Judiciary Staff's Case for Impeachment

Following are excerpts from a "Summary of Information" produced by the House Judiciary committee's impeachment inquiry staff:

Watergate

Approval of a Political Intelligence Plan Including the Use of Electronic Surveillance

The evidence available to the committee establishes that on May 27 and June 17, 1972, agents of CRP, acting pursuant to a political intelligence plan (which included use of illegal electronic surveillance), authorized in advance by John Mitchell, head of CRP, and H. R. Haldeman, the President's chief of staff, broke into the DNC headquarters at the Watergate for the purpose of effecting electronic surveillance; and that this was part of the President's policy of gathering political intelligence to be used as part of his campaign for re-election. The illegal activities contemplated by the plan were implemented and supervised by Howard Hunt and Gordon Liddy, who from July, 1971, to the time of their transfer to CRP were employed by the President to conduct investigations, and who had authorized to engage in illegal covert activity under the supervision of John Ehrlichman.

Containment—July 1 to Election

From the beginning of July, 1972, until after the presidential election in November, President Nixon's policy of containment—of "cutting the loss"—worked. The policy prevented disclosure that might have resulted in the indictment of high White House and CRP officials and might have jeopardized the outcome of the November election. The policy worked because two of the President's assistants, John Dean, counsel to the President, and Herbert Kalmbach, personal attorney to the President, assigned to carry out the President's policy, did their jobs well—with the full support of the power and authority of the office of President of the United States...

Tape recordings of presidential conversations in the possession of the committee establish that the plan of containment prior to the election had full approval of the President. On June 30, 1972, the President told Haldeman and Mitchell that his desire was to "cut the loss." ... On September 15, 1972, the President told Dean and Haldeman, "So you just try to button it up as well as you can and hope for the best. And, ... remember that basically the damn thing is just one of those unfortunate things and we're trying to cut our losses." ... On the morning of March 21, 1973, the President told Dean, "You had the right plan, let me say, I have no doubts about the right plan before the election. And you handled it just right. You contained it. Now after the election we've got to have another plan, because we can't have, for four years, we can't have this thing—you're going to be eaten away. We can't do it." ... And on March 22, 1973, the President told Mitchell, "the whole theory has been containment, as you know, John."...

As of the beginning of July, 1972, the situation was in fact contained. Haldeman told the President and Mitchell on June 30, 1972, "As of now there is no problem there." But, "As, as of any moment in the future there is, there is at least a potential problem." ... The objective was to maintain, to the extent possible, the stability of this situation. That is what Dean and Kalmbach were assigned to do.

Dean was assigned by Ehrlichman to monitor the FBI investigation for the White House ... by obtaining on an ongoing basis its fruit ... and by enlisting the CIA to help narrow the scope of the investigation ... Dean regularly obtained information from Gary about the progress of the investigation ... He sat in on all FBI interviews of White House personnel—a system arranged by Ehrlichman with Gray ... Thus Dean was able to anticipate the leads the FBI would follow and prepare those persons who had knowledge of the facts within CRP and the White House.... Instead of having White House staff members Colson, Kehrli and Krogh appear before the Watergate grand jury, Dean arranged with Assistant Attorney General Petersen to have their depositions taken outside the presence of the grand jury.

Kalmbach secured additional sources of funds for the clandestine payments to the Watergate defendants. By the middle of September (when he unconditionally withdrew from any further assignment in carrying out the President's decision) Kalmbach had delivered more than $187,000 in cash to the defendants or their attorneys ...

Investigations by federal agencies were successfully rebuffed. On July 5, 1972, when Mitchell was interviewed by the FBI, he denied knowledge of any information related to the break-in. Mitchell testified that, at the time of the interview, he had been told by Mardian and LaRue of Liddy's involvement in the break-in, but that the information had not been checked out; and that he was not volunteering information under any circumstances ...

