}, but only with her
concurrence.

They see no liability on her part since they want
prosecute her.

We've tried to get them to raise issue of constitutionality
of § 194i, arguing that since she's acting under
direction of Pres, House can't ~~prosecute~~ direct US atty
to prosecute.

McBrath wanted use to send out revised 2nd draft to Anne,
(Henry reads this as indicative of their position to
change little in 2nd draft).

DOJ assumes they
are not representing
in now.

Geny brought up
needs to state
Anne's personal
status vs Congress.
said that wouldn't
do it for Geny.
Wise this is best
to place the
issue & debate
well.

Henry feels they would slip by one day the filing of complaint.

Henry wants to send a pro + con analysis of their litigation up to now DOS hasn't been willing to do this.

They haven't told us where they are headed.

They also haven't shared w/us any of their research.

Henry thinks they view our requests as annoyances.

Henry will ask again for a copy of Sam's old Motion + Brief, again today they didn't give it to us.

Marshall, Tom + Henry agreed there's no more to do now until we get the next draft of the complaint.

January 31, 1983

CONFIDENTIAL - SUBJECT TO PRIVELEGE-ATTORNEY-CLIENT CONVERSATION
OFFICE OF
THE ADMINISTRATOR

MEMORANDUM TO THE FILES

SUBJECT: Meeting regarding February 1 Hearing on Contempt
Citation

In attendance at today's meeting were Anne Gorsuch, Robert Perry, Michael Brown, John Daniel, Paul McGrath, and Carol Dinkins.

Mr. McGrath summarized the arguments he planned to make on February 1 to the Court in response to the House of Representatives motion to dismiss the Government's complaint. Mrs. Gorsuch stated her disagreement with the Department of Justice's refusal to argue in its pleadings and oral argument the matter of: (1) the deficiency of the Committee's subpoena and the Administrator's substantial compliance with the subpoena; and (2) the President's instructions to the Administrator having the effect of withdrawing the delegation of authority to her under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund).

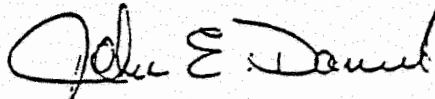
Mr. McGrath stated that with regard to the first matter he (in consultation with White House Counsel and Justice Department attorneys) made the decision not to pursue that line of argument because he felt that it was not a strong argument and that it would detract from other points being argued by the Department. As to the second matter, he stated that an institutional policy decision was made by White House Counsel, the Attorney General, the Deputy Attorney General, and himself (in consultation with Solicitor General Rex Lee) not to argue the delegation question because it would mean that if the government won then all subpoena in the future would be served on the President rather than on the President's appointees.

The Administrator made clear that she disagreed with each of these decisions and that she thought that the attorneys representing her in this matter should have asserted every possible defense to the House of Representative's action and that the failure to do so constitutes an ethical violation of the Department responsibility to properly and completely represent the plaintiff's interests. Mr. McGrath demurred but without further explanation.

* * * * *

In another matter discussed at the meeting, Mr. McGrath and Miss Dinkins agreed with Mr. Perry that in the matter of the most recent Dingell investigation involving allegations of ethical misconduct by an unnamed EPA official, that Robert M. Perry as the Agency's ethics officer will investigate the matter completely and thereafter report to the Administrator on the findings. They agreed that no referral to the Justice Department need to be made at this time.

The Administrator instructed Mr. Perry to communicate with both Chairman Dingell and Chairman Scheuer that we have no evidence of any wrongdoing by any Agency official in either of the matters alleged by them and that if either of them have any evidence of wrongdoing than they have a responsibility as officers of the court to refer their information to proper officials who can pursue the matter through investigation or otherwise.


John E. Daniel
Chief of Staff

Logan Allen Moore 5 PM 1/7/83

Talked to Fred Fielders

his concern in the event that
Anne's position was a ~~fun~~ DOS
it could be a personal defense
and one could complain that
env. prot. funds are being used
for personal defense.

Fred said he's personally &
completely satisfied w/ statement
that Bob said "they've
completed the chore we asked them to do,"
which the Pres. can say as well.
Fred understands the response would
leave the door open to re-
engage counsel.
Situation "under control?"

617-4329
227-4329
(Home)



The Administrator
Washington, D.C. 20460

Jim Balser - 2/18/83 11⁰⁰ AM.

Anne - "If he calls me I won't do it."

- "My understanding of what happened yesterday."

- "I'm not laying down an ultimatum."

- "He's not getting the full picture."

- "I'll do whatever you tell me to do."

- "He's being poorly served."

- "I would like to speak to him."

- "You're telling me the President says no?"

- "No, no, I'll take your word."

- "He hired me to do a job and I can't do that job."

- "My judgment that these bad stories will continue for a year. The only way to stop them is to turn them (documents) over."

- "I'm not demanding anything; I'd just like to talk to him."

2/

- "I've got to live w/ the results!"

- "I can't live w/ either of the agreements they've got."

- "He wants me to do a job. Under either agreement that job won't be done well. The atoms will continue."

- "My judgment is not impaired. I'll do what you ask me to."

- "Will you promise me that the Pres will be told it will go on and on?"

11:10 AM

Logan Moore - 617/423-6100 2/23/83

1) ~~Logan~~ Marshall Moriarty + Perry discussed:

① think as a formal matter, L & G should end relationship
as of Jan 10, date of Judge's opinion

② \$18,000 - order of magnitude or more less than actual

③

2) won't terminate Logan's efforts in Anne's behalf.
will do on friends + volunteers

3) He'll be available to attend w/ Anne a meeting w/ Paul Hozalt.

4) He offered to approach Ed Schmutz to convince them to let
EPA turn over all the documents.
He will put in call tomorrow morning..

Discussion w/ Craig + Anne 2/24/83 \approx 10:30

A - Meet w/ President?

A - want precise time

A - don't guess, tell me.

C - between 2 + 3

C - its 2, for 30 minutes

C - Commission idea is on hold
not commenting otherwise.

C - SW area - Lee Thorne is set - want to give him time + see reaction
Legislative - Lee Venterling is set to come over to assist - time commitment is open.
Admin - Al Zuck is acting - wants to retire in Summer.
IG - Charles Dempsey is acting - will get things started but ^{return} HOD
ORD - Riordan

C - didn't ^{individual} being designated as "acting", will send nomination forward in few weeks, these people will be candidates for the permanent positions.
prepared to go with this at noon.

C - are we in agreement

A - Object to anyone in "acting" position
can't review the bidding

A - What about Lee Thorne?

C - We're open on him. Don't know how Congress will react to him.

A - What about Verstanley?

