The Washington Post OUTLOOK

WXPost

DEC 2 1973 SUNDAY, DECEM

Impeaching Politics Past

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IMPEACHMENT HAS a sticking point for the politicians of Washington, an unspoken impediment which helps explain why senators and congressmen of both parties are so reluctant to become judges and jurors over Mr. Nixon's scandals.

It is the sliver of official hypocrisy which lies concealed behind the public tempest. They know—the politicians—that the Nixon offenses which have so shocked the public's sense of constitutional government are not exactly unfamiliar to this town. Many of them have happened before, before Nixon, before Haldeman and Ehrlichman.

By comparison, the past instances seem pale and innocent. But the excesses of this particular President—the arrogant use of governmental power, the political spying, the cozy special-interest dealings—are not new sins.

Thus, if Congress renders a judgment on the individual guilt of Mr. Nixon, it must also to some extent impeach unpunished activities of others who came before him. If Congress defines the "high crimes and misdemeanors" committed by this chief executive, it will also be defining what is intolerable for congressmen and senators.

While the men and women in Congress do not talk about this much, the public has an interest in confronting the point directly. If the public outrage over Mr. Nixon is to be honest, it must measure the Watergate crimes in terms of their past. In that sense, the public's interest is distinct from the interests of the politicians on both sides —perhaps even hostile to them.

For the public, the bundle of offenses gathered under the dirty cloud called Watergate confronts the national government with questions it can no longer duck—a chance to halt an erosion of constitutional rights which has proceeded unsensationally for years, an opportunity to bridle the crude excessess of White House power.

But from the public's standpoint, the impeachment question could also evolve into a dreadful precedent—one which effectively obliterates those constitutional safeguards that the politicians cherish in their speeches, if not always in their deeds. If Congress is allowed to walk away from this decisive moment, doesn't Watergate then become a reverse milestone—a laundry list of all the things which future Presidents can safely get away with?

19 Accusations

THE BILL OF particulars issued by the AFL-CIO gives a measure of the problem. George Meany's campaign for impeachment lists 19 accusations, some of which are redundant and some too vaguely worded to qualify as crimes.

"He has caused an erosion of public confidence in our democratic system of government." Even Nixon friends might agree on the accuracy of this complaint, but surely it is not a high crime in a politician. If it is, a lot of congressmen are in big trouble.

Or, "He has consistently lied to the American people." The numerous Nixon untruths are on the record, perhaps headed by his speech defending the invasion of Cambodia in 1970, when he artfully failed to reveal that U.S. warplanes were already bombing that neutral country in a war known to the enemy but not to the American people. Lying in high office, especially the profligate lying of Watergate, makes ordinary citizens mad as hell. But politicians, including Democratic politicians, may be more inclined to put the deceit "in perspective," as a White House spokesman might say.

It is, after all, a bipartisan failing. In this century, American Presidents from Woodrow Wilson to FDR to Lyndon Johnson (all Democrats) have lied to the people on the most important subject—war and peace. Indeed, if mendacity becomes an impeachable offense, we may wind up with a revolving-door presidency (not to mention a lot of turnover in Congress, the statehouses and city halls, where truth also has been known to perish.)

Begun by Democrats

STILL AS A whole, the AFL-CIO list represents at reasonable summary of the charges against the President. The accusations could be grouped into four categories: secret wire-tapping and other invasions of civil liberties; secret special-interest dealings; obstruction of justice in both the Watergate and the Ellsberg cases, and finally, general negligence of presidential responsibility.

The AFL-CIO states the first charge this way: "He instituted in the name of

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national security a plan which violated civil liberties through domestic political surveillance, espionage, wire-tapping, burglary, eavesdropping, opening of mail and military spying on civilians."

On down the list, the labor handbill adds other elements to support the same charge—intimidation of the press, the secret tapes of presidential conversations, a secret police force in the White House, the use of government agencies against "political enemies."