Payments

Dean met with the President for almost two hours on the morning of March 21, 1973 ... Dean opened the meeting by briefing the President on the payment activity that had occurred. He told the President that there had been payments to Watergate defendants; that the payments were made to keep things from blowing up; that this activity constituted an obstruction of juctice; and that in addition to Dean, the President's chief of staff Haldeman, domestic adviser Ehrlichman, and his campaign director Mitchell were all involved ...

In response to this report the President did not condemn the payments or the involvement of his closest aides. He did not direct that the activity be stopped. The President did not express any surprise or shock. He did not report it to the proper investigatory agencies. He indicated familiarity with the payment scheme, and an awareness of some details—such as the use of a Cuban committee...

After this initial briefing, Dean turned to this crisis precipitated by Hunt's demand. Dean explained that these demands by Hunt, and possibly others, could, over the next two years, amount to a million dollars. The President said that one million dollars was available. The troubesome issue was exactly how it could be raised and used to avoid disclosure of the cover-up. The President considered various alternatives...

The discussion had been addressed primarily to a general consideration of the necessity for payments over the long term. There still remained the immediate demand by Hunt for approximately $120,000. The President said that Hunt's demands should be met. At the very least, he reasoned, the payment would buy time ...

The President and Dean continued to discuss the payments. They discussed Haldeman's transfer of the $350,000 to the CRP in December and January for the purpose of meeting the demands made by Hunt and the other defendants. They considered the pros and cons of adopting a new strategy and calling a halt to the payments. At the conclusion of that discussion on March 21, the President stated that they could not let things blow ...

After about an hour of discussion between the President and Dean, Haldeman entered the meeting. In Haldeman's presence, the issue of the immediate payment to Hunt was again discussed. The President stated that they had better well get it done fast ... The President also instructed Dean and Haldeman to lie about the arrangements for payments to the defend-

ants...

On the afternoon of March 21, 1973, the President met with Dean, Haldeman and Ehrlichman ... During this meeting the President asked what was being done about Hunt's demand. Dean said Mitchell and LaRue knew of Hunt's feeling and would be able to do something ... Late that evening, March 21, 1973, LaRue, after talking to Mitchell, delivered $75,000 to Bittman ... On the next day, March 22, Mitchell told Haldeman, Ehrlichman and Dean that Hunt was not a "problem any longer."... Later that day Ehrlichman told Krogh that Hunt was stable and would not disclose all ... A few days later, on March 27, 1973, Haldeman talked to the President about payments to Hunt—though it is unclear to which specific payment he referred. "Hunt is at the grand jury today," Haldeman said. "We don't know how far he's going to go. The danger area for him is on the money, that he was given money. He is reported by O'Brien, who has been talking to his lawyer, Bittman, not to be as desperate today as he was yesterday but to still be on the brink, or at least shaky. What's made him shaky is that he's seen McCord bouncing out there and probably walking out scot free." ... On April 16, 1973, Dean had a conversation with the President during which they discussed settlement of the Hunt demand. Dean said to the President that Mitchell had told him, Haldeman and Ehrlichman on March 22, that the problem with Hunt had been solved. The President expressed his satisfaction that the Hunt problem had been solved "at the Mitchell level." The President also said he was "planning to assume some culpability on that. solved "at the itchell level." The (Unintelligibe)" ...

In the middle of April, the President tried to diminish the significance of his March 21 conversation with Dean. He tried to ascribe to the payments a purpose that he believed would make them appear innocent and within the law. On April 14, the President instructed Haldeman and Ehrlichman to agree on the story that payments were made, not "to obstruct justice," but to pay the legal fees and family support of the defendants...

On the morning of April 15, 1973, the President and Ehrlichman discussed possible explanations that could be given regarding the motives in making payments to the defendants... Later that morning the President and Kleindienst discussed the effect of motivation for payments on criminal liability. ... On the night of April 15, according to Dean's testimony, the President told Dean he had only been joking when he told Dean on March 21, 1973, that it would be easy to raise a million dollars to silence the defendants... (The President many months later stated that this conversation with Dean had not been recorded.) ... On April 16, 1973, the President initiated a conversation with Dean in which he tried to suggest that, on March 21 Dean told him not about Hunt's threat, but only about Hunt's need for money ... Both of these suggestions regarding the March 21 meetings are refuted by the transcripts, which, under compulsory process, were obtained much later...

