

Law Professors Find Basis to Impeach

How Academics See It

By John Saar
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Twelve of the nation's leading law professors believe the edited transcripts of White House tape recordings support an impeachment charge of obstruction of justice against President Nixon, or at least warrant continuing investigation by the House Judiciary Committee.

Six of those contacted by the Washington Post in a telephone survey found clear evidence in the transcript that Mr. Nixon ordered his counsel, John Dean, to make a "hush money" payment to Watergate burglar E. Howard Hunt during a March 21, 1973, conversation in the Oval Office.

Six other professors who found transcripts inconclusive on this and other issues still wanted further probing by the House Judiciary Committee, which is investigating grounds for the impeachment of Mr. Nixon. Several of the six coupled this belief with a conviction that the committee members should hear all the actual tapes before reaching a decision.

None of the 12 professors accepted the White House interpretation of the transcripts.

In a national television address on April 29, President Nixon said the transcripts would "once and for all" prove his innocence of involvement in the Watergate coverup. A White House summary that preceded release of the transcript on April 30 also argued that the 1254 pages of edited conversation would exonerate the President.

"From the President's own mouth, from his own tapes," said University of

Chicago constitutional expert Philip B. Kurland, "there is substantial evidence of subornation of perjury and obstruction of justice in the payments to blackmailers."

Like the majority of those who found prima facie (apparent on the face of it) evidence of wrongdoing by the President in the edited transcripts, Kurland referred to the March 21 meeting at which Mr. Nixon and Dean discussed "hush money" payments to Hunt.

Calling his interpretation of the ambiguous transcript "very different from the President's," Kurland, a consultant to the Senate Watergate Committee, said, "There was no indication except that he wanted the payment to Hunt to go ahead."

The grounds for a subornation of perjury charge against Mr. Nixon arose during the same meeting, Kurland said, when the appearance of witnesses before the grand jury was discussed.

The transcript includes this passage:

Haldeman: You can say I have forgotten too can't you.

Dean: Sure but you are chancing a very high chance for perjury situation.

President: But you can say I don't remember. You can say I can't recall. I can't give any answer to that that I can recall.

Referring to "a long series of improprieties and an amoral atmosphere in the White House," Kurland said he was particularly struck by the "improper use" of Assistant Attorney General Henry Petersen.

"The President used Petersen to find out what was going on in the grand jury. He was searching for ways of influencing the grand jury or finding out what they were doing with a view to forestalling them."

Michael I. Sovern, dean of Columbia University Law School, prefaced a telephone interview with the comment that he hadn't read a great deal of the transcripts and might not be able to answer. When asked whether he saw prima facie criminal grounds for impeachment, he said: "Yes, I've read enough to answer that. The 21st tape followed by the delivery of the cash is prima facie obstruction of justice."

In the indictment of seven former White House aides, the special prosecutors' office has charged that \$75,000 was delivered to Hunt's lawyer on the evening of March 21 — just hours after the Nixon-Dean meeting.

During the Oval Office conversation earlier that day, Sovern said, Mr. Nixon encouraged Dean to make the payment to Hunt with such phrases as "You have to come up with the \$120,000" and to "keep the cap on the bottle."

"Assume this was not the President of the United States," Sovern stated. "If you were an assistant district attorney and you had this evidence, you'd take the case to criminal trial."

On the face of Mr. Nixon's words, Dean would have "failed to carry out his instructions if the money for Hunt hadn't been paid," Sovern contended.

Although many of the 12 law instructors professed themselves "shocked," "appalled" and in one case "disgusted" by the subjects and language of the White House discussions, they were asked to concentrate their comments on the criminal implications. Some did so only after protesting that they did not accept the narrow area of criminal offenses delineated by Presidential counsel James D. St. Clair as the only grounds for impeaching Mr. Nixon.

Telford Taylor, former U.S. war crimes prosecutor and professor of law at Columbia University, said, "From the transcripts I don't see conclusive proof of indictable offenses, but there is clear proof of improper use of the presidency." He cited "the use of the FBI and Internal Revenue Service against political enemies," and "the plain intention to cover up the involvement at Watergate."

There is prima facie — probable cause that a crime has been committed — evidence in the transcripts, said Preble Stolz, professor of law at the University of California, Berkeley. "The extracts I've seen don't persuade me the President is innocent. My inclination is there's a prima facie cause for impeachment. It looks to me as though he told Dean and Haldeman to go up there and pay hush money to Hunt."

William Cohen, professor of law at Stanford University, shared that opinion: "I don't see how anyone could read that tape other than that he was ordering John Dean to make the payments."

"It would be hard for me to believe an affidavit from 1500 angels that the President is telling the truth," he added.

Co-author of "The Federal Courts and Federal System," Paul K. Mishkin, stressed the need for the House Judiciary Committee to listen to the tapes. "It's perfectly clear that the meaning of conversations could be affected by inflections and the pieces denoted as deleted may be key passages, so you could not rely on them as evidence," Mishkin said.

Many of those interviewed expressed distaste at what was often termed "the amorality" of planning conversations between the President and his key aides in which expediency figured high and matters of principle rarely if at all.

The other four professors interviewed were Ralph C. McCullough, associate dean, University of South Carolina Law School; Adrian S. Fisher, dean, Georgetown Law School; William J. Pierce, associate dean and professor of law, University of Michigan, and Gerhard Casper, professor of law and political science, University of Chicago.