

Excerpts From the Draft of House Judiciary

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Following are excerpts from the draft of the final report by the House Judiciary Committee that contains facts supporting Articles I, II and III of impeachment of former President Nixon:

ARTICLE I Conclusion

After the Committee on the Judiciary had debated whether or not it should recommend Article I to the House of Representatives, 26 of the 38 members of the committee found that the evidence before it could only lead to one conclusion: That Richard M. Nixon, using the powers 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 investigation of the unlawful entry, on June 17, 1972, into the headquarters of the Democratic National Committee: To cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

This finding is the only one that can explain the President's involvement in a pattern of undisputed acts that occurred after the break-in and that cannot otherwise be rationally explained.

[1]

The President's decision on June 20, 1972, not to meet with his Attorney General, his chief of staff, his counsel, his campaign director, and his assistant, John Ehrlichman, whom he had put in charge of the investigation—when the subject of their meeting was the Watergate matter.

[2]

The erasure of that portion of the recording of the President's conversation with Haldeman, on June 20, 1972, which dealt with Watergate—when the President stated that the tapes had been under his "sole and personal control."

[3]

The President's public denial on June 22, 1972, of the involvement of members of the Committee for the Re-election of the President or of the White House staff in the Watergate burglary, in spite of having discussed Watergate, on or before June 22, 1972, with Haldeman, Colson and Mitchell—all persons aware of that involvement.

[4]

The President's refusal, on July 6, 1972, to inquire and inform himself what Patrick Gray, acting director of the F.B.I., meant by his warning that some of the President's aides were "trying to mortally wound" him.

[5]

The President's discussion with Ehrlichman on July 8, 1972, of clemency for the Watergate burglars, more than two months before the return of any indictments.

[6]

The President's public statement on August 29, 1972, a statement later shown to be untrue, that an investigation by John Dean "indicates that no one in the White House staff, no one in the Administration, presently employed, was involved in this very Bizarre incident."

[7]

The President's statement to Dean on September 15, 1972, the day that the Watergate indictments were returned without naming high C.R.P. and White House officials, that Dean had handled his work skillfully, "putting your fingers in the dike every time that leaks have sprung here and sprung there," and that "you just try to button it up as well as you can and hope for the best."

[8]

The President's discussion with Colson in January, 1973, of clemency for Hunt.

[9]

The President's discussion with Dean on Feb. 28, 1973, of Kalmbach's upcoming testimony before the Senate select committee, in which the President said that it would be hard for Kalmbach because "it'll get out about Hunt," and the deletion of that phrase from the edited White House transcript.

[10]

The President's appointment in March, 1973, of Jeb Stuart Magruder to a high Government position when Magruder had previously perjured himself before the Watergate grand jury in order to conceal C.R.P. involvement.

[11]

The President's refusal to act on Dean's statements of March 13, 1973, that Mitchell and Haldeman knew about Liddy's operation at C.R.P., that Sloan has a compulsion to "cleanse his soul by confession," that Stans and Kalmbach are trying to get him to "settle down," and that Strachan had lied about his prior knowledge of Watergate out of personal loyalty; and the President's reply to Dean that Strachan was the problem "in Bob's case."

[12]

The President's discussion on March 13, 1973, of a plan to limit future Watergate investigations by making Colson, a White House "consultant without doing any consulting," in order to bring him under the doctrine of executive privilege.

[13]

The omission of the discussion related to Watergate from the White House edited transcript, submitted to the Committee on the Judiciary, of the President's March 17, 1973, conversation with Dean, especially in light of the fact that the President had listened to the conversation on June 4, 1973.

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[14]

The President's instruction to Dean on the evening of March 20, 1973, to make his report on Watergate "very incomplete," and his subsequent public statements misrepresenting the nature of that instruction.

[15]

The President's instruction to Haldeman on the morning of March 21, 1973, that Hunt's price was pretty high, but we should buy the time on that.

[16]

The President's March 21 statement to Dean that he had "handled it just right," and contained it," and the deletion of the above comments from the edited White House transcripts.

[17]

The President's instruction to Dean on March 21, 1973, to state falsely that payments to the Watergate defendants had been made through a Cuban committee.

[18]

The President's refusal to inform officials of the Department of Justice that on March 21, 1973, Dean had confessed to obstruction of justice and had said that Haldeman, Ehrlichman, and Mitchell were also involved in the crime.

[19]

The President's approval on March 22, 1973, of a shift in his position on executive privilege "in order to get on with the cover-up plan," and the discrepancy, in that phrase, in the edited White House transcript.

[20]

The President's instruction to Ronald Ziegler on March 26, 1973, to state publicly that the President has "absolute and total confidence" in Dean.

[21]

The President's actions, in April, 1973, in conveying to Haldeman, Ehrlichman, Colson and Kalmbach information furnished to the President by Assistant Attorney General Petersen after the President had assured Petersen that he would not do so.

[22]

The President's discussion, in April, 1973, of the manner in which witnesses should give false and misleading statements.

[23]

The President's lack of clemency to Mitchell, Magruder and Dean.

[24]

The President's lack of full disclosure to Assistant Attorney General Henry Petersen between April 15 and April 27, 1973, when Petersen reported directly to the President about the Watergate investigation.

[25]

The President's instruction to Ehrlichman on April 17, 1973, to give false testimony concerning Kalmbach's knowledge of the purpose of the payments to the Watergate defendants.

[26]

The President's decision to give Haldeman on April 25 and 26, 1973, access to tape recordings of Presidential conversations, after Assistant Attorney General Petersen had repeatedly warned the President that Haldeman was a suspect in the Watergate investigation.

[27]

The President's refusal to disclose the existence of the White House taping system.

