NYTimes JUL 27 1974

Excerpts From the Transcript of the Judiciary

Following are excerpts from the House Judiciary Committee's proceedings in Washington yesterday on the impeachment of President Nixon, as recorded by The New York Times:

MORNING SESSION

PETER W. RODINO JR., Democrat of New Jersey, chairman—According to the rules, we will proceed to the consideration of the proposed Articles of Impeachment. Mr. McClory, for what purpose . . .

ROBERT McCLORY, Republican of Illinois—Mr. Chairman, I have a motion at the clerk's desk which I have distributed among the members. I'm offering this motion, Mr. Chairman, to defer the conclusion of our proceedings for a period of 10 days unless we get—providing that we get assurance from the President by tomorrow noon that the 64 tapes—or 63 of the 64 tapes which the President has ordered to—which the Supreme Court has ordered to be made available to the District Court, Judge Sirica.

The reason I mention 63 is that 63 of the 64 tapes which were involved in the Supreme Court proceedings were also requested by us. We subpoenaed those and the President has failed to make them available to us.

Now, it's my understanding that these contain highly relevant material, highly relevant information which can be valuable to us in coming to a fair and full decision with respect to this impeachment inquiry and it seems to me for us to conclude our procedure without having available to us—or at least without having tried to make available to us—this additional information would not be consistent with our important role here.

And therefore, Mr. Chairman, I move the adoption of the motion.

JACK BROOKS, Democrat of Texas.—I'd like to rise in opposition to the motion and would point out that this order by the court is a very narrow order which is restricted to a criminal prosecution. It provides for only in camera inspection by the judge. There is nothing in this decision that gives any assurance whatsoever that this committee would ever receive any of these tapes. This committee has written to the President, has written again, has subpoenaed the President, has subpoenaed him again. He has refused to send us this and other material. We stand ready to receive any of these tapes or material now and have been ready for some weeks.

I want to say that we have been eminently fair to the President in this regard. This order does not give any assurance of the committee receiving any additional information. I don't think that the public would appreciate the delay of this important proceeding. I would be opposed to it, would ask the members to vote against this motion for delay.

[After debate the motion was defeated 27 to 11.]

[PAUL S. SARBANES, Democrat of Maryland, introduced a substitute for Article I of the proposed articles of impeachment. The text of the substitute proposal appears elsewhere on this page.]

MR. SARBANES: I would like to take a moment or two to speak on the substitute. It, of course, sets out Article I, a substitute for Article I as it pertains to the resolution of impeachment.

I think perhaps the thing that I could do that might be most helpful to the members of the committee is try to review very quickly the changes encompassing this substitute as compared with Article I as it was introduced on Wednesday evening. This substitute is an effort to clarify language, clear up concepts, place this matter in a position

The New York Times

Paul S. Sarbanes, Maryland Democrat, reads impeachment charge he introduced

Figures in the House Inquiry

Special to The New York Times

WASHINGTON, July 26—Following are the names of the members of the House Judiciary Committee, listed by party and in the order of their seniority in the House:

Peter W. Rodino Jr., Democrat of New Jersey, chairman.
Harold D. Donohue, Democrat of Massachusetts.
Jack Brooks, Democrat of Texas.
Robert W. Kastenmeier, Democrat of Wisconsin.
Don Edwards, Democrat of California.
William L. Hungate, Democrat of Missouri.
John Conyers Jr., Democrat of Michigan.
Joshua Eilberg, Democrat of Pennsylvania.
Jerome R. Waldie, Democrat of California.
Walter Flowers, Democrat of Alabama.
James R. Mann, Democrat of South Carolina.
Paul S. Sarbanes, Democrat of Maryland.
John F. Seiberling, Democrat of Ohio.
George E. Danielson, Democrat of California.
Robert F. Drinan, Democrat of Massachusetts.
Charles B. Rangel, Democrat of Manhattan.
Barbara Jordan, Democrat of Texas.
Ray Thornton, Democrat of Arkansas.
Elizabeth Holtzman, Democrat of Brooklyn.
Wayne Owens, Democrat of Utah.
Edward Mezvinsky, Democrat of Iowa.
Edward Hutchinson, Republican of Michigan.
Robert McClory, Republican of Illinois.
Henry P. Smith 3d, Republican of upstate New York.
Charles W. Sandman Jr., Republican of New Jersey.
Tom Railsback, Republican of Illinois.
Charles E. Wiggins, Republican of California.
David W. Dennis, Republican of Indiana.
Hamilton Fish Jr., Republican of upstate New York.
Wiley Mayne, Republican of Iowa.
Lawrence J. Hogan, Republican of Maryland.
M. Caldwell Butler, Republican of Virginia.
William S. Cohen, Republican of Maine.
Trent Lott, Republican of Mississippi.
Harold V. Froehlich, Republican of Wisconsin.
Carlos J. Moorhead, Republican of California.
Joseph J. Maraziti, Republican of New Jersey.
Delbert L. Latta, Republican of Ohio.

