

Impeachment Presentation

Following are excerpts from Chief Counsel John Doar's and Minority Counsel Albert E. Jenner's presentations to the House Judiciary Committee Friday:

John Doar

... As an individual, I have not the slightest bias against President Nixon. I would hope that I would not do him the smallest, slightest injury. But, I am not indifferent, not indifferent to the matter of presidential abuse of power, by whatever President, nor the identification and proof or lack of proof of that abuse of power, if I believe that it has existed. And if, in fact, President Nixon or any President has had a central part in the planning and executing of this terrible deed of subverting the Constitution, then I shall do my part as best I can to bring him to answer before the Congress of the United States for this enormous crime in the conduct of his office.

If any President, if President Nixon or any President has committed high crimes and misdemeanors against the Constitution, then there has been manifest injury to the confidence of the nation, great prejudice to the cause of law and justice, and subversion of constitutional government.

Members of the Committee, for me to speak like this, I can hardly believe that I am speaking as I do or thinking like I do, the awesomeness of this is so, is so tremendous. But, with the awesomeness of the task it seems to me that the careful inquiry that you have made, lasting the last six and one-half months, has been no disservice, but rather great service to the American people.

Let me speak for a minute about Mr. St. Clair's response. Mr. St. Clair said to you you must have clear and convincing proof. Of course there must be clear and convincing proof to take the step that I would recommend this Committee to take... the concept is clear, as I understand it, to all of us as lawyers. That is, that you don't go forward in serious matters unless you are satisfied in your mind, and heart and judgment that legally and factually, reasonable men acting reasonably would find the accused guilty of the crime as charged.

Now... so far as a practical matter I am saying, of course the proof must be clear and convincing. It is just a matter of prosecutorial judgment or legal judgment, or congressional judgment. Of that I have no doubt.

Now, as I listened to Mr. St. Clair yesterday, and I have listened to him before, I must be candid with you that I have had this one observation. It has occurred to me time and time again that Mr. St. Clair has things upside down. He's had things upside down throughout these entire proceedings... I don't mean to attack Mr. St. Clair. Personally, I have nothing but the highest respect for him. But, I am talking about his concepts, his theories of the case, and I just want to say that, and it seems to me that his concept has been that the enormous power and authority of the presidency, it was permissible to use that on behalf of an individual who might be the subject of criminal charges. But, that is my opinion and only my opinion, worthless, really, for it is the facts, direct evidence, circumstantial evidence, time-tested inferences, and, of course, judgment and common sense in this summary of the factual information that we are trying to present to you.

Well, yesterday when I listened to Mr. St. Clair's argument and followed its symmetry and logic, I found myself writing in the margin of my notes, as incident after incident flashed back through my mind as to some of the things that Mr. St. Clair dealt with and didn't deal with, I thought to myself, if what Mr. St. Clair says is true, then why, why did that happen. Why did this other incident happen. Some of the instances, and I am just going to touch on a few, seem to me inexplicable in terms of the picture or the portrait Mr. St. Clair sketched for you.

I think everyone wants to believe our President. I wanted to believe that he had nothing to do with Watergate. But, event after event clicked through my mind, events that seemed, as I say, totally inexplicable within the logic of the case in the response of the President's lawyer.

by Doar, Jenner

What was his logic? AS I see it, it was the President that his policy as President was to be carried out, right or wrong. In the ITT matter, you remember he said he was the elected official. It was his right and responsibility to make the judgment, that the country expected the President to take action which in his judgment he felt sound to protect the country, that he was a President concerned with national security, and a President victimized by the stupidity of faithful but less than average subordinates, fooled by men into believing that they were innocent of an involvement, and mistaken in his judgment perhaps, but doing the right thing eventually in upholding the presidency, the Constitution, and there having been no real harm done to our country.

Now, when I say the why, I thought back, I thought back to a number of things. The first thing that occurred to me was the President's dictation on the evening of March 21st. During the evening of March 21st the President dictated his recollection of that day. You remember that he had received from John Dean that Jeb Magruder was likely to acknowledge to the Watergate prosecutor that he had committed perjury, and that that would implicate his associates, John Mitchell, Mr. Strachan and also possibly Mr. Haldeman.