Clemency

In the transcripts of the conversations of February 28, March 21 and April 14, 1973, the President spoke of his understanding of the question of clemency for Hunt. On February 28, 1973, the discussion was general. The President spoke to Dean about the Watergate defendants' expectations of clemency. The President asked, "What the hell do they expect, though? Do they expect that they will get clemency within a reasonable time?" Dean told him that he thought they did. The President asked whether clemency could be granted "within six months." Dean replied that it could not because, "This thing may become so political." ... There was no specific mention of Colson's assurances to Hunt, but the President did express familiarity with Hunt's personal situation, the death of his wife...

On March 21, 1973, following Hunt's increased demands for money... it was not Dean but the President who first mentioned Colson's assurance of clemency to Hunt: "You know Colson has gone around on this clemency thing with Hunt and the rest." Dean added the apparent expectation concerning time. "Hunt is now talking in terms of being out by Christmas." The President seemed surprised by the time commitment...

On March 21, 1973 the President acknowledged his role in the assurance to Hunt...

In the April 14, 1973, transcript, the President further explained his role. The President acknowledged that, contrary to Ehrlichman's direction, Colson had in fact raised with him the question of clemency in a tangential way. The President said: "As I remember a conversation this day was about five-thirty or six o'clock that Colson only dropped it in sort of parenthetically, said I had a little problem today, talking about Hunt, and said I sought to reassure him, you know, and so forth. And I said, Well. Told me about Hunt's wife. I said it was a terrible thing and I said obviously we will do just, we will take that into consideration. That was the total of the conversation."... While in these conversations the President suggests that his discussion of clemency for Hunt was limited, he acknowledges an assurance that Hunt would be considered for clemency based on his wife's death.

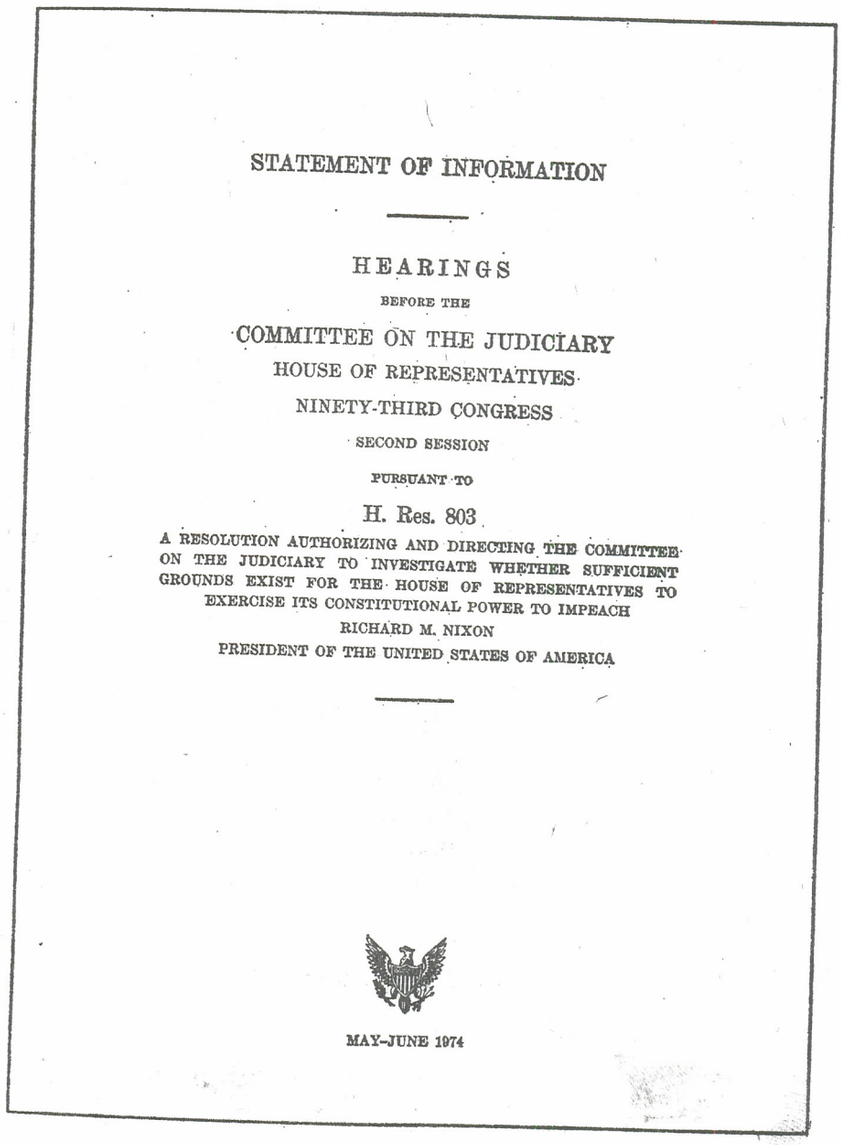
In the conversations of March 21 and April 14, 1971, the President acknowledged his predicament on the issue of clemency for Hunt: the President feared that any action that seemed to Hunt a repudiation of the assurance of clemency would lead Hunt to "blow the whistle." On the other hand, the President was aware that the public attention to Watergate had grown so much since January, when the assurance was made, that clemency to Hunt by Christmas 1973 would be politically impossible because it would require direct and public action by the President...

