Excerpts From Judiciary

Panel's Impeachment Debate

United Press International

Minority members of the House Judiciary Committee confer before the resumption of debate yesterday. From left are Rep. David W. Dennis (R-Ind.), Rep. Charles W. Sandman Jr. (R-N.J.), and Rep. Delbert L. Latta (R-Ohio).

Following are excerpts from the House Judiciary Committee's debate Friday night on a substitute impeachment article offered by Rep. Paul S. Sarbanes (D-Md.):

McClory. As the chairman and the members of the Committee know, I do intend to support an article, perhaps two articles, of impeachment. But, I think that this article which is proposed, the substitute article proposed by the gentleman from Maryland, is very faulty, very poor, and the weakest article whcih I think the Comittee article whcih I think the Committee could recommend.

Now, it has been correctly said that the process of impeachment is not a criminal proceeding but a civil one. We know that our counsel has confirmed that by recommending that we should only consider that the rule or the doctrine of evidence that must prevail here is that of clear and convincing proof, not proof beyond a reasonable doubt. But, what we have before us here is an allegation of a conspiracy. Now, it is called a policy and this is the thesis which our counsel, Mr. Doar, has propounded when he took on this partisan posture in the final days of our investigation, and the thesis is that the President organized and managed the cover-up from the time of the break-in itself or immediately afterwards. And, of course, this is the thesis that my colleague from California and from Massachusetts are tying to develop.

And it just does not hold water. It is weak. It is fuzzy and it is contradictory.

The theory just does not exist . . . .

It seems to me clearly what we should require if we are going to charge the President with a criminal offense, which is what this is doing, not only have clear and convincing evidence, but proof beyond a reasonable doubt, because that is the standard which we are required in connection with a criminal charge.

So, I am hopeful that the committee will either require that we do make these charges specific, if they are going to be offered at all, or that we dispose of this proposed article and go by the one which relates to the President's oath of office in which the President did, indeed, fail to take care to see that the laws were faithfully executed and the violation of his constitutional oath. This does not require that

kind of specific proof and allegation . .

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Rangel. Mr. Chairman, and my colleagues, it seems to me that our constitutional responsibility is really to respond to the House of Representatives. It seems to me that we would be taking on more than our mandate allows if we were to draw some narrow allegations and not have the evidence that we have heard over all of these months presented to the members of the House. I think their judgment as to what final allegation, if any, is going to presented to the Senate, we cannot be preseumptive enough that it just meets our needs, and to cut off to them the benefit of all of this, all of these months of research.

If members are having some type of a problem in terms of what they are prepared to vote for in connection with an article of impeachment, it seems to me that this does not necessarily have to be done in a parliamentary way to just delay these proceedings. I think that each member would have the opportunity as to what in his own mind he believes is an impeachable offense. And I personally believe there is enough in the edited transcripts for that purpose.

But, he should not preclude the information which we have compiled from reaching the Floor of the House of Representatives. We merely have the responsibility to report our findings to the House, and if we vote articles of impeachment they may, in fact be rejected by the House. If we suggest to them that threee or four articles have been voted on by the majority of the members of this Committee, and they see fit to expand, then it seems to me at this late time that if the Members want facts, my God, we have had more than enough facts to reach questions of whether or not we should vote on a particular article. But, if there are members that are prepared to vote on a particular article, it seems to me we should be prepared to vote on that, and then to move so that we can work our will and report back to the House of Representatives.

I think that is our restrictive constitutional responsibility, and we should not allow our vote to be interpreted as being the vote of the Full House.

Jordan. This committee has spent two days receiving and listening to very eloquent arguments. We talked about the Constitution, and we talked about the serious nature of the impeachment process and all which was said, we were telling the truth. We believed what we were talking about.

Now, Mr. Chairman, this committee is called upon to get to the matter of the consideration of Articles of Impeachment.

It apparently is very difficult for the committee to translate its views of the Constitution into the realities of the impeachment provisions. It is understandable that this committee would have procedural difficulties, because this is an unfamiliar and strange procedure. But, some of the arguments which were offered earlier today by some members of this Committee in my judgment are phantom arguments, bottomless arguments.