He said that John Dean felt he was guilty of some criminal liability due to the fact that he had participated in actions which resulted in taking care of the defendants under trial. Dean was concerned, the President said, because everybody was getting their own counsel, looking out for themselves, and as the President said, one would not be afraid to rat on the other.

The President said that Mr. Halde-

man backed Dean up on this and advised the President that even Magruder would bring Haldeman down.

And then the President said, you know, to himself Mr. Haldeman's selection of Jeb Magruder is a hard one to figure out. He said Bob made few mistakes, but in this case, Rose was right. He picked a rather weak man, regardless of his appearance, who really lacked it when the chips were down.

He said to himself, the one option is perhaps, talking to his grand jury, is not for his key aides to appear, but he said that if they don't do that, that puts the buck back on the President. And he also saw very grave danger that somebody like Hunt was going to blow.

He recognized Hunt's problems. He needed \$100,000 to pay attorneys and handle other things, or else he was going to do and say things that would be very detrimental to Colson and Ehrlichman. The President labeled these in Dean's words as blackmail. He recognized that Hunt was in a bad position, he might be figuring on the benefit to himself by turning state's evidence.

The President said he felt bad because all of these people had done what they had done with the best of motives. He said he didn't think that Haldeman and Ehrlichman actually knew about the actual bugging of the Watergate. He knew that Dean didn't



JOHN DOAR

know. But, what he figured happened was it was Colson who was the pusher, and the driver, had pushed Hunt and Liddy so far, and they had followed what the President terms their natural proclivities, and taken that extra step and gotten everybody in trouble.

He said, he told himself how he learned about the Ellsberg break-in, and he said that Ehrlichman said he was about three or four steps away, that Krogh had a problem that put him in a straight position of perjury. The President remarked that it would be a tragedy because Krough was involved in national security work, nothing to do with Watergate.

He said finally that Strachan was really courageous. He acknowledged the matter, and according to Dean that he had transferred the \$300,000. Then he said finally John Mitchell was coming down in the morning so that they could figure out what to do next.

Now, that was what he dictated to himself that night.

Presented, confronted with serious charges of obstruction of justice by his key aides and associates, on the next morning, he called his Attorney General and he talked to him. What did he say to his Attorney General? He said to his Attorney General he would like him to give Senator Baker some guidance, he would like him to hold Baker's hand, to babysit him, starting like the next ten minutes. And the next day he called his director of the FBI and he talked to him. That was after Mr. McCord had read his letter in open court, and he called his director of the FBI and he gave him no information, he gave him no facts, no allegations, but he reminded him that he had told him in early July, Pat, I told you to conduct a thorough and aggressive investigation.

And then I thought of Henry Petersen, and that remarkable ten days between the 15th and the 25th of April, and again I asked myself why. Here we had Henry Petersen dealing directly face to face and man to man with his President, the chief law enforcement officer of the country with respect to the Watergate affair. The present Attorney General had recused himself. Mr. Petersen himself was the President's Attorney General. They spent in those ten days seven, eight, nine meetings, 20 phone calls. During that time Mr. Petersen was very forthcoming with his President, told him everything that was being developed, not the details of the grand jury information, but he sketched out sufficient so that the President had a clear idea of the nature of the charges that were being brought against the President's men, and an outline of the facts that would support those charges.

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On the tenth day the President met with John Ehrlichman and Robert Haldeman at noon for two hours. Following that meeting the President directed Robert Haldeman, one of the two men that Mr. Petersen had been telling him for the last ten days was a subject of this criminal investigation, and very likely, very likely to have criminal charges brought against him, and what does the President do? The President directs Mr. Haldeman to ask for some 20 of the tape recordings and to go and listen to the tape recordings all afternoon that day.