For starters, one problem with the AFL-CIO complaint is that the "military spying" which it mentions was a Democratic scheme. If it was an impeachable offense, the charge should have been brought against Lyndon Johnson. Robert McNamara was secretary of defense when the Army intelligence units were unleashed to spy on civilians. That action, of course, was taken in secret, and the rationale naturally was "national security."

In one form or another, domestic political surveillance has been going on for years, usually under the same justification. Robert F. Kennedy was attorney general when the FBI launched its electronics surveillance against Martin Luther King. Just as the Nixon White House tried to leak dirt against its enemies, J. Edgar Hoover tried to peddle to newspapers the dirty stories about the nation's leading civil rights advocate.

Ramsey Clark was attorney general when the domestic spying was escalated to an enormous surveillance operation, aimed at black community leaders, antiwar activists, New Left radicals—anyone the Johnson administration regarded as a threat to "national security." We still do not know the full story about this period, but it's clear from the fragmentary record that thousands of informers were recruited in black neighborhoods, phones were tapped, mail and bank accounts were inspected, community organizations infiltrated, campus groups watched.

When these activities were exposed in the "Media papers" stolen from FBI files, neither Republicans nor Democrats were eager to investigate the implications—not even Sen. Sam J. Ervin, whose Judiciary subcommittee on constitutional rights was alarmed by Army spying but not by FBI spying.

No Monopoly on Paranoia

THE AFL-CIO accuses: "He created a special and personal secret police, answerable only to the White House, to operate totally outside the constraints of law."

The "plumbers" group which Mr. Nixon established was, indeed a presidential first; as far as we know, none of his predecessors attached a burglary squad to the White House staff. The Army spying which the Democrats started probably comes closest. It was clandestine and extra-legal, and it sprawled aimlessly across the society, even hounding some liberal congressmen.

On the other hand, we do know that breaking-and-entering—without the benefit of a search warrant— was regarded as a legitimate investigative tool by the FBI at home and the CIA abroad long before Gordon Liddy went on the White House payroll.

The precise nature of political investigations aimed at Sen. Barry Goldwater when he was the GOP candidate in 1964 is not known, and it's probably too late in history to find out. The Arizona Republican has complained that Democrats dug around in his past, searching for dirt, and the political gossip confirms that. For that matter, LBJ was convinced that the Republicans were spying on his staff and, in a fitful moment he promised retribution after the election. It is not known however, whether illegal tactics were used by either side.

A great deal has been made of White House paranoia as the motivation for these violations of constitutional rights. So perhaps it is worth remembering that Lyndon Johnson suffered from the same fears. At one point, LBJ was so irritated by antiwar demonstrators outside his window that his Secret Service proposed a "buffer zone" around the White House to prohibit political demonstrations in the neighborhood. Instead, compromise regulations were imposed to severely limit the size of demonstrations outside the White House, controls which a federal court later found to be unnecessarily stringent.

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The AFL-CIO also charges: "He and his subordinates sought to use the power of the White House, the Justice Department, the Internal Revenue Service, the Securities and Exchange Commission and other government agencies to punish a list of political enemies."

As it happens, that is approximately what the steel company executives said about John F. Kennedy when he blitzed them with the threat and substance of government action in the steel-price controversy of 1962. Later, Kennedy joked about tapping their phones and turning the IRS on them—only a joke apparently. But Kennedy did mobilize a bristling show of strength, including an instant investigation by the Justice Department and the famous middle-of-the-night calls by FBI agents.

JFK was widely praised for staring down the corporate titans, but the Republican congressional leadership viewed the episode as "a display of naked political power never seen before in this nation . . . We have passed within the shadow of police-state methods."

The charges of special-interest dealing—illegal corporate campaign donations, the ITT antitrust settlement, the milk money—strike at the heart of the democratic credo. If government serves all equally and favors none, then it is surely a high crime to manipulate important policy decisions in exchange for generous campaign contributions.

Corporate Contributions

THE AFL-CIO charges: "Officials of his campaign committee and his personal attorney extorted illegal campaign contributions from corporations which were dependent on maintaining the good will of the government."