The President concerned himself with clemency not only for the Watergate defendants who were in jail for the break-in itself, but also for three of his associates involved in the cover-up, Mischell, Magruder, and Dean. The President's purpose was to induce them to hold the line and not implicate others.

By the middle of April, 1973, the cover-up had already begun to fall apart. The President knew that Magruder and Dean were talking to the prosecutors. In an early morning meeting on April 14, 1973 the President directed Haldeman and Ehrlichman to convey to Magruder, and also to Mitchell, who had been implicated by Magruder, assurances of leniency. The President carefully explained how he wanted Haldeman and Ehrlichman to handle these assurances...

Deception and Concealment

In order for the cover-up to be successful, those who were responsible for the Watergate burglary and other activities of a similar nature had to remain silent. This was the purpose of the payments and assurances of clemency. At the same time, those seeking



STATEMENT OF INFORMATION

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 803

A RESOLUTION AUTHORIZING AND DIRECTING THE COMMITTEE ON THE JUDICIARY TO INVESTIGATE WHETHER SUFFICIENT GROUNDS EXIST FOR THE HOUSE OF REPRESENTATIVES TO EXERCISE ITS CONSTITUTIONAL POWER TO IMPEACH

RICHARD M. NIXON

PRESIDENT OF THE UNITED STATES OF AMERICA

MAY–JUNE 1974

to ascertain the facts, and to determine whether there was any truth to charges alleging White House responsibility for Watergate, had to be either discouraged or deceived.

In order to achieve the second objective, President Nixon himself chose, upon occasion, to assure the public that his aides were not involved with payments or assurances of clemency. The President made public statements on these matters which were false and misleading. The President also assured the public, upon occasion, that he had ordered, and even personally undertaken, thorough investigations into Watergate, that those investigations found no White House involvement, and that further investigation would therefore be unnecessary. The President asserted in public statements that thorough investigations were reflected in three separate reports by his immediate staff—tha August, 1972, Dean report; the post-March, 1973, Dean report; and the Ehrlichman report of April, 1973—and that such reports concluded that the White House staff had been in no way involved in Watergate.

A. The August, 1972, Dean Report

At the time of President Nixon's August 29, 1972 press conference, Dean had not made a report directly to the President. According to the President's own logs, throughout the entire summer Dean and the President never met prior to September 15, 1972. Dean has testified that he first heard of this "report" in the President's press conference, and no independent evidence exists that such a report was ever completed or undertaken . . .