And the President—it is inexplicable perhaps of the President to call in some independent person to listen to

the tapes and to test and see what exactly was said on those taped so the President could review his recollection. This is the 25th of April. This is the 25th of April, and on that day Mr. Haldeman listened to the tapes and made detailed notes for three hours that afternoon, and then reported back to the President and talked to him for another hour about that.

And then the President's chief law enforcement officer, the man charged with investigating this matter, comes in and sees the President for an hour and 20 minutes.

Does the President tell Mr. Petersen that I have a tape recording system that will assist you and assist you in getting to the bottom of this? Does the President tell his Attorney General, his chief law enforcement officer that Mr. Haldeman has been listening to the tapes, the man Mr. Petersen says is a suspect, the subject of this investigation? He does not.

Mr. Petersen and he discuss generally, and maybe on that occasion, certainly on an occasion the day before or the day after, the President gives Mr. Petersen his view of what he and John Dean talked about on the 21st about the payment of the money and how he had told John Dean after drawing him out, in a series of questions, as was his custom, that that was wrong.

I find that also inexplicable within the logic of Mr. St. Clair's argument.

A third example, and as I say, these are just examples that I just touch on briefly, a third example is the events of the 20th of June, 1972. On the 20th of June, 1972, it was three days after the Watergate break-in. You remember when the Watergate break-in occurred there were three centers of government at that time or political activity at the direction of the President.

The President and his party, that is, Haldeman and Ziegler, were at Key Biscayne. John Ehrlichman and Gordon Strachan and Hibgy were in Washington. John Mitchell, Mardian, LaRue, Magruder were in Los Angeles. . . .

On the morning of the 20th, Mr. Haldeman . . . meets with Ehrlichman and Mitchell at 9 o'clock in the morning. Dean and Kleindienst join that meeting, and they meet from 9 to 10 o'clock. This is the first day that the President has come back faced with a possibility of certainly a very serious scandal within his administration.

What does the President do while his people, his key advisers are discussing this matter? The President is alone in his office, except for a three-minute talk with Mr. Butterfield during that morning until John Ehrlichman comes in and talks to him about 10:20. He does not participate, does not inquire, does not question, does not search out for facts from John Mitchell, or Richard Kleindienst, his Attorney General, or Mr. Ehrlichman who had been assigned to the case the day before to make an investigation, or two days before, or from John Dean who had been called back to get into it.

It is not until, it is not until 11:20 that morning that he has his first discussion . . . with Haldeman . . . And he has an 18½ minute discussion with Mr. Haldeman. We know that it was about Watergate, and then a year and one-half later that tape has been erased.

Those three things, plus one more that I want to mention to you, and that is that when you look into this, and think about this, and look at one every-one of the officials knew you ask yourself why wasn't Gordon Liddy fired? Why wasn't Gordon Liddy fired? It's just inexplicable within the logic of Mr. St. Clair's argument.

Now, I want to turn to the outline of this brief, and I want to call your attention to what President Nixon said on April 30th, 1973 . . .

"Until March of this year, I remained convinced that the denials were true and that the charges of involvement by members of the White House staff were false. However, new information then came to me which persuaded me that there was a real possibility that some of these charges were true, and suggesting further that there has been an effort to conceal the facts both from the public, from you and from me."

President Nixon, before entering on the execution of his office has twice taken, as required by Article II, Section 1, Clause 7, of the Constitution the following oath: "I do solemnly swear that I will faithfully execute the Office of the President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

Article II, Section 3 in Article II of the Constitution requires that the President "shall take care that the laws be faithfully executed." Under the Constitution, the executive power is vested in the President. But, of necessity, the President must rely on subordinates to carry out his instructions in the execution of his office.

In his statement of April 30th, President Nixon told the American people that he had been deceived by subordinates into believing that none of them were implicated and that none had participated in the efforts to cover up. The President said he recently received new information that persuaded him that there was a real possibility that some of the charges were true and he declared his determination to "get to the bottom of the matter."

Fifteen and one-half months later this Committee is now faced with the responsibility of making recommendations whether or not the House of Representatives should exercise its constitutional power of impeachment.