C - He's leaving DOT. - Asked to commit to 60 days.

A - I've objected to that + continue.

A - Al Zuck - first heard his name this morning.
If he's retiring, can't see what good he could do.
Told you that Brabant is willing to come over permanently.

A - Re Charles Dempsey, heard his name for first time this morning. Always said I'd work w/whomever WH asked me to. But don't know him. Also, would be here only temporarily.

A - I love you dearly. But he can't do F&A or
Does any good - i.e. temporary
Looks like strike free, odds to miss was
that something wrong.

C - WH saying every which way, WH helping
to strengthen agency
Can't let another day go by w/o appointing strong
managers over there.
We're up against the wall in needing to make
this announcement today.

C - Some advantage to having flexibility to making other choices over next 60 days.

C - went over this w/Pres last night & again this morning.

A - At fr Admin - I have commitment for Broadbent.

C - View of some that he's not strong enough.
Want give sense that he's capable.
After Zuck there, maybe we can consider Broadbent.

Zuck has good credentials.

we'll sit down w/Broadbent.

we can't go to Pres right now and ask him to apppt Broadbent.

A - Does Pres say this is all wonderful?

C - yes.

We're holding off people who're saying more ought to be done. Some wanted to call it a "mgt strike force"

They know, they'll report to Anne, the Admin.

A - I don't question you, but still think this is a mistake.

I'm having a real problem with this
These are people I've never met.

a - This wait go away until we

c - you've got a group here agreeing we've got to be forthcoming w/ documents. Doesn't mean attys will step out of way each time. But will keep w/in reasonable bounds.

a - reasonable bounds of "exec privilege" have been exceeded.

a - make whatever announcements you want to make.

c - w/ support for our Order 2.

a - How can I? How is good conscience can I?
advised against sending anyone on temporary basis.

c - Best thing for you + her is to say this is to support your next group over there.
Otherwise will appear "shaky".

a - I've tried to put a good face on this whole mess against my better judgment.
May be better to cancel my appearances + let you make your announcements.

c - Will help in getting story out.
Anything you want us to say or do.

a - Yes. It sounds right. 1. 1. 1.

A - what is party line, what are you going to say.

C - we've been working w/ EPA Adm.
whole tone of this is that this is a Pres. Announcement.

actions being taken to assist Adm + EPA in the
mgt of agency.

These people are going over there to report to Anne.

A - This whole scandal will continue [until documents turned
over] and I don't think Pres well served.

C - we'll have reading later today

A - Didn't we think that things would improve w/ the Revitor
agreement.

C - yes, for a time.

Standing in place is taking ^{it} is not the thing to do.

A - That's what I've been doing w/ respect to the documents.

Horton, Novich came from you all

C - On document question, you've got allies here and
we continue going after

a - I've never lied and I don't like it.

I think we ought to turn these G.D. documents over or we're going to bring this Pres to his knees.

c - Personally, my heart goes out to you. And I don't like asking you to [lie].

a - I don't like to lie and

I love this Pres + he's being misadvised, it's not going to go away. Eroding confidence. He's being poorly served. Given the Dems an issue they'll ride forever.

c - I'll join w/you on the documents question.

a - we've done a good job w/o much help.
E.g. repeal SDWA. Thanks OMB.

Politically this is disastrous

I'll go do everything I'm supposed to do today.
will take no-eye balls.
I'll see the Pres. tomorrow.

c - Change meet w/Pres to 3³⁰ or 3⁴⁵

Anne only - later:

Working w/Pres to strengthen mgmt at EPA.

Resignat accepted from very loyal people
He stepped aside because allegation made against him didn't want public disclosure page
Pres + Anne anxious to reinvent public trust in
a program critical to Am people.

Dick Hansen - 12:40 pm - Monday 2/28/83.

A = Anne ; D = Dick ;

A - Employees supervised to Dingell, told to produce notes.
There were released in ~~that~~ redacted form to Levita.
Per instructions by Dick, Schmultz, Carol, etc
But ^{these} documents (redacted) shouldn't be given to Dingell.

D - that's correct

A - I'm not going to instruct employees, unless you so
instruct me.

D - We can't give them to Dingell unless we work out
an agreement

A - Are you so instructing me?

A - I feel strongly that whatever we give to our Congressmen
we must give to another

D - We wouldn't mind if Levita gives them to Dingell.

A - We're talking about my employees

D - What if Dingell wants unredacted form.

A - We'd tell him to agree to the Levita form.

D - I don't want to start a new procedure with Dingell.

- - -

A - I'm going to tell my people that any document given to Levitas should be given to Dingell, unless I'm instructed otherwise.

D - I feel uncomfortable

A - Well, give me some direction.

D - I needed Fred; if this document was given to Levitas, we can give the same redacted document to Dingell.

We don't want anything going to Dingell that hasn't gone thru the process.

4/

Craig Fuller - 11/15 + 3/1/83

When asked re David Heinow - to do total regt at EPA 2.,
he said ~~not~~ no!

Would you rule out ^{rule 4} Heinow at EPA-2?

he said nothing ruled out -

they took that and added to others' comments.

2 pts - ① not part of effort to search for new Adm. (+ know? no).
② other speculation is very unfortunate

— Craig Fuller —

3/2/83

1/
~ 12:15 PM

Review bidder's:

Baker, Fielding, Speaker, Craig
conferred on EPA

1) Haven't seen "hit list" -

they haven't reviewed transition
material.

Pres: "People in scientific should include
a broad range of views."

They did locate Chamber of Commerce
list - sent from Pen Game
to Anne in 1981. -
~~and~~ (Not acknowledging this).

2) Response to Dingell letter -
along lines of providing
access -

Craig thinks we'll be able
to support. - but says
there's distinction between
complete access +
some process

3) Re Commission - not
at this time - DOJ
investigating matter - Council
working at EPA.

Craig Fuller: ~1:35 PM 3/2/83

Speaks to say at Press Conf. shortly

Pres was briefed by Balcerre re EPA

Pres directed

1) Cong have complete access ^{to do}, in context w/ access
EPA, Cong not to be denied access to any
document. This, of course, extended earlier
agreement to all Committees of Congress

2) ^{add to} Dir. meet w/ Ditzell to seek any & all info re
allegation of misconduct
Reaffirm direction to move forward investigating
allegation at EPA.

note: downplaying process

He suggested our lawyers get together

I stated non-concurrence.

Craig - our position is they'll get the documents -
have possession of redacted documents & can
see all others.

QED - pointed out problems & perceptions.

Craig - can't see how Ditzell can object.

QED - why didn't he accept earlier offer?

Craig - wants Anne to stick w/ him thru today.
they can't go any further for now.