The transcript of the March 21, 1973 morning meeting between the President and Dean also indicates that, in the summer of 1972, Dean was helping with the cover-up, not conducting a "complete investigation." . . . At the end of the March 21, 1973 morning meeting the President told Dean that there was no doubt about "the right plan before the election," that Dean "handled it just right," and that Dean had "contained it."...

B. The March 1973 Dean Report

On August 15, 1973, the President said: "On March 23, I sent Mr. Dean to Camp David, where he was instructed to write a complete report on all he knew of the entire Watergate matter."

The "report" that the President had in fact requested Dean to make in March, 1973, was one that was designed to mislead investigators and insulate the President from charges of concealment in the event the cover-up began to come apart. When the President and Dean discussed a report in a March 20, 1973 telephone conversation, the President told Dean to "make it very incomplete."...

C. The Ehrlichman Report

At a press conference on September 5, 1973, the President said that when he realized that John Dean would not be able to complete his report at Camp David, he assigned John Ehrlichman to conduct a "thorough investigation" to get all the facts out. . .

The President's statement about a White House report on Watergate was, in this case, too, misleading. The "report" Ehrlichman had been asked to prepare in April, 1973, was one designed to mislead the investigators, insulate the President from the appearance of complicity and explain the President's failure to take action on Dean's disclosure of March 21, 1973. The President also intended to use the "report" to get public personal credit for the disclosures that were on the verge of being made through other agencies, in spite of White House attempts to cover them up.

In mid-April, 1973 the President had reason to fear these disclosures. Magruder and Dean were meeting with the prosecutors. . .The President met with Haldeman and Ehrlichman at 8:55 a.m. on April 14, 1973. Ehrlichman told the President that Colson had reported that Hunt would testify because there was no longer any point in remaining silent and that Hunt's testimony would lead to the indictment of Mitchell and Magruder. . . The President decided that, as Colson had advised, their best course would be to pressure John Mitchell into accepting the blame for Watergate. If Mitchell could not be persuaded voluntarily to accept the blame, then the White House could "make a record" of its efforts for the purpose of showing that the White House had been actively engaged in trying to get out the truth about Watergate. Ehrlichman suggested that the President could put pressure on Mitchell by telling him that the Ehrlichman report showed Mitchell's guilt.

There is no evidence that when the President learned of such conduct he condemned it, instructed that it be stopped, dismissed the person who made the false statement, or reported his discoveries to the appropriate authority (the Attorney General or the Director of the FBI. On the contrary, the evidence before the committee is that the President consoned this conduct, approved it, directed it, rewarded it, and in some instances advised witnesses on how to impede the investigators.

Statements to Cover Up the Cover-up.

Starting in late March, 1973, the President received reports from his assistants that the cover-up was threatened from four different sources. First and foremost was Hunt, whose threats were discussed with the President on March 21, 1973. Hunt's immediate demand for money could be taken care of and money for the long term could be obtained. But there was also Hunt's expectation of clemency which the President realized was politically impossible. Second, there was McCord's letter to Judge Sirica and the decision to reconvene the grand jury. Third, there were the dangers posed by threatened disclosures by key subordinates in the Watergate cover-up. The President showed concern when Dean and Magruder started to talk to the prosecutors in mid-April. Fourth, on April 14, 1973 there was a fear discussed by the President, Haldeman and Ehrlichman that Hunt had changed his mind, and that he would talk to the prosecutors about the payments and the clemency offers. . .

There is clear and convincing evidence that the President took over in late march the active management of the cover-up. He not only knew of the untruthful testimony of his aides—knowledge that he did not disclose to the investigators—but he issued direct instructions for his agents to give false and misleading testimony. The President understood that his agents had been and continued to coach witnesses on how to testify so as to protect the cover-up; and the President himself began to coach witnesses.