And the critical question in the Watergate matter, it seems to me, what the Committee must decide, is whether the President was duped by his closest political associates or whether, in fact, they were carrying out his policies and his decisions. I think this question must be decided one way or the other.

In short, the Committee has to decide whether in his statement of April 30, the President was telling the truth to the American people or whether that statement was part of a pattern of conduct designed not to take care that

the laws were faithfully executed but rather to impede their faithful execution in the President's personal interest and in his behalf.

This Committee has found that much of the evidence pertinent to this question and other questions is within the custody and control of the President. In defiance of subpoenas legally authorized, issued and served by the Committee, President Nixon has denied the Committee access to this evidence. Nevertheless, the Committee has considered evidence that is substantial, and this report summarizes that evidence.

Now, when we consider this evidence, we must proceed with caution. We must not find the President responsible for offenses of others. But likewise, we must not forget that we are dealing with an awesome crime, a constitutional crime of high crimes and misdemeanors.

Now, I would like to talk just a minute about conspiracy. You know the crime of conspiracy consists of several distinct elements . . .

There must be a combination of two or more persons to constitute a conspiracy. The person may plot or plan alone, but he cannot conspire alone.

The second element is that there must be a real agreement or a confederation with a common design. Mere knowledge, or negative or passive acquiescence is not enough. The agreement need not be in writing. It usually is not. Most often in these kinds of cases, as you all know, it is a matter of inferences deduced from the actions of the conspirators.

The third element is the existence of an unlawful purpose. Anyone who takes part in any part of the conspiracy is liable as a conspirator . . . The point I want to make, however, is that in this case, as I view it, this is not a conspiracy case. This is not a conspiracy case. I don't believe that it is possible to have a conspiracy involving the President of the United States. The President of the United States is different. He is supreme in effect because of his awesome power granted to him under the Constitution. Those that work for him as subordinates are more extensions of him than co-conspirators if there is an unlawful crime. I make that distinction, because I think it is an important one as we review the evidence.

This is not to suggest that the matters, the seriousness or the wrongness of the conduct that occurred is not similar to that which occurs in a criminal conspiracy. But, you just don't have co-participation. You don't have co-equals when you are dealing with the President of the United States. There is just one President, and one man when he is using his official, or performing his official duties, that is in charge and directs the operation. And the other people that serve him as subordinates and as associates, as I say, are extensions of that one man.

Now, proof of. We all know that in true cases of this kind of truth that the patterns are the same whether it is involving the question of impeachment of the President for abuse of power or whether it involves the question of co-conspiracy, that there is much circumstantial evidence that you have to look for. It is understandable that crimes of impeachment, at least the ones that we are considering today, must be proved in that way because the essence of the crime is concealment, duplicity, dissembling, prerequisites on the success of the unconstitutional venture.

There is another part of this proof that I think is important and that is that we have to distinguish as we go through the facts the difference between decisions and executions of the decisions. The President can establish a policy, can lay out a broad plan that there will be a certain cover-up. Then in executing that cover-up, the means used, the execution of that, will be carried out by subordinates. And one of the difficulties that we have, in analyzing this case it seems to me, is that we first have not looked at the presidential decisions, but we have looked at the means for carrying out those decisions. And we have gotten into such questions of payments and perjury and interference with official investigations, all means and carrying out this plan rather than analyzing whether, in fact, the President established the plan in fact. And when you get into the proof and try to find the proof of the means, you find yourself down in the labyrinth of the White House in that Byzantine empire where yes meant no and no was yes and maybe meant certainly, and it is confusing, perplexing and puzzling and difficult for any group of people to sort out. But, that is just the very nature of the crime, that in executing the means, everything will be done to confuse and to fool, to misconstrue so that the purpose of the decision is concealed . . .

Now, as I say, we are going to go over a great deal and try to help to put together and fit together the circumstantial evidence . . . But, what I want to talk about first is direct evidence because yesterday Mr. St. Clair said there was no direct testimony that the President directed this plan of the cover-up. And I want to state my thesis, my conviction, my judgment now.