In the broad sense, that challenges the past of both parties, nearly all presidential candidates, senators and congressmen. By loophole or evasion, the usual fund-raising practices do not constitute illegal extortion, but the distinctions which make them lawful are lost on a great many citizens. The public sees both parties sucking up corporate money (and union money, for that matter). In exchange for generous contributions, the donors receive special consideration when they seek self-interest legislation or policy changes.

Lyndon Johnson invented the President's Club, a device to shower special attention on the biggest contributors. It was the Democratic Party which dreamed up expensive ads in convention programs as a way to milk money from big defense contractors (the Democrats then secured an IRS ruling that the cash was tax-deductible as a legitimate business expense).

When the ITT scandal first surfaced, it was only mildly embarrassing to Sen. Edmund Muskie, the Democratic presidential candidate, that one of the central players—ITT director Felix Rohatyn—was also serving on Muskie's campaign finance committee.

In money politics, the players sometimes get mixed up that way. Milton P. Semer, who was chairman of Muskie's election committee in 1972, was the man who delivered $100,000 in milk money to Herbert Kalmbach, the Nixon lawyer, in 1969. And, as the President himself pointed out recently, the dairy lobbyists found other friends in Washington besides the White House when they were pushing for increased price supports on milk in 1971.

The scores of Democrats who bombarded the Agriculture Department on the milk issue were presumably representing their constituents, the dairy farmers of America. Or were they snuggling up to a lobby which hands out lots of money to both parties at election time? Nobody has said much about why the dairymen gave $51,600 to the weakling presidential campaign of Rep. Wilbur Mills, who writes the tax laws as chairman of the House Ways and Means Committee. Or why the milk lobbyists gave $6,100 to Sen. Hubert Humphrey, especially the $5,000 to help pay off his campaign debts after he lost the Democratic nomination.

"There is no better food, no more wholesome food, no more nutritious food than milk or dairy products," Humphrey told the Senate when he urged that the milk price supports be jacked up even higher than Mr. Nixon's level.

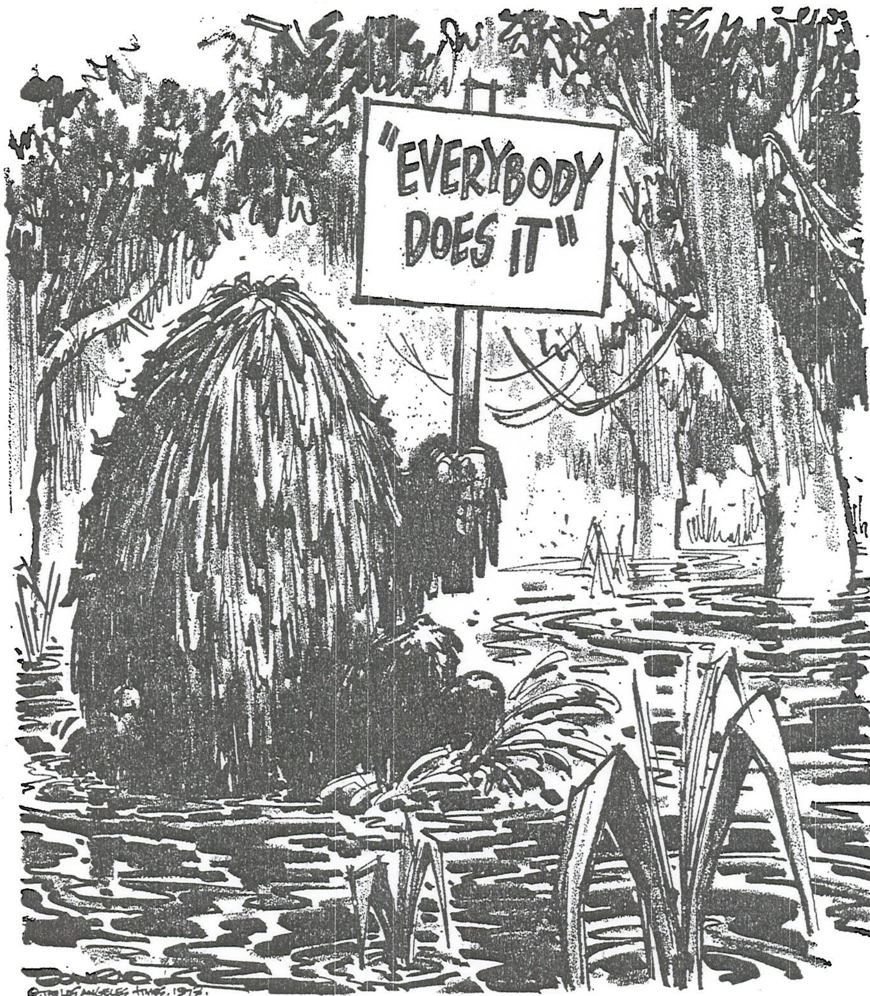
The dairymen also gave $15,000 to Sen. Walter Huddleston (D-Ky.) and $7,500 to Sen. Richard Clark (D-Iowa) *after* they were elected. Both freshmen serve on the Senate Agriculture Committee, where the dairy cooperatives were pushing legislation. They even gave $2,500 to Sen. Bob Dole (R-Kan.), who is not up for reelection until next year—but who also serves on the Agriculture Committee.