* * *

Due process. If we have not afforded the President of the United States due process as we have proceeded through this impeachment inquiry, then there is no due process to be found anywhere. Well, what did we do? The Judiciary Committee under all of the historical precedents available does not have to allow counsel to the President to participate in its proceedings, but this Committee, because of its grace, because it wanted to be fair, because of its interest in due process, allowed, suffered, if you will, counsel to the President to sit in these proceedings every day.

He was present. Was he gagged? Was he silent? No, because this Judiciary Committee cast a rule which allowed the President's counsel to speak.

Now, one might say, well, certainly that is minimal due process. All I am saying is that the Committee was under no compulsion to do that, but voted to do it. So, the President's counsel was here and received every item of information this Committee received.

The President's counsel suggested witnesses he wanted called and heard by this committee. They were all called. They were all heard. The President's counsel was afforded the right to cross-examine witnesses.

Now, I know that our rules disallowed cross-examination on said question. But, those of you who know of the capacities and abilities of Mr. St. Clair would certainly say that he cross-examined the witnesses who appeared before this Committee.

What else did he do? He submitted to this Committee a reply brief in addition to making an oral argument in response to all of the material which this committee had received.

Now, we have heard a lot today about specificity, about our case being so general that no one would be able to answer it, that the President would not be advised of his rights, and that therefore would not be able to answer or prepare for his defense.

Well, Mr. St. Clair felt that the case presented before this Committee was specific enough for him to file a reply brief and to engage in oral argument, both before this Committee.

The subpoenas. We were very reluctant to issue a subpoena to the President of the United States. But the President asked us for additional time to respond to our first subpoena and we said we want you, Mr. President, to have due process, so additional time is yours. And we gave him that time.

Due process? Due process tripled. Due process quadrupled. We did that. The President knows the case which has been heard before this Committee. The President's counsel knows the case which has been heard before this Committee. It is a useless argument to say that what we would do is to throw 38 or 39 books at the House and say, you find the offenses with which the President is charged, and say the same thing to the President.

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We talk about a report and we say that the report will be filed along with the bill of impeachment, resolution of impeachment. That report will be filed and it will contain the rather detailed specific particularized information so that no one can question whether the President has been advised of the allegations against him.

Cohen. All I could just direct a question to counsel, Mr. Doar and Mr. Jenner, and go back to the law for just a moment as to whether either of you gentleman could tell me as to whether or not a specific allegation or charge is made by reading Article I of the Sarbanes substitute, if it were to end after the words "and to conceal the existence of the scope of their unlawful covert activities."

In other words, simply reduce the charge to "on June 17, agents of the Committee for the Re-election of the President committed illegal entry" and then what happened subsequent thereto that the President, using his powers of his office, to act directly and personally through his subordinates and agents to delay, impede, obstruct the investigation.

In your opinion, would that not be sufficient to place the President on notice as to the specific charge against him and whether or not the other items listed on the two pages are really additions which don't have to be there, but are put there for the benefit of even placing the President on more notice?

Doar. That is my opinion.

Rodino. The time of the gentleman from Alabama has expired but Counsel will be allowed to answer the question since it is important to the inquiry.

Doar. Congressman Cohen, that is my opinion. The second paragraph of the Sarbanes substitute is the operative paragraph. It puts the President on notice that he—the committee charges or the article charges that as President of the United States he made the decision or adopted a policy that there would be a plan to cover up the Watergate affair and that in furtherance of that policy, acting personally, individually and also through his close associates and subordinates, he did take certain steps to further the policy. And that allegation is sufficient in my judgment to put the President of the United States on notice as to what this Committee is considering—what this article charges him with.

Cohen. Further along this line, Mr. Doar, is it my understanding that you would be and the staff would furnish to the House a complete and full report outlining in detail the specificies to which Ms. Jordan recently alluded to and also whether or not in your opinion Mr. St. Clair would be entitled to file a bill of particulars, at which time you and this Committee and the House of Representatives, would furnish the specifies to Mr. St. Clair upon that request?

* * *

Doar. Well, I don't—with respect to the first question I have no doubt that our report would do exactly that, precisely that, specifically that. With respect to the second, what the House might do, the House of Representatives would do with respect to a request by Mr. St. Clair prior to the time that it considered and voted on articles of impeachment would be a matter that would be within the judgment and wisdom of the House just as the matter of Mr. St. Clair's presence here was a matter within the Committee's judgment. It is not a matter of right.