My judgment is that the facts are overwhelming in this case that the President of the United States authorized a broad, general plan of illegal electronic surveillance, and that that plan was put into operation by his subordinates.

Of course, he did not know of the actual facts that the Watergate had been broken in on the 17th of June. There is no proof that he even knew that there had been a bugging operation going on there, no clear and convincing proof, although there is some reference in the transcript that he had some knowledge that information was coming from an intelligence operation. But, with respect to the plan, with respect to the plan, I say that decision came direct from the President or implemented through his two closest associates, Haldeman and Ehrlichman. Fol-

lowing that, I say that he directed, made the decision, the President made the decision to cover-up this shortly after the break-in on June 17th and he's been in charge of the cover-up from that day forward . . .

On the morning of March 21, 1973, just before the meeting ended . . . and the President is speaking and he says, and Haldeman and Dean are there, and he says: "All right. Fine. And, uh, my point is that, uh, we can, uh you may well come—I think it is good, frankly, to consider these various options. And then, once you, once you decide on the plan — John — and 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 are going to be eaten away. We can't do it."

Now, during that same conversation and in a number of other conversations, the President refers several times to the containment was the decision. Containment was the plan, containment was the decision. Contain-

On the 21st of March, he talks about having John Mitchell come down the next day. It's urgent he come down. Why does he want him to come down? He wants him to come down so that they can have a new strategy, not to develop for the first time a strategy, but to have a new strategy. All of that is direct evidence that the President directed and made the decision to cover up back shortly after the break-in.

Now you move back to the September 15th conversation, and I won't go into that, but I say to you, anyone reading that as a whole, and taking into consideration what the President knew at that time, can only conclude that that too is direct evidence that the President made the decision to have a plan of containment of cover-up shortly after the break-in.

You remember that when John Dean comes into the room, he says: "Well, you have had quite a time, John, you have finally got Watergate on the way." And he says, John Dean says: "Quite a three months."

In the President's transcript, the quote "quite a three months" which happens to go right back almost the 17th of June, it's not there. And then you read the June 30th excerpt of the transcript and you see the discussion between Haldeman and Mitchell and the President. And if that isn't direct evidence of a presidential decision to cover up, then I am badly mistaken.

So, those are direct evidence of proof of what I say is the matter that you have to consider, and weigh and decide in connection with the Watergate extent of this case . . .

Now, I will summarize with just one more observation. I realize that most people would understand an effort to conceal a mistake. But this was not done by a private citizen, and the people who are working for President Nixon are not private citizens. This was the President of the United States. What he decided should be done following the Watergate break-in caused



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action not only by his own servants, but by the agencies of the United States, including the Department of Justice, the FBI, the CIA and the Secret Service. It required perjury, destruction of evidence, obstruction of justice, all crimes. But, most important, it required deliberate, contrived, continued and continuing deception of the American people. It is that evidence, that evidence, that we want to present to you in detail and to help and reason with you, and this book is the basis, or a work product, to help you in that reasoning. . . .

Albert E. Jenner

. . . Now, as Mr. Doar said to you, it is very difficult for any man or woman to put himself or herself in the shoes of another. But, in part, as judges instruct juries, there must be an effort to do that. It is very difficult here to put yourself in the shoes of the President. But, you are all professionals who have been trained throughout your professional lives to do your level best to take an objective viewpoint. . . .

And may I make one personal reference? I have been here now since January 7th, I have been through all of these materials and I have read those transcripts and I have listened to the tapes. And ladies and gentlemen, I have never heard the President of the United States or any of his aides ever say, as Mr. St. Clair is wont to say, by any manner or words, this is my country, this is the Constitution of the United States that is involved. These

are the people of the nation who will be affected one way or the other by what I do or what I don't do. These are the people who will be affected if I don't seek out that to which I have been alerted.

I haven't heard any of that. There isn't a word. There isn't a phrase, there isn't an inference to be drawn from which you may find that.