Abuse of Presidential Powers

The evidence relating to the Watergate break-in and cover-up, reviewed above in detail, demonstrates various abuses of presidential power, including:

- The directive to the CIA to interfere in the FBI investigation
- The use of Counsel to the President John Dean to interfere with the investigation.
- Offers of executive clemency for improper purposes.
- Obtaining information from Assistant Attorney General Petersen and passing it on to targets and potential targets of the investigation.
- Discouraging the prosecutors from granting immunity to Dean.
- The firing of Special Prosecutor Archibald Cox.

In this section of the memorandum, other instances of possible abuse of presidential powers are examined. They involve seven areas: (1) intelligence gathering, including the 1969-1971 wiretaps authorized by the President and conducted by the FBI; the wiretap and FBI surveillance of Joseph Kraft, the Huston Plan, the Secret Service wiretap of Donald Nixon, and the FBI investigation of Daniel Schorr; (2) the Special Investigations Unit, including the Fielding break-in and the use of the CIA; (3) the concealment of intelligence-gathering activities, including the concealment of the records of the 1969-71 wiretaps and the Fielding break-in, and the offer of the position of FBI Director to the judge presiding in the Ellsberg trial; (4) endeavors to use the Internal Revenue Service for the political benefit of the President; (5) the appointment of Richard Kleindienst as Attorney General; (6) the 1971 milk price support decision, and (7) expenditures by the General Services Administration on the President's properties at Key Biscayne and San Clemente.

The issue in each of these areas is whether the President used the powers of his office in an illegal or improper manner to serve his personal, political or financial interests.

Illegal Intelligence Gathering

From early in the President's first term, the White House, at his direction or on his authority, engaged in a series of activities designed to obtain intelligence for the political benefit of the President. These activities involved widespread and repeated abuses of power, illegal and improper activities by executive agencies, and violations of the constitutional rights of citizens. . .

Special Investigations Unit

There is evidence that the President encouraged and approved actions designed to provide information that would be used to discredit Daniel Ellsberg, the peace movement, the Democratic Party, and prior administrations. These actions included the break-in at the office of Dr. Lewis Fielding, Ellsberg's psychiatrist. There is also evidence that in aid of this information-gathering program the President authorized activities by the Central Intelligence Agency that violated its statutory charter.

The Plumbers had no police powers or statutory authority; indeed their existence was kept secret until 1973, after they had ceased functioning. Their primary purpose—to discredit Daniel Ellsberg for the President's political advantage—violated Ellsberg's constitutional right to a fair trial on the criminal charges against him; it interfered with the fair administration of justice. On June 3, 1974 Charles Colson pleaded guilty to obstructing the trial of Daniel Ellsberg by carrying out the plan to publicly discredit Ellsberg. The Fielding break-in, conducted by agents of the Plumbers, also was a violation of Dr. Fielding's constitutional rights and at least one federal civil rights law, 18 U.S.C. No. 241. The President's chief domestic aide, John Ehrlichman,

has been convicted of this offense. The Committee could conclude that the break-in was a natural and foreseeable consequence of activities authorized by the President.

The use of the Central Intelligence Agency to prepare the psychological profiles of Ellsberg and to provide materials for Hunt's use in the Ellsberg project (as well as political intelligence-gathering by Hunt) involved the misuse of the President's power as Chief Executive. The CIA has no authority to engage in domestic activities. Indeed, its jurisdiction is expressly limited by statute to prohibit its involvement in domestic intelligence-gathering.

Misuse of the Internal Revenue Service

The evidence before the committee demonstrates that the power of the office of the President was used to obtain confidential tax return information from the Internal Revenue Service and to endeavor to have the IRS initiate or accelerate investigations of taxpayers.