"I wouldn't give a damn if they didn't give a dime," Sen. Humphrey once explained to a reporter, "I'd still work for the Minnesota dairy farmer." That is probably how most would explain it, including the President.

The point is not that these contributions were bribes, but that the shadowy areas of *quid pro quo* and special-interest favoritism are hardly unique. They lurk behind most big issues in Congress as well as in the executive branch. It has been, and is, the way of Washington. One could make the same point by matching AFL-CIO campaign contributions against the roll calls on crucial labor legislation.

Backroom Contacts

BACK-CHANNEL DEALING did not begin with the ITT case either. The settlement of that giant conglomerate's antitrust problems involved an extraordinary series of private consultations between ITT men and the White House, the Attorney General and his



Conrad in the Los Angeles Times

deputies, with the as yet unproved inference that the GOP settled in exchange for a $400,000 donation.

In the early 1960s, when the du Ponts of Delaware had a billion-dollar tax problem, they hired Clark Clifford to guide their argument through the inner chambers of the executive branch. Ordered to divest its General Motors stock because of antitrust implications, the family faced a tax liability of more than $1 billion unless Congress passed extraordinary legislation of forgiveness. Congress, as usual, was willing, but would the Kennedy administration go along?

Clifford, who was advising President Kennedy on foreign intelligence matters then, arranged some appointments for the folks from Wilmington—private audiences with the Treasury secretary, the attorney general, the deputy attorney general, the assistant attorney general for antitrust, and the general counsel of the Treasury.

The arguments were apparently persuasive, because the administration retreated to a position of neutrality. The Justice Department originally had opposed any special tax consideration for antitrust violators, but the Treasury conveyed to Congress that the administration would leave it to the lawmakers. They promptly passed a law cutting the potential tax liability by approximately $650 million.

Two years later, when Johnson was President and Clark Clifford was his close adviser, the du Pont tax matter came up again and Clifford helped negotiate a favorable interpretation at Treasury of the 1962 settlement—one that saved his clients about $56 million in taxes.

One accusation which the AFL-CIO handbill doesn't mention is the mysterious $100,000 from Howard Hughes, supposedly a campaign contribution but for some reason delivered to the President's close friend, Florida businessman Bebe Rebozo. Of course, the same Hughes delivery man also took $50,000 in cash personally to Vice President Hubert Humphrey for his 1968 campaign.

Obstruction of Justice

THE CHARGES OF obstruction of justice are virtually unique to the Nixon White House. Nothing is previous administrations comes close to the wholesale cover-up activities—going to the paper shredder with incriminating evidence, persuading key witnesses to perjure themselves, blocking FBI

agents from pursuing leads. The episodes surrounding Watergate and the Ellsberg cases probably provide the strongest criminal case against the administration, though it is still disputed whether the evidence directly implicates the President.