Now, we are talking not about Mr. Nixon, we are talking about the presidency of the United States. The people of this nation revere the office of the presidency of the United States, and all of the presidents, the individuals who have been elected and sworn to the office of the presidency become, for the people of this country, deities, because they expect he—and maybe some day she, not far away, I hope—will have in mind that oath of office, will have in mind the provisions of the Constitution to uphold and defend that Constitution, to assure that the laws are faithfully executed and their liberties and their properties and all they hold dear will be protected by the office of the presidency of the United States.

As I say, you take the same oath, not only as lawyers, but you take the same oath when you are inducted into office as members of the Congress of the United States.

And I have been troubled by another thing. Constantly, throughout all of these proceedings, and while I have said to myself, yes, the President of the United States is elected in a general election going across the country by almost 220 million people who elect to decide to vote, but there is the Congress of the United States also elected and selected by the 220 million people, and it is a division, it is a part of the Constitution of the United States, and one of the three divisions to which the 220 million people turn and say, there are our representatives who have taken this oath to uphold and defend the Constitution of the United States.

And we learn as children in grammar school that there are three divisions invented by our forebearers, and there is no peradventure about that, to have checks and balances, the Legislative, the Judicial and the Executive, because those wise men realized what Abraham Lincoln said later, and perhaps others before him, Montesquieu, that once you create government you must take care, you must be diligent, to see that the government does not become a monster and destroy that for which it was created by you in the first place.

Now, this matter of reverence, you had on the witness stand Mr. Kalmbach. If he doesn't typify what happens to people who have reverence as we all have for the office of the presidency, but then comes close to the office itself as he did, and be affected by it with the tremendous candor and shame that that man had in appearing before you. That shame stuck out all over, and his apologies were over, and over, and over again, within the presence of the President, the office of the presidency. Now, what the wise men who created that Constitution said to themselves, we want a strong President. They weren't thinking of any individual, they were thinking of a strong office of the presidency. And you have read those debates. We have brought them to your attention. They were afraid that you as members of the legislature, if given too much latitude with respect to the office of the presidency, that you might subvert it. That is one of your problems here today, and why you are so concerned, why you are going to cast aside technical rules of evidence. Your constituents don't know about technical rules of evidence. They know that you are men and women of honor and dignity and have a love of country and a love of them as well. And you will worry and fret at night, and all day long in your ultimately reaching as part of the that you have to reach as part of the political process. Perhaps I would concede it is entirely a political process, but a political process for the preservation of this nation. And it is, the framers of the Constitution intended, and as appears from their debates, that the granting to you of the highest privilege that the people grant in creating this government, that is to bridge from the Legislative to the Executive, the executing department,

to grant to you the sole power of impeachment, the sole power of impeachment.

That is not to destroy the presidency or its office. What is it for? It is to continue to strengthen it and regardless of what your ultimate decision, majority decision, may be in this Committee, on the floor of the House, up or down in that decision, you will be strengthening the office of the presidency of the U.S. and the Executive Department in the interest of the people that you represent.

I wish to join with Mr. Doar—I join with him in all the remarks he has made, but I wish to emphasize the aspect of conspiracy and concealment and containment. . . . In the case of a conspiracy, you lawyers, and I know many of you have been very able trial lawyers, in civil and criminal cases and conspiracy cases, where there is secrecy and concealment, you must draw inferences. You don't have, you can't find the man with his hand in the cookie jar when you open the door suddenly, but you can see the pieces of the cookie, the crumbs, perhaps off in the corner of the room, when you suddenly open that door.

Now, in the light of all that, and with your permission again, Mr. Chairman, this is history. You are not recreating the Constitution; you are preserving it and you are strengthening the Constitution of the U.S. irrespective—and that is the way I wish to conclude these comments—irrespective of what your ultimate decision may be because it is being reached as lawyers of objectivity and looking at the evidence the way lawyers do, especially those of you who have for many years been litigators both on defense, on the plaintiff's side and in criminal cases, as former prosecutors, and as counsel representing the defense.