Cohen. But the report that we would prepare would list each and every item relied upon by this Committee in its report to the Full House.

Doar. Yes, it would.

I certainly concur with the gentleman from Alabama that we should move on from this legal question to the central issue in this case, as to the evidence, the weight to be given the evidence, the strength of the evidence. I hope that in just a couple of questions here addressed to Mr. Jenner that we can move on from this issue.

Mr. Jenner, in your opinion does this bill, this article I, the Sarbanes substitutes, violate due process, notice requirements?

Jenner. Congressman Fish, it does not. As Mr. Doar has stated, the first two paragraphs of the Sarbanes substitute state in sufficient specificity to meet all due process requirements of notice. It satisfies the Constitution in full.

Fish. So it is your view that Article I does put the President on the alert as to specific charges?

Jenner. It does, sir, and the paragraphs following, numbers one through whatever the number is—

Fish Nine.

Jenner.—afford him additional gratuitous notice so that he may be more fully placed on notice than is required under the due process clause of the Fifth Amendment.

Fish. Finally, Mr. Jenner, as to going beyond the present scope of this article, is it not so that in a suigeneris proceeding such as impeachment that you do not permit your pleading to strangle yourself with respect to evidence that you may tend?

Jenner. Congressman Fish, very much so. That is the bane and trouble the prosecutors concern themselves with at all times, that overspecificity with respect to indictments, especially in modern times and particularly as to a suigeneris proceding which im-

peachment is, that they not strangle themselves with respect to admission in evidence of that which is pertinent and relevant to the basic and main issue presented on the pleading.

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Dennis. Mr. Doar, a moment ago in answer to the gentleman from Alabama, Mr. Flowers, you said that you were prepared to sepcify here and if that is true I wonder why you don't do so instead of waiting until the Report of the House and whether you think that a Committee Report can be used for the purposes of an article of impeachment.

Dennis. Let me see if I understand you. Of course, I know you say that he article is good but are you asserting that if the article should be faulty that a Committee Report would make it a good article when it was not?

Doar. No, I am not asserting that but I am asserting as positively as I know how that the article is not faulty.

Following are excerpts from yesterday's Judiciary Committee debate on amendments to the impeachment articles:

Rodino . . . the chair wishes to announce pursuant to the policy adopted when we considered the rule of procedure for this debate, that it contemplated that there be general debate for a period not to exceed ten hours and that it was understood as agreed policy that the balance of the time for the consideration of amendments to the articles would not consume more than 20 hours.

The chair wishes to point out that having commenced with the consideration of the articles yesterday for purposes of amendment, 12 hours have already been consumed of that time. However, as the committee certainly understands, the committee can extnnd time for consideration of the articles for purposes of amendment until we have resolved the entire question.

But the chair would like to state that in the light of some of the motions to strike which are presently before the chair, the chair intends to recognize after a motion to strike has been proffered as an amendment to Article 1 and to each paragraph thereafter that after an hours debate has expired, the chair is going to entertain a motion to move the question and that the question will then be in order.

Hutchinson . . . I would not want there to be any misunderstanding about the time limit for debate. My recollection is, Mr. Chairman, that in an earlier version of the rule which was adopted, there was a 20-hour limitation for amendment but that in the final version the wording was worked around the concept of the five-minute rule and the provision does not limit debate to a total of 20 hours, and that while there was an expression of hope that it could be accomplished in that length of time, still if 12 hours have already been consumed and we have not yet disposed to Article 1, it becomes very obvious, Mr. Chairman, that it will be necessary to consume more than 20 hours to handle these articles, and in order to extend beyond 20 hours, Mr. Chairman, I do not think it would take any formal action of the committee to extend the time for debate beyond that 20 hours. With regard to limiting debate on a motion to strike to one hour, Mr. Chairman, I would indicate that I certainly would interpose in objection to that.

Sandman. Mr. Chairman, reserving the right to object—

Rodino. Mr. Sandman.