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Panel's Impeachment

Proceedings

where the debate can go hopefully to the substance and less to the form of the article as it is before the committee.

If the members have the previous resolution or they can follow the substitute, there is very little change in Paragraph 1 other than to clarify the language, "the President of the United States."

Two, we are using carefully "Committee for the Re-election of the President," which is, of course, the proper name and those changes are made throughout with respect to the Department of Justice or the committee or any official reference.

There is stricken the phrase "has made it his continuing policy to act" and instead the phrase "made it his policy" — "Richard M. Nixon, using the powers of his high office, made it his policy and in furtherance of such policy did act directly and personally and through his close subordinates," et cetera.

There is added the language near the bottom of Paragraph 2, next to the last line, "to cover up, conceal, and protect those responsible," and there is stricken in Paragraph 3 the language, "or others" which previously followed the word "following."

Illustrative of Policy

The means that are set out are illustrative of the policy that is contained in Paragraph 2, which is basically the gravamen of this article and it was felt that the use of that language has unnecessary and really superfluous.

The first item listed follows essentially the previous language, although it limits it to the investigative officers and employes of the United States.

Paragraph 2 of the substitute was Paragraph 6 of the original article. It has been placed here in an effort to group together means which seem to be related to one another and it seemed appropriate that it should be here with 1, 2, and 3, rather than further down on the list. This is an effort obviously among other things to introduce some additional logic into the structure of this article.

Paragraph 3 is essentially the same as Paragraph 2 of the original proposed article.

Paragraph 4 includes interfering and the addition of the language "or endeavoring to interfere with the conduct of investigations by the Department of Justice of the United States, the Federal Bureau of Investigation, and the office of Watergate special prosecution force."

Two changes clarifying the official titles of these agencies and the addition of the language "or endeavoring to interfere."

Five strikes the language "and concealing," and inserts "condoning and acquiescing in the surreptitious payment of substantial sums of money." And then this means which previously went on "for the purpose of obtaining the silence of participants in the illegal entry," the "participants in the illegal entry" language has been stricken and in place has been put "or influencing the testimony of the witnesses, potential witnesses, or individuals who participated in such illegal entry."

In other words, the thrust of that action encompasses not only individuals who participated in the entry, but influencing the testimony of witnesses or potential witnesses.

Paragraph 6 of the substitute is identical with Paragraph 5 of the original article with the addition of "an agency of the United States" at the end of that sentence.

Paragraph 7 of the substitute makes some changes in what was formerly Paragraph 8 of the original article and I think it probably would be best if I simply read that it includes "disseminating information received from officers of the Department of Justice of the United States to subjects of investigation." And this is new language, "conducted by lawfully authorized investigative officers and employes of the United States" is new language. It is meant to clarify the thrust of point No. 7, "for the purpose of aiding and assisting."

Instead of the language "their avoidance of," we insert the language "such subjects in their attempts to avoid" criminal liability.

Paragraph 8 of the substitute is—parallels Paragraph 9 of the original article and the changes are as follows: "Making false or misleading public statements," strike the language "in his capacity as President," so it is "making false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation has been conducted with respect to allegations of misconduct," and the earlier language said, "at the White House" and in this language has been changed to say "on the part of personnel of the executive branch of the United States," which I think is a more accurate description of the individuals that would be discussed under this means.