Deberstein is backgrounding the Hill -

1/
Santa Barber, Co.

355-
2006

Cary Fuller

3/1/83 4¹⁰ P.M.

Discussed Deigell letter -

WH Counsel reviewing

WH not responding until
reviewed.

Deigell's letter called
for release of all documents

asked if Anne referenced
the Blue Ribbon Commission -

A WH concern - a commission +
sunshine law could create some
circus.

2/
Don't want to deviate from where
WH is now:

In response to question:

at present WH not about
to announce a Commission.

Craig + Fred together

@ Santa Barbara -

would like to talk to us

re Dargell letter.

Ed Schmultz, Carol Duthiers, Pat Perry, Henry Yamada, Lee Morkett
 AMB & JED 3/3/83 \approx 700 PM.

EJ - make some adjustments as a result of our referrals
 Feel what we, DOS, has to do is to
 Give primacy to investigative role & wall off legal & not for

aside - Fielder & talking to Levitas re the resolution.

Rest of Dept can't participate in WH counsel negotiation
 w/ Hill Comm.

Can't investigate & ask comm's for info & jostle
 w/ comm's over documents.

Carol can't be privy to meetings on the investigation.
 That may present problem of who from DAS goes up
 with Oden & Perry to hearings. - Suggested
 Tim Ryan or some other admin dept lawyer

Can't fulfill that role anymore, would muddy

A - Are you telling me I'm not entitled to DAS
 see before Hill Comm while fulfilling my role
 in answering subpoena?

Ed - yes

A - That's not what I was told when we got with
 this.

Ed - We'll have to talk to Fielding + Hansen

Ann - Am I under investigation?

Ed - No, not to my knowledge.

Ann - Then I should get representation
You can walk off another part of DoJ.

Bob - You can w/draw the Pres' order.

Ed - We can't do that.

Ann - you got me into this saying you could represent me
while under criminal contempt, now you say you can't

Ed - Our role has changed.

Ann - Put in writing, by noon tomorrow (Friday).

Ed - It's now in the hands of WH Counsel + Jim Baker
re Exec. Privilege & the Congress.

Bob - Have you discussed this w/Pres.

Ed - No

Bob - I think you have moral obligation to recommend
to Pres - to w/draw the order to Pres

Anne - This is bizarre, before you're saying that a adm official acting under order of the Pres. is not entitled to DOJ counsel.

Ed - I've told you now we're not investigating you now.
But no guarantee forever more.

Anne - Wall off more of the Dept.

Ed - you can't wall off ~~the~~ the AG or me.

Ed - The choice is someone else, but not DOJ

Perry - If there's a declination from DOJ, it will be mighty awkward to have Adm represented by private counsel.

Ed - We can't represent Agency + investigate it too.

Anne - It's going to look just terrible.

Ed - Enforcement sensitive documents will no longer be reviewed by Ted Olson.

Perry - That changes the procedure!

Ed - Reason for wall limiting to L+NR is that it represents the Agency.

Anne - There won't be anymore esp sensitive since there won't be Olson sign off.

Henry - Is existing order still valid or is another one required.

Anne - I've been told repeatedly that existing Order still applies and that DAS was going to work it out w/ ~~Fielding~~ Dargell et al.

Ed - WH is assuming all responsibility for negotiating w/ Dargell

Henry - Under present order, Pres reviewed index. Since he hasn't reviewed later documents, is his order still applicable?

Ed - Just ask WH; Baker or Fielding can ask Pres.

Bob Buford came in here.

Bob Buford - You perhaps got her into this.

{ Ed objected!

Anne - Let's close discussion. I want your direction in writing.

Ed - Our role has changed in last 10 days.
DoD is now assuming posture of an enforcement agency.

Question is whether other adms lawyers or outside counsel is to be used.

Perry - Please describe wall completely.

Anne - That means that Bob Perry and I must hire private counsel to represent us to go before Congress to assert Exec. Privilege as directed by the Pres.

Anne - It will read like Anne + Bob Perry did something bad.

Ed - Fred asked Derigell to review documents like Lenta

Anne - Derigell won't accept that

Ed - you're probably right.

Anne -

Lee - you don't understand the politics of this.

Revitas has asked Rodino to prepare impeachment of Pres + AG, but not the Adm.

There's strong political perception that DoJ are hanging Anne out to dry. Its on Hill and not partisan.

Ed - we (DOS) are no longer involved in advising (even Pres) on exec privilege and whether documents are released or not.

Perry - AG has ^{obligation} to recommend to Pres. ~~to release the info~~ that order should be lifted, DOS got us into this and now should recommend w/drawing.

Ed - I'll talk to the AG about it on Friday.

Perry - What's wrong w/ the special prosecutor.

Ed - Person. Pres. asked DOS to do it.

Issue - Person chosen to wall off the branch that was our lawyer. That's despicable (spilling?).

Ed - I ^{probably} don't recommend to ~~Pres~~ AG that the Pres. Order be w/drawn.

If Person capitulates to Cong., they'll just pick off one agency at the time. That's up to Feltman and others.

Perry - During civil litigation, when Oshin wanted changes in the complaint, DOS rejected these saying institutional reasons prevented this. What will be DOS's role in any ensuing litigation, such as more civil litigation after the Derigell subpoena/court order.

Ed - No answer. But said that DA would not prosecute
Adm. for criminal contempt for following the Pres.
instruction.

Anne - What they're trying to do - the only way I
can avoid another contempt citation is to no
longer be Adm.

Ed - That's not what ^{were} they're up to. That's not why
I'm over here.

ended \approx 8:00pm.

September 28, 1983

Attached are my notes from yesterday's hearing before Dingell's Subcommittee. I tried to catch all my typos but probably didn't, sorry!

If you have any questions, please call me at 633-1442.

Marty Kaplan

Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
September 27, 1983
Rayburn 2322

10:00am

Witnesses: John Daniel (subpoenaed), Gerald Yamada, Richard Mays, Kirk Sniff.

Dingell opening statement (attached).

Bliley opening statement: DOJ over Burford's objection recommended that Executive Privilege (Ex.Pr.) be asserted.

"Unceremoniously sawed off the limb of Ex.Pr. behind her" by not representing her.

Dingell: Considerable concerns re manner in which Admn. conducted itself.

Gore limits his questions to OMB-related matters.

Slattery: Sept. 1982, EPA receives document request. When is EPA first contact with DOJ?

Mays: 9/16. The next day.

Slattery: Who did you contact?

Mays: Mary Walker, DAAG.

Slattery: How did DOJ respond?

Mays: I called MLW and advised her that we had been requested to allow access to active Superfund files. DOJ handles our litigation and so would be interested. Asked for guidance.