Sandman. —and I shall not object, I would like to say, and I hope that others will agree who took the position I did yesterday, that the argument was exhausted as far as I am concerned yesterday on the articles of impeachment along the line that I suggested. A vote has been taken. There are amendments on the desk that have my name on them and I would like to withdraw those because they are aimed at the same point of law that we discussed at great length yesterday.

* * *

It is my hope, Mr. Chairman, that we will be able to proceed with Article 1 with the degree of discipline that existed yesterday and last night, no doubt continuing today. There is no way that the outcome of this vote is going to be changed by debate and I, therefore, hope that we can with dispatch cover the Sarbanes substitute, and there will be no objections from me, no amendments from me, nor will there be any motions to strike from me . . .

Flowers. If I might be recognized for a short minute, knowing of my friend from New Jersey's conservative bent which I share, I would ask if he would be opposed to my borrowing the paper that he has already got at the desk and at all of our desks and adopt for my purposes the same motion to strike that he has proffered to subsection 1. I would be prepared at the appropriate time to offer to subparagraph 2. I think it is important to me to know here in these debates that we are having this week in this committee on the allegations that are contained in Article 1, and if there are any other articles to them, the specifics of the charge. I think it is important. The gentleman from Wisconsin, I think agrees with me on this. We discussed it here in the committee last evening and I believe the other members do.

So I propose, Mr Chairman, I take this time merely to point out that it would be my purpose to offer a motion to strike the paragraph, to seek out the information that would support the paragraph from the members or from the counsel . . .

Railsback. Mr. Chairman, I have an amendment that I would like the clerk to read.

Rodino. If the gentleman will defer, the chair was not recognizing the gentleman for purposes of offering an amendment since I believe that at this time the chair is going to state that it is going to be its policy to first recognize those who have perfecting amendments and I had already indicated to Mr. Hogan that I would recognize Mr. Hogan for that purpose.

Railsback. Am I recognized for the other purpose, then?

Rodino. The gentleman will be recognized and I would like to also state that if the gentleman from Alabama was asking that his name be substituted for that of Mr. Sandman which appears on the motions to strike that are on the clerk's desk, if there is no objection, I will entertain that so that the gentleman would have that proper motion before the clerk's desk if it is not.

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Railsback. . . . I wanted to congratulate my friend from New Jersey for what I thought—he says it is about time—

(Laughter)

—for doing something that I think is very wise and very prudent and very thoughtful on his part and also in the best interests of this committee and once again I think that—I think he has shown his good sense. As far as Mr.—my good friend, Mr. Flowers, I hope that if he does move to strike every single numbered item that we maybe can expedite the debate on each item because, frankly, I think a lot of us thought that there was a great deal of repetition last night and I think it ought to be—I think we ought to be able to either present the case for or against in a little bit more expeditious manner . . .

Latta. . . . Let me say I concur in Mr. Sandman's statement. We are certainly not bowing just because we want to be bowing. We are bowing to the obvious and the obvious is that we do not have the votes. We are not deserting our position. We think it was a proper position.

Yesterday those who believed as deeply as we did were not resorting to dilatory tactics, as has been reported in some places, but we definitely felt that the President of the United States should be able to answer the charges that were being made against him, and they were not specific. They are still general, and that is the way they are going to be, they are going to remain.

But I would like to at this juncture, Mr. Chairman, point out that there has been some misinformation going out across the country that, had we been successful and made these articles specific, that they could not have been amended on the floor of the House. I know the chair knows and every member of this committee knows that we are not going to grant in the Rules Committee a closed rule on this matter. It will be an open rule and subject to amendment on the floor.

So, if there are any additional charges that wish to be brought or times or places under any of the articles that have been mentioned here that wish to be included, it could have been included by amendment on the floor of the House.

I would just like to make the record straight that here is one member, and I am sure that there are going to be 14 other members on the Rules Committee when this matter comes up there, going to be voting for an open rule.

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Rodino. The chair would like to point out that while the rule has yet to be established since that will be a matter before the Rules Committee, the chair is certainly going to recommend that there will be full full and free debate, as this is a matter of such moment, and be considered as it should be considered delierately and fully by the full House, and therefore, I think that the membrs recitiation of what could be expected is indeed in order. .

At this point the committee adopted by voice vote perfecting amendments offered by Rep. Lawrence J. Hogan (R-Md.) to the impeachment articles.