Paragraph 9 of the substitute is former Paragraph 7 of the original article. "Endeavoring to cause prospective defendants, and individuals duly tried and convicted, to expect favored treatment and consideration," which is new language, "in return for their silence of false testimony," and then the balance, "or rewarding individuals for their silence or false testimony" is new language.

And finally, Mr. Chairman, the concluding paragraphs are a reworking, I think, essentially, of the language to place it in a better form so that the final paragraph would read, "in all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the manifest injury of the people of the United States."

AFTERNOON SESSION

SARBANES: Subsequently in conversation (Sept. 15), the President said that a lot of stuff went on, that Dean had handled it skillfully, putting his fingers in the dike when leaks had sprung here and sprung there, and that, "You just try to button it up as well as you can and hope for the best. And remember that basically the damned thing is just one of those unfortunate things and we're trying to cut our losses." We're trying to cut our losses.

Now they succeeded in covering up through the November election, and then early in the year things began to come apart; they started slowly and accelerated. And we have in January discussions, the President and Colson, a discussion about clemency for Hunt. Again Colson says that—there was no assurances made, but the discussions were held, the subject was brought up.

Why were they bringing up this subject with respect to people for whom they denied any connection at an earlier time?

And then in late February, the President begins to have some conversations with Dean, and those continue in late February and into March. And of course beginning with March 21st and coming forward things begin to snowball.

Necessary to Read Transcripts

Let me go back to the March 21st conversation. It is imperative that you take the transcripts and read through them, and that you read through them not only in terms of what is being said then as to what is happening, but refer it back as to what happened earlier.

Because there are discussions of how it developed, what the pattern was, what the problems were that came forth. And in that conversation of March 21, 1973, in the morning, at which the President and John Dean, H. R. Haldeman, the President's chief of staff, were all three present, the President said to John Dean: "All right, fine."

And, "My point is that we can—you

may well come—I think it is good, frankly, to consider these various options. And then once you decide on the plan, John, and you have the right plan, let me say, I have no doubts about the right plan before the election."

CHARLES W. SANDMAN JR., Republican of New Jersey—I would like to start with one simple question—it certainly deserves a simple answer. I've just heard a rehash of all of the excerpts from all of the tapes. My question to the gentleman from Maryland, who has just presented those, is this a new document that you submitted? Or what was your purpose?

SARBANES: No, I'm recounting back over the transcripts of the tapes, pertinent portions of that conversation.

SANDMAN: Well, if it's not a new document, then we're back to where we started. Why are you resisting the fact that this should be in the Articles of Impeachment? Isn't the Congress entitled to know what they're going to vote on when it gets to them? Shouldn't they know when it happened and how it happened? Shouldn't this be in the articles? A brief answer from the gentleman from Marlyand, if he has one!

SARBANES: I responded to that question this morning when the gentleman —when I said at that time that if we were to bring into the articles all of the factual material which underpins them we would have to have articles that ran into volumes.

SANDMAN: Now that is not so, and you know it is not so. In a moment, I will yield. You know that that is not so any more than it is in an indictment. You don't need the whole brief in an indictment, and I don't want to be confused again by saying this is an indictment, it isn't. But the common criminal in a criminal case has no more right than the President of the United States in an impeachment case. This is what I said. No, I won't yield, I'm not finished.

Now the important thing here is why isn't the President entitled to this kind of simple explanation? It can be in a single sentence. We don't have to go through the speech that you made, all you have to say on any one of your Articles is a very simple sentence.

"On such and such a date the President did, contrary to the law, a simple act." That's all you have to say, and why won't you say it? I want him to answer. A simple answer.

SARBANES: Behind each of those allegations lies a extensive pattern of conduct—that will be spelled out factually and will be contained — If the gentleman will let me finish, I am endeavoring as best I can to respond to his question.

And that pattern of conduct will be spelled out in the report that accompanies the articles. But there is not one isolated incident that rests behind each of these allegations, there is a course of conduct extending over a period of time involving a great number of—

SANDMAN (interrupting): I'm not going to yield any further; this is my time you're using up. I'm not going to yield any further for that kind of an answer.

You are entitled to your proof, no one said that you aren't. You are entitled to as many articles as you can get the Democrats and some Republicans to agree up — and no one says that you're not entitled to that.