Slattery: Deadline?

Mays: Subcmte staffer who contacted Regional office, set up appointment in NY for following day. Tight time constraints. This was 9/16. He'd be there 9/17. Decided to take same approach as in FOIA and make available technical data re site but not make available names of potentially responsible parties or attorney-gathered materials.

Slattery: You and Yamada attended 9/29 meeting at DOJ?

Mays: EPA - Perry, Yamada, me; DOJ - Dinkins, Ramsey, Simms, Roetenberry, Walker, several others.

Slattery: Did you write a memo to Perry and Brown on 9/24?

Mays: Yes. Summarizes contacts with DOJ and Cmtes. Pointed out that received another request from this Cmte. Both pertained to same subject matter - some of which we had previously

determined not to grant access to. We had requested DOJ guidance. But DOJ person said we probably would not get written opinion by 10/1 - this Cmte's deadline. I felt we ought to formulate our own opinion with regard to our obligation since it was our obligation.

Slattery: You and others at EPA concluded that ultimate responsibility for responding lay with EPA and not DOJ?

Mays: Yes. Request addressed to EPA. DOJ could advise us since some of their cases.

Slattery: Malson also there. What position did EPA and DOJ take on the documents?

Mays: Started meeting at 8:30. Were meeting with Congress at 10:30. Discussed §104(e)(2)(d) on furnishing records to Congress. 3 categories of documents:

1. Info submitted to or gathered by EPA as part of its info-gathering process.
2. Internally-generated documents or analysis.
3. Program office memos that did not contain enforcement strategy.

Category 2 should be withheld. Came to be known as enforcement-sensitive. Other 2 categories - our position they could be released. EPA position that DOJ taking lead on determining what our position should be. Perry did not assert strong position - deferred to DOJ.

Slattery: As of 9/29, EPA relying on DOJ. On whom at DOJ?

Mays: Everyone participated. Some discussion that if category 2 released, could be potentially harmful. Agreement. Next, were we legally entitled to withhold?

Slattery: Ex.Pr.?

Mays: Ex.Pr. not relied on at that point. Those words only said once. Simms suggested we should not mention "Ex.Pr." since only the President can assert it.

Slattery: Relying upon term "enforcement-sensitive"?

Mays: Yes. EPA would prefer not to release documents but could not withhold unless sound legal argument. Most of discussion centered on §104(e)(2)(d).

Sikorski: Late Sept., it was EPA's position to cooperate with Congress. DOJ forestalled that cooperation.

Mays: We wanted to cooperate as much as possible. On way over to meeting, reviewed 9/24 memo and opinion from our GC's office, several years old, on Ex.Pr.

Sikorski: Release to Congress not public.

Mays: Suspicion among some people that release to Congress may result in public.

Sikorski: Following the 9/1 mtg, EPA had expectation of cooperation with Congress? YES.

Sikorski: Daniel, Burford's position on making documents available to Congress?

Daniel: Should be made available to Congress. Always clear she wanted to cooperate.

Sikorski: In summary, from beginning EPA not opposed to making documents available to Congress, with appropriate safeguards, which we were willing to agree to, and would have, but for DOJ. YES.

Sikorski: Anyone disagree with summary? (SILENCE).

Sikorski: Agency consistently maintained that position in discussions with DOJ? YES.

Sikorski: Sniff, DOJ seeking to withhold documents.

Sniff: 10/6/82 mtg. Representatives of DOJ took a firm position of withholding documents in question and presented legal basis.

Sikorski: Who was there?

Sniff: DOJ - Simms, Regnery, Walker,?. EPA - Perry, Mays, me, Leifer maybe.

Sikorski: Nature of discussion and rhetoric used?

Sniff: Simms especially strong advocate of DOJ position of firm assertion of confidentiality. Three phases of discussion. 1. Simms encouraging Perry and reassuring him that confid. claim in best interest of law enf. 2. Tactical suggestions (Simms to Perry) for dealing with Congress. 3. Simms discussed legal basis.

Sikorski: Were Simms and Regnery looking for fight?

Sniff: Simms resolute. Did most of talking. Not afraid of confrontation. Not cowed by prospect.

Sikorski: Complaint of being sabotaged by Wh. House on Watt matter?

Sniff: He gave a number of tactical suggestions and would use Watt incident. Don't think he specifically mentioned Wh. House. He was disappointed by Watt matter.

Sikorski: Looking for test on Ex.Pr.?

Sniff: Simms strong and sincere advocate of position. Felt would be difficult to reach compromise. Don't recall extensive discussion of merits of documents.

Sikorski: Simms and Regnery loud in discussion, almost ranting?

Sniff: Simms very forceful, articulate in presenting position.

Sikorski: Ranting?

Sniff: Ranting may be a bit strong.

Sikorski: Did you use that term in staff interview? YES.

Sikorski: Were you inaccurate then?

Sniff: Hyperpole.

Sikorski: Did Regnery talk about grand strategies, etc.?

Sniff: Was discussion of importance of confidentiality of law enforcement files to interests of Exec. Branch.

Sikorski: Meeting designed to bring Perry onto DOJ's wagon?

Sniff: Yes. Perry not enthusiastic re confrontation.

Sikorski: Mays, it appeared that DOJ was looking for test case?

Mays: Fair statement. Whole matter developed over several months. Looking back, my opinion that Watt matter had not resolved Ex.Pr. issue to satisfaction of OLC - on lookout for another case.

Sikorski: This mtg was change from previous mtgs - movement toward confrontation and designed to bring Perry along.

Mays: Started out low-key. We were concerned re not furnishing names of potentially resp parties and atty-client. Not thinking Ex.Pr. Clear it was on minds of some DOJ.

Bliley: Yamada, series of events leading to 2/25 mtg at DOJ. Familiar with Hughes and Strickland?

Yamada: Notes on Hughes on Stringfellow were part of documents withheld from Cmte on enf-sens grounds.

Bliley: Did you review similar notes of Strickland at 2/25? YES.

Bliley: These were not withheld from Cmte as enf-sens? YES.

Bliley: Did your review Hughes notes on 2/18?

Yamada: Yes, Hughes had referred to 9/7 notes at briefing. "Election-tracking" referred to. We were unable to find that term at that time.

Bliley: Did you discuss with DOJ on 2/18 these notes and others?

Yamada: No, Perry did. I think with Dinkins - she was running to airplane. Hughes notes indicate Stringfellow cooperative agreement not signed by 9/7 and unlikely in near future. Copy provided to Fielding to see if document consistent with 3/11 and 11/30 pronouncements re allegations.