[28]

The President's statement on May 25, 1973, that his waiver of executive privilege, announced publicly on May 22, 1973, did not extend to documents.

[29]

The refusal of the President to cooperate with Special Prosecutor Cox: The President's instruction to Special Prosecutor Cox not to seek additional evidence in the courts and his firing of Cox when Cox refused to comply with that directive.

[30]

The submission by the President to the committee on April 30, 1974, and the simultaneous release to the public of transcripts of 43 Presidential conversations and statements which are characterized by omissions of words and passages, misattributions of statements, additions, paraphrases, distortions, non-sequiturs, deletions of sections as "material unrelated to Presidential action," and other signs of editorial intervention: the President's authorization of his counsel to characterize these transcripts as "accurate;" and the President's public statement that the transcripts contained "the whole story" of the Watergate matter.

In addition to this evidence there was before the committee the following additional evidence.

[1]

Beginning immediately after June 17, 1972, the involvement of each of the President's top aides and political associates, Haldeman, Mitchell, Ehrlichman, Colson, Dean, LaRue, Mardian, Magruder, in the Watergate cover-up.

[2]

The clandestine payment by Kalmbach and LaRue of more than \$400,000 to the Watergate defendants.

[3]

The attempt by Ehrlichman and Dean to interfere with the F.B.I. investigation.

[4]

The perjury of Magruder, Porter, Mitchell, Krogh, Strachan, Haldeman and Ehrlichman.

In addition to this evidence, there was before the committee a record of public statements by the President between June 22, 1972, and June 9, 1974, deliberately contrived continually to deceive the courts, the Department of Justice, the Congress and the American people.

On August 5, 1974, the President submitted to the Committee on the Judiciary three additional edited White House transcripts of Presiden-

tial conversations on June 23, 1972, which confirm the finding that from shortly after the break-in on June 17, 1972, President Nixon personally directed his subordinates to take action designed to delay, impede and obstruct the investigation of the Watergate break-in: to cover-up, conceal, and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

In violation of his constitutional duty to take care that the laws be faithfully executed, contrary to his trust as President and unmindful of the duties of his high office, the President adopted a course of conduct, which caused illegal surveillance for political purposes, and the concealment of responsibility for that surveillance: obstruction of justice: perjury, destruction of evidence—all crimes. For more than two years, the President engaged in a course of conduct which involved deliberate, repeated and continued deception of the American people.

The committee finds the President's course of conduct to be to the great prejudice of the cause of law and justice and subversive of our Constitution: and the committee recommends that the House of Representatives exercise its constitutional power

power to impeach Richard M. Nixon.

ARTICLE II

Article II charges that Richard M. Nixon has violated his constitutional duty to take care that the laws be faithfully executed and the obligations he assumed when he took the constitutional oath of office as President. The article is based upon the constitutional standards governing the President's conduct of his office, and charges that he has misused powers that only a President possesses.

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed, has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws of Government agencies of the executive branch and the purposes of these agencies.

Five areas of misconduct are included within the ar-

ticle, each of them sufficiently substantial to warrant impeachment. Each involves repeated misuse of the powers of the office of President, over a continued period. Each focuses on improprieties by the President that served no national policy objective and cannot be justified under the most expansive view of the discretionary or inherent powers of a President. Each

Central to Article II is the charge that the President misused the power of the Presidency. He misused these powers by directing or authorizing his subordinates to seek to interfere with the administration and enforcement of the Internal Revenue laws in order to advance his political interests, contrary to the constitutional rights of citizens. He misused his powers by authorizing the Federal Bureau of Investigation and the Secret Service, as well as agents of his own office, to undertake and continue electronic surveillance and investigation of citizens for which there was no lawful purpose; by permitting or authorizing the use of information obtained from this surveillance for purposes that were beyond the authority of his office; and by permitting a secret investigative unit within the office of the President to engage in unlawful and covert activities, in violation of the constitutional

rights of citizens. He failed to perform his duty to see that the laws were applied to his close subordinates, when he knew or had substantial reason to suspect that they were interfering with the proper administration of the law. He knowingly misused the executive power to interfere with the proper and lawful functioning of agencies of the executive branch, including the Department of Justice and the Central Intelligence Agency.

In some of these instances his attempts to misuse executive agencies proved unsuccessful. The impeachment process is designed to determine whether the President is fit to remain in office, not whether he should be punished for past misdeeds. In this connection, a violation of the President's duties the objective is no less serious because the improper objective is not achieved. [footnote: the applicable principle was stated by Supreme Court Justice William Johnson in *Gilchrist v. Collector of Charleston*, 10 F. Cas. 355 365 (No. 5, 420) (C.C.Z. S.C. 1808):

If an officer attempt an act inconsistent with the duties of his station, it is presumed that the failure of the attempt would not exempt him from liability to impeachment. Should a Pres-

ident head a conspiracy for the usurpation of absolute power, it is hoped that no one will contend that defeating his machinations would restore him to innocence.]

ARTICLE III

Conclusion

The undisputed facts, historic precedent, and applicable legal principles support the committee's recommendation of Article III. There can be no question that in refusing to comply with limited, narrowly drawn subpoenas—issued only after the committee was satisfied that there was other evidence pointing to the existence of impeachable offenses—the President has interfered with the exercise of the House's function as the "grand inquest of the nation." Unless the defiance of the committee's subpoenas under these circumstances is considered grounds for impeachment—it is difficult to conceive any relevant evidence necessary for Congress to exercise its constitutional responsibility in an impeachment proceeding. If this were to occur, the impeachment power would be drained of its vitality. Article III, therefore, seeks to preserve the integrity of the impeachment process itself and the ability on Congress to act as the ultimate check on improper presidential conduct.