But to each of these, my friend, the law from the beginning of this country up to the last impeachment in 1936, says, whether you like it or not, it has to be specific and this is not specific.

RODINO: The chair would like to address a question to counsel to this staff, which has had the whole matter before it for a period of time—citing the precedence and the history of impeachment as to whether or not there is a requirement that there be specificity in the preparation of Articles for Impeachment. I address that to our counsel.

JOHN M. DOAR, special counsel: Mr. Chairman, in my judgment it is not necessary to be totally specific, and I think this Article of Impeachment meets the test of specificity. As the Congressman from Maryland said, there will be a report submitted to the Congress with respect to this article if the committee chooses to vote this article, and behind that report will be the summary of information as well as all of the material that was presented to this committee.

Rights of Nixon Counsel

Prior to trial in the Senate, the counsel for the President is entitled to make demands for specificity through perhaps a motion similar to a bill of particulars, and so that all of those details may be spelled out.

But from the standpoint of this article, my judgment is firmly and with conviction that this meets the tests that have been established under the procedures.

RODINO: I ask the same question of Mr. Garrison.

SAMUEL A. GARRISON, 3d, special minority counsel: I have not, frankly, spent a great deal of time researching this question. I would say that while it may very well not be a requirement of the law, it clearly can be said to be the uniform practice of the past to have a considerable degree of specificity in the articles.

I would cite the members of the committee to a publication of this committee, October of 1973, entitled: "Impeachment, Selected Materials." And beginning on Page 125 concluding on Page 202 every Article of Impeachment which has been tried in the Senate is set forth.

And I would be less than frank, Mr. Chairman, if I didn't suggest that a simple reading of those articles would suggest an enormous amount of factual detail. As a matter of fact, to an extent that is actually not included in indictments.

There are not only times, dates and places named, but sometimes there are the sums of money that have allegedly been misappropriated. I would refer you, for example, on Page 173 to the fifth article against Judge English, in which the judge was accused of inebriousy.

I'm sure much to his embarrassment the article goes on at great length describing exactly when and where he was drunk.

RODINO: I would like to address the same question to Mr. Jenner. The gentleman is associate counsel of this committee, associate to the staff as counsel, and or a while—and for a great while—served by selection of the minority, as the minority counsel. Mr. Jenner.

ALBERT E. JENNER, Jr., associate special minority counsel: An article of impeachment as of the present day is to be viewed in the light of the progress made in the field of criminal procedure by this Congress and by the progress made under the Enabling Act by the Advisory Committee to the United States Supreme Court adopting he Federal Rules of Criminal Procedure.

And, secondly, arising out of the multidistrict panel plan by which all complicated cases are reviewed whether they are multidistrict or otherwise. And as a result of that progress that has been made with respect to the Federal Rules of Criminal Procedure, and the new Federal Criminal Procedure which have now been approved by the House of Representatives, and I believe this committee, it is no longer necessary to specify either in civil or criminal complaints a range of specificity that accompanied the needs of a past era.

And all that is necessary under the cases is that the bill, the complaint—and I especially suggest the articles of impeachment give but what is called notice or notice pleading, and that is in itself sufficient.

Progress on Procedure

Under the Federal Rules of Criminal Procedure, the discovery provisions, the President may obtain all of the 38 books, all of the summaries, all of the materials that are before this committee, as is specifically stated in Rule 16—the rule that's now in effect—not even counting the new criminal rules that have been approved but are not yet in effect.

So that in considering present-day articles of impeachment, you must have in mind the progress that has been made in those respects from the last decade.

M. CALDWELL BUTLER, Republican of Virginia: Thank you Mr. Chairman. I would—I share the concern raised by the gentleman from New Jersey, Mr. Sandman, and I would like, if I may, to return to our questions of Mr. Jenner, if you could answer a few more questions for me.

We really have so much information that it's not sufficient to say to the counsel for the President that he's entitled to all of those 38 books, because we really have so much we don't have any. I'm concerned that the President is entitled to know what facts are going to be adduced against him. So my question is this, based on your view of the precedents and your experience, "Is the President entitled to know at some point prior to trial just exactly what facs will be adduced against him?"