Bliley: Did Fielding have view on this matter?

Yamada: We asked and recommended all Stringfellow documents be released on 2/18. In that context and Hughes notes, we asked Fielding. Perry responded to me documents not to be released.

Bliley: Fielding's position?

Yamada: Yes, my understanding is that it was his decision, after talking to DOJ.

Bliley: Fielding had authority to make decision to retain docs? YES.

Bliley: Did you assist Burford in 2/25 referral to Schmults? YES.

Bliley: How was letter prepared and delivered to DOJ?

Yamada: Hughes notes came to our attention 2/18. Next week, Hughes on travel. Had identified sentence over weekend. Couldn't talk to her until 2/25. Mentioned Strickland at mtg. I asked Strickland for her notes and decided to refer to DOJ. Hand-carried to DOJ about 2pm to Dinkins, staff and Schmults.

Bliley: Did you discuss this with Daniel?

Yamada: Yes. Extremely brief conversation. Told John what we found and he said fine. (Daniel agrees.)

Bliley: Did you meet with reps of DOJ on 2/25, subsequent to letter of referral? YES.

Bliley: Any discussion on how referral to be handled and what attachments to Hill?

Yamada: Daniel and I had discussion on releasing it or sending copies to Hill. At DOJ - DOJ said they had not studied documents and we were requested not to transmit to Cmte.

Bliley: Who there?

Yamada: In Dinkins' office - Dinkins, Walker, Ramsey, Gailis, and later Schmults.

Bliley: Did EPA on its own have authority to release if showed evidence of wrongdoing? YES.

Bliley: Did you later meet with Burford re results of DOJ mtg? YES.

Bliley: Did she direct you to do anything?

Yamada: She directed Perry to make copies of document with attachments and have them hand-delivered to Hill by close of business that day. Perry, because of discussion at DOJ recommended delay. I believe Perry asked to call DOJ, called Dinkins and reaffirmed that he should not transmit.

Bliley: Was Schmults given letter?

Yamada: Yes, Perry gave it to him.

Bliley: Hughes testified 2/28 in Exec. Session. Any discussion of release of 9/7 notes as responsive to Subcmte's subpoena?

Yamada: Don't recall any as it relates to subpoena. But after discussion with Hughes, we felt it would be consistent with Att Gen's 11/30 letter to release Hughes notes and all Stringfellow documents.

Broyhill: Daniel, are your notes a reconstruction?

Daniel: Yes, I reconstructed from notes I kept although some from conversations with Perry and Yamada while I was reconstructing.

Broyhill: After House had adopted contempt resolution, DOJ filed suit. Then there were discussions with EPA re amending complaint to make Burford personally liable?

Daniel: Original complaint filed on day of contempt.

Broyhill: In her official capacity?

Daniel: After original complaint was filed, DOJ requested that caption be changed so Administrator party in her personal capacity to "personalize lawsuit."

Broyhill: Why?

Daniel: U.S. couldn't show injury to give rise to injunctive relief in prayer. We saw first draft of complaint 12/16 - the day before it was filed. When first put together, opening identifies Administrator in her official capacity. After filed, DOJ started preparing amended complaint. Lot of discussion with EPA over what is to go in complaint. That's when this came out.

Broyhill: EPA resisted it?

Daniel: Yes. Most did. Burford absolutely resisted, as did Yamada.

Broyhill: In your notes - "no liability on her part because won't prosecute."

Daniel: Stated in conversation Yamada had with DOJ while discussing amendments. Notes from telephone conversation I had with Yamada after he talked to Wise and others. We feared she may be waiving certain defenses by doing this.

Broyhill: Who is Wise?

Yamada: Attorney with Civil Division at DOJ.

Broyhill: What is his involvement?

Yamada: One of the principal attorneys working on civil case.

Broyhill: How would he know they wouldn't prosecute?

Yamada: I don't know.

Broyhill: Daniel, Burford advising White House tht she felt the President was not being fully served; she was not able to do her job. Urging all documents be turned over to Congress. She was aware of Agreement with Levitas; also questioning if that would satisfy Dingell Subcmte request. What were her feelings?

Daniel: We objected to Agreement between White House and Levitas. Not a party to negotiations and learned of them by some mistakes on their part. We were opposed to Agreement. We understood DOJ would pursue through lawsuit. Burford felt you either field the case or turn over the documents. Her view was that the documents should be turned over. We went to White House 2/17 to try to convince President that his instructions should be removed so documents could be released. Burford made strong plea that President not being well-served. That at any hint of wrongdoing, documents should be released as President said in his press conference. We felt her plea was being heard. Fielding intervened to say assertion of Ex.Pr. being done for the President's predecessors and future ones and we should wait and that we were real close to an Agreement with Levitas. President said if so close to Agreement, let's go with that. Agreement reached 2/18.

Broyhill: No agreement with this Cmte?

Daniel: No, there was not.

Broyhill: That Agreement did not reach concerns of this Cmte.

Daniel: She pointed that out.

Broyhill: Purpose of Burford's trip to California in late July. Allegations . . . [Ran out of time.]

Dingell: Did DOJ ever direct all requested documents to be physically transferred to DOJ?

Mays: About Oct. 6 or 8, discussion between Perry and DOJ - either Walker, Simms, or Olson but probably one of the latter two. I came into office as he hung up the phone. He was somewhat incredulous - DOJ suggested we take all requested documents and send them over to DOJ. My impression was that it was Simms' suggestion. If we got documents out of EPA and over to DOJ, they'd be somehow safe from subpoena. We rapidly dismissed suggestion. No further discussion. Perry talked to Barrett later. Great deal of furor. Dingell wrote us about protection of documents at Agency.

Dingell: After 10/21 subpoena served, mtg between DOJ and EPA to plan response. Who and when.

Yamada: 10/21 or 22. EPA - Mays, Brown, Yamada. DOJ - number of people, in Olson's office - Olson, Simms, Malson, Dinkins, Walker, Liotta, Mit Spears, Ramsey, Regnery, McConnell, Cooksey, Hauser (came later).

Dingell: Describe mtg where Ex.Pr. discussed - 10/21 or 22.

Mays: We had just received Dingell subpoena for three sites. Notified DOJ and mtg scheduled for 6pm. When we arrived brief review of facts, documents involved, discussion on Ex.Pr. claim for enf-sens documents. Some documents had been reviewed by Cmte staff 10/14 - documents that affect claim of Ex.Pr. Question re if anyone else outside had seen documents. I advised the group that another subcmte had been looking at some similar files in a regional office. Silence. Someone asked me to repeat it. Extremely agitated reaction from DOJ - primarily Olson. Olson explained that this had somehow messed things up. Rest of evening spent discussing that and its effect on Ex.Pr. We left with assignment to find out what documents other Subcmte had reviewed.