Danielson. Mr. Chairman, the thrust of sub-paragraph 4, as is apparent, relates to the interference by the President, or endeavoring to interfer with the conduct of investigations by the Department of Justice, the FBI, the Office of Watergate Special Prosectuion Force. I should like to add to those agents congressional committees.

I have in mind specifically the House Committee on Banking and Currency under the chairmanship of the Honorable Wright Patman.

You will recall, a couple of days ago, during the early stages of our debate, I quoted at some length from the Sept. 15, 1972, tape transcript of the conversation in the President's Oval Office in which it was apparent that the President, his chief of staff, Mr. Haldeman, and Mr. Dean were planning on how they could possibly prevent the House Committee on Banking and Currency from conducting investigations into the whereabouts, the source, the transmission of certain funds that were found in the possession of the people arrested in the Watergate on June 17th.

* * *

The plan was rather elaborate. The President first offered to do so himself, and then he suggested that Mr. Ehrlichman, or Mr. Mitchell, or some other person contact and enlist the aid of Gerald Ford, who at that time was the minority floor leader, and various other members of the House of Representatives, to prevail upon Mr. Patman to not, to desist from conducting his

investigation.

In all fairness, I want to point out that Mr. Dean's testimony later was that the members of the House who were being prevailed upon to in turn prevail upon Mr. Patman were not aware of the fact that they were being used for this purpose. The guise of the argument was that what if the trial forthcoming of the burglars, and maybe I should say the unlawful entrants, that a congressional hearing into their activities might prejudice their case and might interfer with their civil rights. This was explored at some length. I do not wish to reiterate it here, because you have all heard it.

In addition, they had a plan whereby they were to contact Mr. Rothblatt, who was the attorney for four or five of the defendants, and Mr. Bittman, who was the attorney for Mr. Hunt, and have them in turn call upon Mr. Patman and urge that he not conduct the investigation because it might interfer with their clients' civilr ights.

Other testimony before this Committee is that Mr. Bittman acknowledges that he was to contacted and was requested to get in touch with Mr. Patman, but that he declined to do so. Records of the House Committee on Banking and Currency relfect that there was a letter from Mr. Rothblatt, making the same argument.

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Carrying, on, I have also in mind the Senate Select Committee on Campaign Practices. I might add, going bac, that the Banking and Currency Committee was not able, due to these efforts, to muster enough votes to pass a Resolution to conduct the investigation, and the investigation was postponed.

The fear in the minds of the President, Mr. Haddeman and Mr. Dean while they talked in the Oval Office was that if Wright Patman was able to issue subpoenas and call in the witnesses, he might uncover almost anything. It was a can of worms and they didn't know what might happen if Patman were given a chance to conduct the investigation he wanted.

Their fear was the disclosure of the fact that the $3200 in new consecutive numbered bills found at the Watergate did in fact come through a Florida bank account, could be traced back to a Minnesota donor that had been laundered in some kind of an operation down in Mexico.

Proceeding on to the Senate Select committee, we do have testimony from some of the tapes furnished to us by the White House that at various times in the proceedings the President counseled his aides to, if they did appear, to stonewall it, to say nothing, to say they could not recall, to take the Fifth Amendment, to do anything, but not let the plan come out.

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This, I submit, is a specific example of an effort to obstruct and interfer with the lawful function of that Committee.

And, thirdly, I refer to our own Committee, the House Committee on the Judiciary. In connection with the cover-up plan, which I submit is still going on, the President has openly and notoriously and knowingly persisted in defying this Committee in its lawful subpoenas and has failed and refused to turn over the documents that e have requested.

I respectfully submit that we should include within subparagraph 4 congressional committees. . . .

Wiggins. Mr. Chairman, I do not oppose the motion of the gentleman from California to include the language. The problem is will the prosecutors in this case be able to prove the charge.

Let me review my recollection of the evidence with respect to wnetner the President interferred with a congressional committee. First in the context of the Patman hearings, bearing in mind, ladies and gentlemen, that there was no Patman hearing. What we had was an intention on the part of the chairman, Mr. Wright Patman, to do something, which he announced publicly, but the members of his committee, including six Democrats, would not go along with him. He was thwarted, not by the President, but by the members of Congress, who were on his Committee, and that hearing, that congressional activity never got off the ground.