JENNER: I think in an impeachment proceeding that it is called for.

BUTLER: Now how would counsel for the President go about getting that information if it were not spelled out specifically in the Articles of Impeachment?

JENNER: In the proceedings that take place prior to trial he is entitled to ask for and receive virtually without seubpoena, without process but by request and the supervision of the Chief Justice, who will perform the function of the presiding judge, the production of all materials in the possession of this committee bearing upon the issues presented by the article of impeachment.

Under the present practice, especially in civil cases, substantially so also in criminal cases under the criminal rules and the multidistrict panel manual, counsel are required in criminal cases subject to the Fifth Amendment, of course, and the Fifth Amendment rights, to all of the material that bears upon the issues in the case.

BUTLER: Just one moment, is the President also entitled to know sufficiently in advance of the trial the facts that may be adduced to him in order to prepare a defense so it cannot come to him at the last moment.

JENNER: I think he's entitled to that, Congressman Butler, but he's not entitled to it by way of a specific pleading. He is entitled to know and he will receive under the present modern practice these facts, which I assume you mean evidence of all bearing upon the issues stated in the bill.

BUTLER: Whether he gets it sufficiently in advance will depend on whether he asks the question soon enough. Is that correct?

JENNER: Well that will depend on the President's counsel, of course, but Mr. St. Clair, as demonstrated here, is one of the most able lawyers in America. He is experienced both in the civil and criminal fields and we anticipate, I think without peradventure, that he will proceed to do so, sir.

DAVID W. DENNIS, Republican of Indiana: I would like to ask Mr. Jenner if Rule 7 of the Federal Rules of Criminal Procedure does not provide that the indictment or the information shall be a plain, concise and definite written statement of the essential facts consti-

tuting the offense charged.

JENNER: That rule so reads, sir.

DENNIS: I thank you.

LAWRENCE J. HOGAN, Republican of Maryland: If I could further ask counsel, either Mr. Doar, Mr. Jenner or Mr. Garrison, "Would it be possible for Mr. St. Clair to not request any additional information or specificity and wait until the time of trial in the Senate and then move to dismiss the impeachment on the grounds that it's not specific?"

JENNER: He may do that, Mr. Hogan, at the gravest possible grave risk of waiting until that particular time. It is . . .

HOGAN: Except as a practical matter he has all the material already.

JENNER: That's correct, sir. And the Chief Justice in presiding and ruling upon that motion would have that in mind.

HOGAN: But the real crux of my question is "would he prevail in offering that motion for in effect a directed verdict?"

JENNER: I think not, sir, under the present modern practice.

RODINO: The time of the gentleman from Virginia has expired. I recognize the gentleman from Wisconsin seeking recognition. The gentleman is recognized.

ROBERT W. KASTENMEIER, Democrat of Wisconsin: Gentlemen, I'd like to take this time to yield to my colleague, Mr. Danielson, because the question nags at specificity. I think he has something further to contribute.

DANIELSON: I thank my colleague Mr. Kastenmeier for yielding. The point raised by the gentleman from New Jersey, Mr. Sandman, and others along his line, I'm fearful have a motivation, perhaps an intent which we must avoid in this case of impeachment, namely by specifying some one overt act following one of the articles, one of the listings of impeachable offenses we might thereby narrow the area of proof under which the prosecution of this case, the managers in the Senate would be entitled to produce evidence.

By stating for example under the first item, the making of false statements to investigative officers, whatever that is, if we were to list a specific false statement that may have been made on let us say June 30, 1972, would we not then in the Senate be limited in our proof to evidence which would relate directly to that specific false statement.

In a moment I may yield.

Notice to the President

Likewise, the fact of notice pleadings which our counsel Mr. Jenner has pointed out, it is clear here the President is still on notice as to the specific types of impeachable conduct which we allege against him. This is enough to alert him, to give him notice as to what are the charges, and bear in mind that if and when this matter reaches the Senate, it will be accompanied not only by a committee report but of course by the final articles of impeachment, and he will then if he desires have the right to make a motion for a bill of particulars or related motion, the idea being to request greater specificity in the charges against him. Or if some of those charges appear to be a little bit vague and uncertain as to time and place and manner, he can make a motion to make more specific and perti-

Continued on Following Page

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nent, and aided by the results of those motions he will have a wealth of information, everything that he could possible need to make his own defense.