Dingell: Olson quite distressed?

Mays: Very distressed.

Dingell: Re delay in Burford appearance.

Mays: Discussion of getting delay. I suspect someone at DOJ suggested it. They were taking lead in discussing strategy.

Dingell: Position of Burford on turning over documents responsive to this Subcmte?

Daniel: She was still seeking ways to cooperate with Cmte.

Dingell: Had she ever changed that position? NO.

Dingell: She changed travel schedule and flew back only to find DOJ had requested change in schedule without consulting her? YES.

Gore on OMB.

Slattey: 11/28 mtg with Olson to prepare Burford for 12/3 hearing?

Daniel: Yes. Simms, Olson, Hauser, Yamada, Mays, Brown, me. Number of testy comments between Olson and Burford. Olson told her President would assert Ex.Pr. She resisted this. Olson told her no choice but to follow President's order.

Slattey: So Olson said, you are going to assert Ex.Pr. whether she wants to or not?

Daniel: Yes. (Yamada and Mays confirm.) After that, question came up re Olson's role in providing counsel. He wanted to sit by her and control what she said.

Slattey: She didn't trust Olson?

Daniel: She had reason. Always been her feeling that in the Watt matter, he had been poorly served by advice from DOJ.

Slattey: Did Burford want Att Gen to assert Ex.Pr. argument? YES.

Slattey: Nature of Olson's legal arguments.

Daniel: Burford most challenged his legal reasons. We didn't see his line of legal precedents until we saw a draft of some motion to be filed with amended complaint.

Slattey: DOJ never gave legal advice that EPA requested in this specific case?

Daniel: We asked for it in writing (on several issues). DOJ said did not want to put advice in writing. Final advice was that Ex.Pr. could be asserted - U.S. v. Mitchell cited.

Slattey: Your conclusion is that DOJ attempted to develop test case on Ex.Pr.?

Daniel: I had always personally been under that impression.

Slattey: Is it true that you, Yamada and Mays went to another mtg 12/12 with Olson and Burford in preparation for 12/14 appearance? YES. Who else?

Daniel: DOJ - Olson, Simms. EPA - Perry, Mays, Yamada, Hernandez (later), Leifer.

Slattery: On this occasion, did Burford express misgivings re assertion of claims?

Daniel: Yes. I have difficulty determining if you are talking about 12/10 or 12/12. I do recall I was at a mtg where exchange between Burford and Olson on documents. Instructions from President very general.

Yamada: Lavelle and Lucero also there.

Slattery: Did Olson give assurance to Burford re DOJ defending her on Ex.Pr.?

Yamada: Not only at 12/12 mtg but at 11/28 mtg too.

Slattery: Olson told her DOJ would back her all the way?
[ALL THREE AGREE.]

Slattery: How would you characterize representation DOJ gave Burford?

Daniel: Eventually DOJ withdrew representation. Olson remarked that they'd represent Burford to the very end and "I would resign before we withdraw." [MAYS, YAMADA AGREE.]

Slattery: Olson giving his personal assurances that DOJ would defend Burford to the end. When Burford appeared before Levitas, she was asked several questions on who handled document review. How did that affect 12/12 mtg?

Daniel: At hearing it appeared tht documents had been reviewed at staff level and not thoroughly at higher level. At 12/12 mtg, Burford adamant that she wanted high level review at EPA, DOJ and White House and insisted on certification being signed by Walker or Ramsey, Olson, Perry or Brown and Hauser or Fielding. We prepared certification to be attached to withheld documents. Purpose was that high level officials certify that they reviewed documents and they fell under guidelines. She did review documents prior to Dingell hearing but didn't determine which would be withheld.

Slattery: When Burford appeared and claimed Ex.Pr., it was against her best interests? [ALL THREE AGREE.]

Daniel: Before Levitas hearing, she made it clear to Cmte that as far as she was concerned, they could have all documents.

Sikorski: Re lawsuit. Is it true that Burford's lack of confidence led her to get private counsel?

Daniel: Yes.

Sikorski: DOJ's focus on Ex.Pr. so single-minded that they neglected credible defenses and she considered bringing ethics charges?

Daniel: We complained re initial complaint and offered suggestions. DOJ wanted to reach constitutional questions and that's what they wanted case decided on. EPA felt certain affirmative defenses could be brought.

Sikorski: Burford asked you to follow up and call Rex Lee to advise him that they better bring up every credible defense possible or else ethics charges?

Daniel: Yes. Lee and Watt very good friends. Watt may have brought this up. She was on vacation but called me to call him to pass on her dissatisfaction with case.

Sikorski: During negotiations after dismissal of lawsuit, did she get info on progress?

Daniel: None. Our first knowledge of negotiations was reading it in Wash. Post. Schmults visited us to advise us of status. Dinkins there too. Schmults advised us negotiations going well and close to agreement. Describes process (redaction, etc.). Gave us report that agreement favorable to Exec. Branch. Perry asked for written copies of drafts of Subcmte and White House. We were denied documents. Request made again to Schmults and we were denied copies. He went to Burford's desk for phone call and left his papers there. Two sets of documents - Levitas and Exec. Branch. Different from oral report - two sides well apart still.

Sikorski: What did Burford think about proposals?

Daniel: Didn't like either one. Thought Levitas had upper hand in negotiations. Felt very burdensome on Agency and would still appear to be withholding.

Sikorski: Fig leaf analogy.

Daniel: Yes. Politically still not acceptable.

Sikorski: Schmults misrepresented true state of negotiations? YES.

Sikorski: After Schmults briefing where did Burford turn?

Daniel: Sought mtg with president.

Sikorski: 2/17 you and Burford went to President to urge release?

Daniel: Yes, met with Meese, Fielding, Deaver first. Burford urged release of documents. Complained re representation from DOJ - lawsuit ill-prepared, oral arguments deficient.

Sikorski: Did she ask Meese re pardon or immunity?

Daniel: She asked whether President had dealt with this. She assumed an immunity to be there. Immunity from criminal liability for doing what she had been ordered. I think

he was surprised by the question. "Immunity for what?"
She and I assumed matter was taken care of.

Broyhill: Allegations about Burford's trip to Cal. in late July.
Purpose to make announcement re Stringfellow site.
Circumstances?

Daniel: Burford was on plane reading her briefing documents for
Cal. trip. She was to announce in L.A. allocation of
money for cooperative agreement on Stringfellow. Read
briefing papers, found them inadequate. Not only purpose
for visit. When she arrived in LA, she called and asked
me questions re Stringfellow. Status of enf., status
of IG audit, why deviation from Agency rules, policy on
state-owned sites under Superfund. Only knew answer to
last.