I am not willing to attribute to the 20 members who voted against the chairman of the Banking and Currency Committee any corrupt motives and do not regard them as coconspirators in this case.

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Moving next to the Senate select committee, the only interference of the President with the conduct of the Senate select committee was for a period of time a consideration of the invocation of executive privilege with respect to this aides testifying before that committee. As we all know, shortly thereafter, that policy, which was characterized as stonewalling it, that is the invocation of executive privillege, that policy was abandoned by the President, and the policy thereafter that was that all of his aides would go before the Senate select committee and testify freely, without claiming privilege and, of course, we know that is, in fact, what occurred.

The legal question, the legal question on the basis of those facts is whether or not we are going to punish the President in the context of impeachment for considering the invocation of executive privilege. Now, if so, future Presidents are in jeopardy, because the executive privilege concept is still alive and well in American jurisprudence.

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Finally, with respect to interference with this committee, I think that probably we will debate that more extensively in the context of a separate article, and so I will not address myself to it now. But, in essence, I say to my friend we are still talking about punishing the claim by the President of a right to withhold evidence by reason of his assertion of either executive privilege or a claim of non-relevancy, and I do not understand that our system of government prohibits the punishment of a good faith claim on a narrow and otherwise confused legal issue, and so in conclusion, I will say to my friend, I don't oppose your amendment at all. I just simply indicate that the facts to date do not support it.

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Danielson. . . . I do not disagree with my colleague's argument. I want to make eminently clear and I thought I had that the vote of the Members not to hold the committee meeting was certainly not corrupt. They were—the background to which I have alluded was not brought to their attention and I make no assertion and no implication that there was any corrupt voting.

On the other portion I agree that whether or not this article can be proved is a matter of proof and that would have to be resolved, of course, at the appropriate time, in the trial in the Senate. But we are bringing here on impeachment—all we are doing is

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TRANSCRIPTS, From A14

bringing an accusation. I think there is sufficient evidence to warrant that the matter be tried and, therefore, I urge the adoption of my amendment. . . .

McClory. . . . I intend to support this amendment. While I do not favor the entire article, it seems to me that nevertheless, in perfecting this article we should include the words "and congressional committees" as suggested by the gentleman from California, Mr. Danielson, because in my opinion, the defiance of this committee by the President in refusing to provide information to this committee is a serious situation and one which in my opinion, suggests valid grounds for an article of impeachment.

I propose at a later time to offer a separate article on this ground and I would like to call attention to the fact that following the President's refusal to respond favorably to our subpoenas, we notified the President on May 30th that this would be regarded as an impeachable offense if he did not comply with our subpoenas.

Now, I do not agree with the interpretation of evecutive privilege as suggested by the gentleman from California, Mr. Wiggins. I think that the doctrine of executive privilege must yield when the Office of the President is being investigated. Otherwise the President is in the position where he can dictate what he wants to provide this Committee with and what he does not want to provide the Committee with. It seems to me that in order for us to carry out a valid and full and fair investigation we need all of the information which we have required and which we deem necessary. And our position has been definitely strengthened by the recent opinion of the Supreme Court which has knocked down this doctrine, that so-called doctrine of the absolute executive privilege and in offering a motion yesterday that we defer our proceedings for the purpose of giving the President an opportunity to provide the additional tapes that we have requested, it seems to me that an opportunity again was offered for him to provide the kind of cooperation which it seems to me he should have been providing throughout these proceedings. And so I think it is perfectly valid for us to put in this article the inclusion of the words "congressional committee" because in addition to his interference and misuse perhaps of other agencies of government, his defiance of this committee is, in my opinion, a most serious matter and is entitled to be presented to the House of Representatives together with this proposed article as well as a later article which I propose to introduce. . . .

Railsback. . . . I am opposed to the article by the gentleman, Mr. Danielson, from California. Anybody that had any knowledge, I believe, of the possible motivations at that particular time of the Patman committeee, I think would have—who was on the receiving end of a possible investigation to be conducted by Wright Patman, probably would have had good reason to try to avoid what they believed very easily could have been a political fishing expedition and I think it is very significant that the members of his own committee decided not to go along with the chairman in conducting that kind of an investigation which I think many of them believe was going to be a political fishing expedition. In respect to evecutive privilege, I agree with the comments made by the gentleman from California, Mr. Wiggins, and as far as refusing to comply with our subpoenas, it is my own belief that that failure should not constitute an independent or separate either article or item in an article of impeachment.