In the Ellsberg matter, Mr. Nixon is accused of directly trying to influence the outcome, first by suppressing evidence of the "plumbers" burglary, then by having the FBI director's job discussed with the trial judge in the middle of the trial.

Backroom contact with judges is usually considered unethical. LBJ did it with his old friend, Abe Fortas, though not on pending cases. When Fortas was on the Supreme Court, he also sat in on President Johnson's war councils, developing Vietnam strategy, even though the Supreme Court ultimately would be faced with crucial war-related issues — the free-speech rights of antiwar activists, the constitutional limits on presidential war-making. When the Senate failed to confirm Fortas as chief justice, that private dealing with the White House was part of the case against him.

When the Bobby Baker case surfaced, President Johnson did not block the prosecution of his former Senate aide, accused of influence peddling. However, people high in the Johnson administration did try to sidetrack at least part of the case against Baker in the pre-trial stages.

A memorandum, purportedly signed by B.W. Fridge, special assistant to the secretary of the Air Force, was leaked to the press, intended to discredit Don Reynolds, one of the key witnesses against Baker. The memo revealed derogatory information from Reynolds' service record. The New York Times reported that White House aides approached at least two publishers, attempting to have them kill or alter articles based on the Reynolds testimony.

White House attempts to use the CIA in the Watergate cover-up are also part of the case against Mr. Nixon. Nothing quite like that exists in the past, but the CIA was heavily implicated in domestic affairs long before now.

Under Eisenhower and Kennedy, the CIA pumped millions of dollars into domestic institutions which supposedly were independent—labor unions, foundations, magazines, everything from the National Student Association to the American Newspaper Guild. The CIA money was funneled to them in secret; the rationale was, as usual, national security.

That brings us to the last charge—the negligence of presidential responsibility — which, in effect, sums up all of the Watergate crimes which happened right around Mr. Nixon and holds him responsible for them. As President, he promised to uphold the laws and the Constitution, and it is for congressmen and senators to decide where his failure to do so is of such a magnitude that he ought to be removed.

James Madison made the point of presidential responsibility in 1789 when he argued that the chief executive must retain control over the removal of officers he has appointed. "It will make him, in a peculiar manner, responsible for their conduct and subject him to impeachment himself," Madison declared, "if he suffers them to perpetrate with impunity high crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses."

A Line in the Dust

THE PAST EXCESSES of presidential power, the antecedent scandals of spying and manipulation and evasions, of course, do not make the present ones more acceptable. The President could build his defense around them, if he ever comes to trial in the Senate, but a public already shocked by his stewardship is not likely to find that approach very appealing.

What the public has to understand is that if it asks Congress to impeach and try Mr. Nixon, it is really asking for much more than that. Impeachment on these offenses implicitly requires Democrats and Republicans alike to rethink a lot of recent history, a great many examples of excessive governmental power, and to render judgment not just on Mr. Nixon, but on the political past.

That could produce a new and higher standard. It could distill a more cautious definition of presidential power, of the meaning of "national security," and of the sanctity of the Constitution. To draw a line around those offenses and declare that they are forbidden, Congress must tacitly acknowledge that electronic spying, excessive presidential secrecy and power, abuses of special-interest dealing—that all these are maladies of this era, not just of this President.

Impeachment would be a line drawn in the dust, an explicit halt to the drift toward presidential supremacy, set above the Congress and above the law. The act of indictment would specify the forbidden activities for all time.

If Congress chooses not to face that painful therapy, the consequences are fairly clear. In the ways of Washington, the past slides easily into precedent. The noisy controversy fades and future history asks merely: What happened? What happened when all of these presidential offenses were revealed to Congress? If the answer is nothing, that is what will shape the precedent.

Just as the Nixon White House looks back on the unpunished excesses of recent history to justify its own abuses, future Presidents would be able to look upon Watergate as their license, not their proscription.