This use of the IRS is an abuse of the powers granted to the President by the Constitution to superintend the agencies of the Executive Branch. The Constitution entrusts that power to the President with the understanding that it will be used to serve lawful ends, not the personal political ambitions of the President. This misuse of power is a challenge to the integrity of the tax system, which requires taxpayers to disclose substantial amounts of sensitive personal information. It is also a crime to interfere with the administration of the internal revenue laws, and to divulge confidential information. This policy of using the IRS for the President's political ends is an abuse of office and may be deemed by the Committee to constitute a violation of the President's duty to take care that the laws are faithfully executed.

The committee could conclude that attempts to bring about political discrimination in the administration of the tax laws—to have them "applied and administered with an evil eye and unequal hand," to use the classic test of discriminatory enforcement of the laws—is a serious abuse of the President's power and breach of his duty as Chief Executive.

Refusal of the President to Comply With Subpoenas From the Judiciary Committee

In only one instance has a person under investigation for possible impeachment refused to comply with congressional demands for information. In 1879, the committee charged with the duty of inquiry reported articles of impeachment against George Seward, former consul general at Shanghai. One article included a charge that Seward had concealed and refused to deliver certain records to the Committee. This suggests that the refusal to comply has been treated as grounds for impeachment. The precendential value is limited because the House adjourned before voting on the articles. Moreover, the Judiciary Committee, which had considered the question of Seward's refusal to comply with the demands of the committee, concluded that he had validly claimed his Fifth Amendment privilege against self-incrimination and thus refused to recommend a contempt citation.

Apart from precedent, however, the refusal to comply with impeachment inquiry subpoenas may well be considered as grounds for impeachment. Thus, the President's refusal likely violates two federal statues—2 U.S.C. § 192, making willful noncompliance with a Congressional Committee subpoena a misdemeanor and 18 U.S.C. § 1505, making it a felony to obstruct a lawful Congressional inquiry. But much more significant than the possible violation of a criminal statute is the conclusion that the President's noncompliance with the Committee's subpoenas is a usurpation of the power of the House of Representatives and a serious breach of his duty to "preserve, protect and defend the Constitution of the United States."

In refusing to comply with limited, narrowly drawn subpoenas, which seek only materials necessary to conduct a full and complete inquiry into the existence of possible impeachable offenses, the President has undermined the ability of the House to act as the "Grand Inquest of the Nation." His actions threaten the integrity of the impeachment process itself; they would render nugatory the power and duty of the legislature, as the representative of the people, to act as the ultimate check on Presidential conduct. For this most fundamental reason the President's refusal to comply with the Committee's subpoenas is itself grounds for impeachment.

Willingful Tax Evasion

There can be no doubt that the President knew that the Tax Reform Act reqiured that, for the claim of a deduction to be valid, a gift must be completed by July 25, 1969. It is also clear that the President knew that his return indicated that the gift had been made on March 27, 1969. The question which remains is whether the President knew that the gift had not been made on that date. . .

The willful evasion of taxes by a President would be conduct incompatible with his duties of office, which obligate him faithfully to execute the laws. A violation of law in the context of the tax system, which relies so heavily on the basic honesty of citizens in dealing with the government, would be particularly serious on the part of the President also if it entailed an abuse of the power and prestige of his office. As Chief Executive, he might assume that his tax returns were not subject to the same scrutiny as those of other taxpayers.

It was unlikely, for example, that the Archives would question a President as to the date of his gift. Although documents show that Archives employees thought that no gift was made in 1969, the Archives raised no question when the deed dated a year earlier was delivered in 1970.

In May 1973, when the President's tax returns for 1971 and 1972 were selected for audit by an IRS computer, agents were shown a copy of Newman's appraisal, which evaluated the papers as of March 27, 1969. The agents were satisfied without furthr inquiry. They did not ask whether the gift itself was made on that date; they did not ask to see the deed, as they would have done with any ordinary taxpayer, who did not have the power and prestige of the President.

Only after questions about the legitimacy of the deduction were raised in the press, did the Internal Revenue Service or the National Archives begin to re-examine their earlier acceptance of the President's claim. And only after the President learned that the IRS was going to reaudit his returns did he request the Joint Committee on Internal Revenue Taxation to examine his deduction for the gift of papers.