In this case he ish even in a better posiion simply because, and I know this cannot be charged to him at the present time, but as a practical matter and in he real world in which we're operating, the President does have some 40 volumes of evidentiary and statistical matters already at his disposal and in his office and I think that unless we're to stultify common sense we're going to asknowledge that that is a fact.

Items Not Restricted

I would say this: If this committee should decide in order to lessen the concern of our colleagues on the other side of the aisle, list any specific item of factual information in these articles, it must be couched in such language and the committee report worded in such language that it's eminently clear that proof in the Senate would not be restricted to those specific items.

WILLIAM S. COHEN, Republican of Maine: If I could, I'd like to address a question to the gentleman from Maryland, Mr. Sarbanes, Mr. Sarbanes, I would assume that in each of these subheadings under the article that you propose to substitute — and let me say that I think the statement's conclusions I can agree with, most if not all of them. But let me turn to Page 1, under Article I, where you list Subtitle I, Making False and Misleading Statements to Lawfully Authorized Investigative Officers and Employes of the United States.

Now would it be fair for me to assume that you would rely upon certain — Mr. Dennis said — "essential facts." I would hesitate to use the word "operative" facts in this context. But is it fair to say that you would rely upon one, two, three or four specific dates and opposite sets of facts to support that general statement, the Making of False or Misleading Statements to Lawfully Authorized Investigators.

Is that fair to say that you have that in mind?

SARBANES: Yes, although in most of these instances when it's finally detailed, I would assume a report would really think of many more instances than the number the gentleman spoke of. One of the problems is that there is a course of conduct and not a single event.

COHEN: Is it fair to say that you would probably refer to the summary of information that's been presented by Mr. Doar and Mr. Jenner, such as summary Pages 30 through 32 to support that specific operative set of facts?

SARBANES: Well, I would assume that the report would go further than that. While the report could do that, I would also assume that the report would spell—this was the response I gave this morning to the gentleman from Illinois — that the report would spell out the matters.

COHEN: The problem I've had for several months now, and usually with counsel, Mr. Doar and Mr. Jenner, you may recall that on each time we issued a subpoena I specifically asked you, inquired and was always rejected, as to whether or not we might attach the specific justifications which you set forth in great detail justifying the issuance for those subpoenas and the reasons why we needed them.

Appendix Suggested

And I'd just like to inquire—I think I know the answer you'll give me—but is there any reason why a document could not be attached to the proposed Articles of Impeachment with a phrase to the effect: all of which is set forth with greater particularity in the appendix attached hereto?

In other words, getting into the civil pleading, I happen to agree with counsel, Mr. Jenner, that we're talking not necessarily criminal pleading but also perhaps civil pleading and we do have notice of pleading in civil cases. And we also have the very well established doctrine of incorporation by reference. Now wouldn't that be helpful in this particular instance?

DOAR: My understanding, Mr. Congressman, is that this material would be included in the report that would go along with the articles. Now whether it's attached that way or attached to the pleading, my understanding further it really is immaterial. But generally speaking in civil pleading that I've been familiar with you don't incorporate this by reference, you furnish it by way of answers, interrogatories or other discovery pre-trial procedures.

COHEN: But it would be helpful in this instance to at least incorporate by reference several opposite sets of facts supporting the general allegation, which, again, I can agree with, the making of false and misleading statements to lawfully authorized officers, I agree with that. There were false statements made. But I think we can, by the simple act of incorporating by reference clear away the problem really.

CHARLES B. RANGEL, Democrat of Manhattan: I wonder, as we try to talk about specifics so that the President would be in a better position to defend himself, whether we're really taking in consideration that the mandate of this committee is to report to the House of Representatives.

And it seems to me that if we got bogged down with specifics before the House of Representatives has worked its will, that perhaps we would not give the general recommendation to the House that it rightfully deserves.

It is not our constitutional responsibility to impeach the President, but merely to report to the House. So that it seems to me that we should not be talking about specifics, but give the maximum amount of information to the House of Representatives so that they can deal with the problem constitutionally.