Broyhill: Did she mention any political considerations for decision?
NO.

Broyhill: Any other directions on this?

Daniel: Instructed me to get answers to those questions. I
instructed Asst Administrator for OSWER when dealing
with these precedent-setting situations to make sure
ample review by GC's office, etc.

Broyhill: Is that Lavelle?

Daniel: Delivered to her. Not referred to Hedeman although
normally so. Question arose re state-owned sites in
budget talks. At 8/6 briefing, Burford instructed
staff to study state-owned sites to get proper pricing.

Slattery: 2/17 mtg at White House.

Daniel: Met with President, Baker, Meese, Fielding, Fuller,
Burford. Burford asked for mtg to ask President to permit
her to release documents. Cited her overriding concern
- as long as documents withheld, criticism of Agency
would continue. I thought President was agreeing with
her when Fielding intervened and suggested historic
significance of principle.

Slattery: Yamada, 2/18 did you learn tht certain Stringfellow
documents contained notes on possible political
considerations? YES. Told Perry? YES. Recommended
all withheld Stringfellow documents be released? YES.
What did Perry do?

Yamada: Few things happening that day. Employees appearing
before you the next week.

Slattery: Stringfellow documents no longer enf-sens?

Yamada: Had recommendation from Regional staff in Cal. that none of these documents were enf-sens. Perry called Dinkins that evening. Short - she had plane to catch. Next day Perry called me to come in Sunday. He said he had talked to Fielding 2/19. Perry reviewed notes 2/20 with Yamada and Mays.

Dingell: In mtg with President, any discussion of contents of withheld documents?

Daniel: On 2/25, no.

Slattery: [Reads entry from notes from Sunday.] Made copy and took to Fielding. Perry concerned about his own liability. Felt documents should be released.

Mays: Perry called Fielding. I made three copies and gave Perry one. I understood he went to Fielding's house and reviewed them. Perry said he had had mtg with Fielding and was inconclusive.

Slattery: Perry on Fielding's reaction to Stringfellow documents?

Mays: I asked Perry how mtg went and he said inconclusive.

Slattery: Perry hand-delivered Stringfellow documents to Fielding on 2/20 because of Perry's concerns re some notations and would recommend release to Congress.

Mays: That is my understanding. . . . 2/22 Perry asked me to contact Hines (Assoc. GC) who was to brief employees appearing before Subcmte on withholding enf-sens materials. Hines felt employees concerned that they didn't know what was enf-sens.

Slattery: You noted Perry wanted to specify that they should not hesitate to discuss political implications.

Daniel: Burford called Fuller later that week. Burford didn't believe Levitas Agreement workable and only recourse was to turn over and that is what she wanted to tell him.

Slattery: 3:30pm Friday. Your notes on conversation with Burford and Fuller full. The replacement of several managers. Page 4 of notes. Burford felt that Ex.Pr. claim has been affecting management. It wouldn't go away until we release documents. Burford - reasonable bounds of Ex.Pr. have been exceeded.

[BREAK FOR VOTE.]

Sikorski: On notes where you have "I don't like asking you to lie." They were asking Burford to go out and speak the Admn line.

Daniel: Her expression: "She didn't like trying to put a good face on something that is bad."

Sikorski: Yamada, morning of 2/25, came into possession of notes on Seymour case? YES. Then you drafted referral note to Schmults?

Yamada: Yes. [Describes letter.]

Sikorski: Seymour notes reflect 9/2 mtg at DOJ on Seymour. "Oct. 8 deadline," etc. Other two enclosures are notes on 9/7 mtg on Stringfellow (quotes political parts). Did you discuss documents with Perry?

Yamada: Yes. He immediately supported recommendation that they go to DOJ for investigation. Pre-arranged mtg at DOJ. I was told we were going to meet with Schmults. Perry called Dinkins and told her we were bringing it over. Mtg at Dinkins' office and later Schmults came down. Perry, me, Dinkins, Ramsey, Walker, Gailis, and later Schmults. Went through history of how documents discovered. Stated our concern re maintaining confidentiality of documents but consistent with 11/30 letter, documents should be released. DOJ said they hadn't had chance to review and requested we not release documents. . . . I was told we were meeting with Schmults. Just before we left, Perry said we'd be dropping in to see Dinkins first.

Sikorski: We are talking about mtg at DOJ where DOJ attorneys present when statements made about political activities in administration of Superfund monies - 9/2 mtg? CORRECT.

Sikorski: Walker said she did not recall 9/2 mtg at DOJ on Seymour?

Yamada: Yes, but our notes show she was there.

Sikorski: Was Ramsey stated as one of attendees?

Yamada: No, he was on vacation.

Sikorski: Relationship to Walker?

Yamada: Chief of LNR's Enf. Section. He would have been present if not on vacation.

Sikorski: He was assigned to case the next day?

Yamada: I don't know.

Sikorski: Was Schmults called in by Dinkins?

Yamada: Yes. Perry presented letter, showed them political connotations and said that documents should be given to Congress. Decision made before Schmults arrived that we would not do it until we had heard back from DOJ or else DOJ would do it - not sure on that. Once Schmults walked in, no extended discussion on it.

He said that EPA referred over several matters for investigation and this would be included. 2/18 we were of the opinion that Stringfellow documents should be released. Wasn't till 2/23 that we found written corroboration and could refer to DOJ. At that point, the Cmte not focusing on Seymour, we were not withholding any Seymour. Did recommend Seymour document be sent over with Stringfellow documents to Congress because of political connotations. Schmults response was nonsubstantive. "We'll look into this together with everything else" kind of thing. Returned to EPA about 3:30.

Sikorski: Any reason why EPA didn't deliver copies of referral to Congress then?

Yamada: We were specifically instructed by DOJ not to release until DOJ could look at it and they'd get back to us. I gathered from mtg there were prior discussions re releasing other referrals. Perry did ask early in mtg if referral could be released. I believe Walker, at Dinkins' request, called Jack Keeney. If Agency wants to, Criminal Div. has no problem. Dinkins, I believe, said with regard to this 2/25 document, since Criminal Division had not looked at it, it was not to go to Congress. Later in afternoon, we met with Burford. She asked us to copy package and send it to Congress. Perry called DOJ to see if position changed and it did not.

Sikorski: By time you arrived at White House 2/25, you had advised her of referral?

Daniel: Yes.

Sikorski: Did Burford advise you of what she wanted to accomplish?