I think—I think, Mr. Chairman, what we are doing here is we are adding something that cannot be proved and that would certainly weaken the Article 1. . . .

Fish. . . . I thank the gentleman . . . and I would just like to associate myself with his remarks. I think in considering the language in an article of impeachment we must always bear in mind that it must rise to the gravity of a crime against the constitutional system and I agree with you that this proposed additional language simply does not meet that test.

At this point the amendment was adopted by a 24-to-14 roll-call vote, and the committee began debate on another amendment.

Railsback. This language replaces the following language:

"Subsequent thereto, Richard M. Nixon, using the powers of his high office, made it his policy, and in furtherance of such policy did act directly and personally and through his close subordinates and agents, to delay, impede, and obstruct the investigation of such illegal entry; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities."

Mr. Chairman and members of the committee, I have a great deal of difficulty believing that Richard M. Nixon, at a particular point in time, contrived any kind of a policy, or at least any kind of a policy that would continue to follow through, and I think the word "policy" gives the impression of an affirmative, orchestrated, declarative decision that occurred at a given point in time.

I thought that some of Mr. Wiggins' objections yesterday were very well made. I think what the record reflects, however, is a course of conduct or, in the alternative, a plan of action over many months which was responsive to and developed as a consequence of events that occurred, and that is the reason for my amendment.

It seems to me that we are going to be asked to prove the charges that we make and it seems to me that we would have a great deal of difficulty proving that the President had any kind of a policy that we could pinpoint as of June 23 or July 6 or Aug. 29, but rather, that many of the things that he did were in response to certain events that occurred . . ..

Thornton. . . . I would like to say that I think the language suggested by the gentleman is superior to the language which we have had before us, and I am in full support of this amendment. . . .

Mr. Brooks . . . I think that this language is perfectly adequate to explain the factual situation at that time. I think that it eliminates some difficulties in the minds of some Republicans about policy. I think the course of conduct or plan is quite adequate to indicate the fact situation and I would commend Mr. Seiberling for his genius in originally working on some of this language, and Mr. Railsback in implementing it, putting it together, and I would hope that we could adopt it without tremendous delay. . . .

Sarbanes. Mr. Chairman, any lawyer worth his salt ought to recognize an improvement when it comes along. I know the concern that Mr. Railsback has had with this language and I know how he has worked on this problem. I think that the language that he has proposed here this afternoon is a very constructive suggestion. I commend him for the skill that he has shown in developing this language.

I would hope that the committee wuld adopt the proposed amendment.

Dennis. . . . What is your view of the difference between "plan," as you propose, and "policy," as contained in Mr. Sarbanes' substitute?

Railsback. Well, if the gentleman will yield —

Dennis. I yield.

Railsback. Let me say that I have some difficulty myself with the word "plan" and at one time it was suggested that the language read "course of conduct and plan," and I am not sure that I can answer that there is that much difference between the word "plan" and "policy" except there seems to be a feeling on the part of the counsel that I dealt with in drafting that "policy" seems to give an impression — more of an impression of an affirmative, orchestrated, and declarative decision.

I will tell you, the reason why I took out the word "and" is because I personally favored the words "course of conduct" which I think more aptly fits the situation.

Dennis. Well, if the gentleman will yield further, does the gentleman think that his change gets us further away from the conspiracy theory or nearer to it?

Railsback. Well, I am not going to — I really would prefer not to express my legal opinion on that. I think that —

Dennis. I would be real interested in your legal opinion on that.

Railsback. Well, I will say to the gentleman, what the amendment does is express my belief that there were certain events which occurred which, for one reason or another, the President did not see — did not either see fit to respond to or in some events responded to in what I believe to be an improper way.

I do not think that they were necessarily orchestrated. If there ever was a time when — if there ever was a time when the President perhaps came close to a policy, it would have been that time, in my opinion, after March 21 when all the —

Dennis. Let me ask the question —

Railsback. — events were divulted to him.

Dennis. — if I may.