TOM RAILSBACK, Republican of Illinois: I wonder, Mr. Doar, if I could address a question to you. I wonder if in past impeachment cases it has not been the procedure that the Judiciary Committee has recommended and then on some occasions the House of Representatives itself has formally drafted and prepared articles of impeachment which were then submitted to the Senate.

In other words, it's my recollection that there may have been cases where the House Judiciary simply made a recommendation; that the House itself had the responsibility of drafting and adopting the Articles of Impeachment, based on the recommendation. And I wonder if we couldn't do it that way. What's your feeling about that?

DOAR: My understanding is that has been the past practice.

RAILSBACK: I thought that was the practice.

RODINO: Before we proceed, the chair would like to state some propositions. First of all, we do know that we are proceeding under a very unique proceeding. Impeachment has offered us, except for the case of Andrew Johnson, no guidelines, no precedents.

It is a fact, however, that the rules of evidence do not apply as such; the rules that will be the rules that will apply should this impeachment proceeding move on into the House and then to trial in the Senate will be the rules that the Senate will adopt.

We do know as a matter of fact from impeachment proceedings and the research that has been extensive—and all I need do is recall to the members

of the House that the House of Representatives has indeed impeached without any Articles of Impeachment except merely to impeach. And that on a mere motion, a privileged motion of any member of the House, that the House could move to impeach.

So that therefore this discussion, and this issue requiring specificity in order to lay the groundwork for Articles of Impeachment seems to me to be begging of a question which I think has long been settled.

What we do here is to proceed with deliberations concerning the proposition that certain Articles of Impeachment be recommended by this committee to the House of Representatives.

In the report that the committee will then furnish the House of Representatives, that information will be specifically included, together with that counsel of the President, as has been properly pointed out by the gentleman from Maine, would be provided with all the information which is contained in the Summary of Information which details all of the specifics, and that prior to trial in the Senate, upon proper request by counsel for the President, should it reach that stage, and discovery and other proceedings that these materials would be then provided.

I believe that this affords all of the opportunity for fairness in this proceeding to ensure that the House of Representatives not act as a trial body under the exacting rules of evidence as we know them, because this as a matter of fact—and all of us are aware, I think, who have been long wrestling with this question—that the House of Representatives is indeed not the trial body but the body merely recommending.

WILLIAM L. HUNGATE, Democrat of Missouri: I would like to begin by commending our colleague, Mr. Sarbanes, who seems to be the target for tonight on what an excellent job I think of explaining what he's worked out here and what's going on.

The impeachment, as the chairman has indicated, grounds indeed are quite broad, as I understand in the case of Andrew Johnson they passed a resolution of impeachment and came back with nine articles and got over in the Senate and decided they needed some more and drew a couple more.

So going into all this great—I hesitate to try to say "specificity"; I really can't say "specificity." I didn't mean to say it. And as we get into all these legal terms it's a lot of fun for 38 good lawyers, I think—37 good lawyers. It's a lot of fun but we forget perhaps that in the House of Representatives they aren't all lawyers. And the public likes it that way, I think.

I saw where one of the distinguished Senators said yesterday that some of the discussions we've had about rules of evidence that they had different views.

Action in Johnson Case

The Senate would decide on the rules of evidence, as I recall in the Johnson case they did. They overruled the Supreme Court Justice — wouldn't that be a thrill? — so many times that he finally threatened to quit and leave unless they behaved a little better, so I think it's educational for us as lawyers but the doctrine of impeachment is as strong as the Constitution and it's as broad as the king's imagination. We have that problem now, perhaps.

There's lots of evidence here. Let's don't — if they don't understand what we're talking about now, a fellow wouldn't know a hawk from handsaw anyway.

Seriously, we know what we're discussing. It's really a question of pleading and I think we're seeking to—piling inference on inference—there you go again piling inferences. We sit through these hearings day after day and I tell you if a guy brought an elephant through that door and one of us said "that's an elephant" some of the doubters would say "you know that's an inference. That could be a mouse with a glandular condition."