Daniel: Full release of documents. President, Vice President, Laxalt, Fller, Burford, me. She told him agreement with Levitas left nothing of Ex.Pr.; that he was not being well-served. Preident's response very sympathetic. Asked what did Bill have to say about this. Bill being the Att Gen. Burford told him that she had not talked to Smith. President told Fuller to arrange mtg with Att Gen. At end of mtg, Laxalt told President that Burford correct, documents should be released with no redactions.

Sikorski: Were specifics of referral document discussed with President? NO.

Yamada: During course of mtg before President's mtg, around 5pm, Perry, Burford, Daniel and I went over referral.

Daniel: Met with Att Gen as late as 6pm that night.

Sikorski: Burford had been sufficiently briefed on referral package?

Daniel: Yes, it did not come up.

Sikorski: Fuller called you after President's mtg to say meet with Att Gen that night? YES. Met at DOJ?

Daniel: Yes. 6-7pm.

Sikorski: After DOJ had referral document?

Daniel: Yes. Att Gen, Schmults, Simms, Dinkins, other DOJ people, Hauser, Fuller, Burford and me.

Sikorski: Any reps of DOJ there that were at 9/2 mtg.

Daniel: I can't say for sure. Only person likely would have been Dinkins but she wasn't at 9/2 mtg.

Sikorski: There were DOJ people there that were aware of allegations re 9/2 mtg?

Daniel: Yes. At mtg, Burford made pitch re release of documents; Levitas Agreement not working out; criticism of Agency continuing; cumbersome process, etc. In course of this, on cumbersome nature of Agreement, she brought up referral of that date - not within agreement.

Sikorski: At this point, referral would stay at DOJ, they wanted to review it?

Daniel: Yes. Dinkins said we'll take care of it, don't worry about it. Burford says we'll have more of these. Dinkins said don't worry about it, we'll take care of it. Don't recollect we discussed what was substantively in referral.

Sikorski: Notes re Seymour. During week of 2/22, did anyone at DOJ make request to review EPA case files?

Mays: Yes. 4:30, 2/22, received call from Ann Gailis who asked if DOJ attorney on Seymour could come review files. Reason for request, they wanted to double check for enf-sens documents tht may have been missed. We said no problem but ASAP because we were segregating out enf. documents. Had to be on our time frame.

Sikorski: So, request from DOJ to see notes of enf attorney at EPA that as it turns out were found later to contain those notes on political connotations. Correct?

Mays: Yes. Don't know if they actually looked at documents but were given access to them.

Sikorski: Want to keep record clear.

Dingell: Phone call from DOJ? Re EPA documents?

Mays: Phone call from Ann Gailis who is attorney in LNR and was designated by Dinkins as helping coordinate enf-sens determinations. She requested enf attorney's files and engineer's files. EPA documents.

Sikorski: 8/11 Report from DOJ.

Daniel: Doesn't refer to this referral.

Sikorski: That incident fell into some black hole never to be referred to in 8/83 report.
(?)

Dingell: Withdrawal of representation of Burford and employees of EPA. On 3/3, did attorney-client relationship change?

Daniel: Yes, we were advised DOJ was withdrawing from its role as counsel for Burford. Meeting suggested by Schmults. He and Dinkins came over. Also Perry, Yamada, ?, me Burford, and later Mr. Burford.

Dingell: I observed some outrage when DOJ announced withdrawing of representation. Behavior of DOJ less than shining, perhaps offensive. What was purpose of mtg?

Daniel: Mtg for Schmults "to make some adjustments in representations" as result of referrals. Advised Burford that because of referrals EPA had made, DOJ had to investigate and so DOJ had to change its role. Burford objected. Nonetheless, decision had been made. Told we would still get some liason activity from LNR to see that documents would still have EPA-DOJ review before going to Congress. Walling off LNR so they can provide that limited counsel. Burford said should wall off Criminal Div. instead so DOJ could still counsel.

Dingell: Was Burford surprised by DOJ behavior?

Daniel: Yes. She reminded them of earlier promises.

Dingell: Page 3 of notes, at bottom. "Enf-sens. documents no longer to be reviewed by Olson."

Daniel: Schmults said it. Up til then, any withheld document would have been reviewed and approved and those would be signed off by a lot of people. Ted Olson is no longer to be in review process. LNR only. Olson removed because walling off everyone else in DOJ from having anything to do with EPA.

Dingell: Had DOJ been investigating Agency?

Daniel: Very possible. But Burford asked Schmults if she was under investigation and he said no.

Dingell notes Mr. Burford calling DOJ "turkeys": Mr. Burford's outrage does not appear misplaced.

Daniel: Other references in notes to "Bob" are to Perry. Page 6. Walling off branch that was our lawyer. Our lawyer are the other parts of DOJ - OLC, Civil.

Dingell: DOJ will represent two agencies against each other and not infrequently represent persons within Exec. Branch in controversies with other parts of Exec. Branch, eg., other contempt actions. (Cites Califano, former SEC Admin'r.)

Daniel: Bottom page 6. Admin. refers to Burford. Schmults - not prosecuting Burford for contempt. As long as Burford follows President's instructions, she wouldn't be prosecuted for contempt.

Yamada: My recollection as well. Another aspect too - after appearance of Burford before Cmte, if forced to exert Ex.Pr., inconsistent to have legal counsel other than those representing President. Schmults said private counsel available. Brford asserting Ex.Pr. on behalf of President and could employ private counsel.

Dingell: Do you feel DOJ had decided not to prosecute any future House contempt citation?

Daniel: Not explicit but I think have to draw that conclusion.

Dingell: Subcmte interviews of EPA employees scheduled to begin 2/2. Personal counsel allowed; no other conditions. That morning you came to us and said no interviews until following conditions met: OGC counsel present, transcripts, Minority Members present.

Mays: Evening before, I was preparing memo for Perry for employees where Agency would furnish attorney if he wanted one; employee could request transcript. Number of drafts. About 8pm (2/1) final draft. Perry was to meet Burford later on. My understanding was that this was the position Burford wanted to take. Next morning Perry called and said Burford had some changes. Perry arrived and advised me Burford wanted to impose restrictions you described. At that point, close to first interview with Mike Hook. Perry asked me to call him but he called me and wanted someone from Agency present. I went with him. Met with Frandsen and Raabe. Discussed conditions. They chose not to conduct interview and rest were cancelled.

Dingell gives concluding statement thanking witnesses.

Mays: Want to make clarifying statement re Stringfellow review on 2/20. I read from my journal. I refer to Leifer and Brown being only attorneys besides staff attorneys that had reviewed them. I hold both in very high regard. I do not want to imply that they should have discovered these improprieties.

ADJOURNED 2:00pm.