Railsback. I am sorry.

Dennis. I thank you for your answer.

I suggested when I was talking to Mr. Sarbanes yesterday that under his version you would have to first establish the policy before you could use against the President the actions of subordinates.

Do you think that would be equally true or not under your version?

Railsback. Let me make myself very clear on that.

I do not buy I am putting criminal responsibility to the President for acts of his subordinates and I want to make that very clear. I do not believe in in-

ferring anything either. I think that is why some of us on this side believe very strongly that there should be a bill of particulars, or if Mr. Flowers —

Dennis. Well, is it your idea —

Railsback. — wants to —

Dennis. — you are taking — by your amendment you are talking to the possibility of attributing to the President acts of third persons which Mr. Sarbanes was definitely under his theory attempting to do?

Railsback. Well, my recollection of Mr. Sarbanes' response when I inquired yesterday of him was that he does not believe in the Madison theory or the —

Dennis No, he —

Railsback. — or the Madison concept.

Dennis. But he still was attempting to do it by his theory of the policy.

Now, are you saying we are taking it out altogether?

Sarbanes. Will the gentleman yield?

Dennis. Wait. I would like to see what Mr. Railsback —

Railsback. My thrust I guess is to get away from the language of "policy" and I think I have answered your question as far as my own beliefs about I am putting criminal responsibility.

I do not think I can answer it any more clearly. I do not believe, and impute any kind of imputation of criminal responsibility, and I think that the President should be charged with direct acts or knowledge. I think there has to be some kind of Presidential knowledge or involvement. I just happen to think there is. . . .

Wiggins . . . I have several questions which I will be directing to my colleague, Mr. Railsback, about his amendment. I have it before me, and it seems to say, omitting the parenthetical expression, that Richard Nixon engaged personally in a course of conduct or plan designed to delay, impede and do other acts in connection with an obstruction of justice charge.

Now, I want to understand, does the word desinged as used in your amendment, Mr. Railsback, mean that the President intentionally and corruptly acted for the purpses of delaying, impeding and so forth? Is that your intent?

Railsback. Will the gentleman yield?

Wiggins. Of course.

Railsback. I think that the design can relate to the course of conduct, or the word plan, and I think that it clearly means that the action that he took, he took willingly.

Wiggins. And to carry on, knowing the purpose of his acts, that is to obstruct, delay, interfere and impede with the due administration of justice?

Railsback. If my friend will yield, the answer is yes.

Wiggins. All right. Then that evidence which may be before us, which does not suggest that the motivating purpose f Presidential actions was to obstruct, delay, hinder and impede and so forth would not be covered by the langauage of yours in this amendment, is that so, Mr. Railsback?

Railsback. Well, let me make myself clear on that. If you are suggesting that the litany or the litany or the recital of events that was made by Mr. Walkie yesterday, which referred to many acts about which we have no knowledge of direct Presidential direction or involvement the answer aagin is yes. I do not, I do not think there is, frankly, a proper to be considering things other than that which relates to the President. We are talking about the impeachment of the President of the United States. Wea re not talking about criminal indictment returned, unless they happen to relate to his knowledge or to his direct involvement.

Wiggins. All right, Now. I think it would be a fair summary of the gentleman's position, and if I err you are right here to correct me, that you intend by this language to put on the mangers in the Senate, the burden of proving that the President personally acted to corrupt the due administration of justice by intentionally engaging in a plan or design, a course of conduct or a plan which was intentionally designed to obstruct justice. Now, is that a fair statement?

Railsback. What I intend by the amendment is to suggest that Richard M. Nixon, if it can be shown in the Senate, and if he can be held to account in the Senate, that he used his powr of his high office, engaged personally and through his subordinates and agents in a course of conduct or plan designed to delay, impede and obstruct the invesitgation of such lawful entry to cover up, conceal and protect those responsible and to conceal the existence and scope of other unlawful and covert activities. In other words, the words speak for themselves.

Wiggins. I understand. You mean what you said. Well, I am running out of time. I want to clear up the question, however, of the conduct of hisaides. In order to have this be the President's acts, you would require, I am sure, that at least he had knowledge of the acts of his aides, or that he instructed them with the requisite corrupt intent to obstruct justice, would you not?