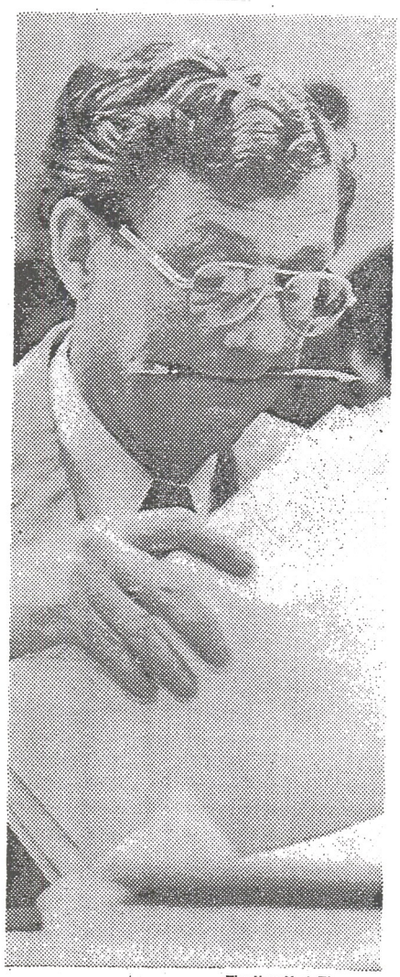
(Laughter)

You're on my time.

(Laughter)

And, friends, one of them might be but not 12 and not 28 volumes, and let's talk some about this evidence here and I know these distinguished gentlemen know the law far better than I and they realize that we don't have to plead it with all that great—whatever that word was.

CHARLES E. WIGGINS, Republican of California: We do not have any responsibility to be specific at all here with respect to the recommendation we make to the House. Indeed the House is able to recognize any member at any time to impeach Mr. Nixon without any degree of specificity. We're talking rather about what happens at the Senate. This is a job which will be ours to cary to the Senate. Now ladies and gentlemen, each in turn yesterday and the day before, we paid tribute to the Constitution. Well, now's the time to put up or shut up because we're talking about the Constitution. We're talking about the Fifth Amendment and the



The New York Times

John M. Doar, the special counsel, bites on a pencil while reviewing papers on his desk.

rights of a respondent not on the floor of the House of Representatives but at the bar of the Senate and specificity is required over there because the Constitution demands it.

Wouldn't it be a damning indictment, Mr. Chairman, if this committee if after all this time and all this money we were unable to state with specificity what this case is all about? I think it would.

Now all we're asking, Mr. Chairman, is that we get about it and do it. We shouldn't argue over that point. We should be precise and I suggest we do so.

HAROLD V. FROELICH, Republican of Wisconsin: Mr. Jenner, when you indicated that sometime just prior to trial in the Senate a demand could be made by the attorney for the President for something akin to a bill of particulars, what point in time were you referring to?

JENNER: I think I was responding to Congressman Hogan's question as to whether the President's counsel could wait until just before the Chief Justice opened the trial, and then move with respect to the pleading.

I don't wish to compromise Mr. Hogan, but I think that was the question.

What Point in Time

FROELICH: I don't want that answer, Mr. Jenner, I want the answer as to what point in time would it be proper for the President's attorney to demand in behalf of the President a bill of particulars as to this impeachment?

JENNER: He can do so, Mr. Froehlich, at any time after the bill of impeachment is lodged with the United States Senate.

FROELICH: And who writes the bill of particulars?

JENNER: The House of Representatives, the managers for the House of Representatives.

FROELICH: Would you say this was an unconstitutional delegation of the sole power of impeachment to a small group of individuals in behalf of the House of Representatives?

In behalf of the House of Representatives as a whole, since the power of impeachment, as you so eloquently have stated time and time again rests in the House of Representatives solely? Solely in the House of Representatives.

JENNER: Congressman Froehlich, I think not, because when you reach that point in the course of the proceedings before the United States you are pursuing procedures and practice before the United States Senate, and the United States Senate, in its rules with respect to this impeachment, will have established by that time, I very much anticipate, the procedures in that time.

FROEHLICH: Chairman, members of the committee, I've just paged through the October, 1973, publication of this committee on impeachment.

And each one of these articles of impeachment are specific. They tell the date, they tell the place, they tell the occurence, they tell what was wrong and what laws were violated, if there were laws violated.

And it seems to me that in fairness and in justice to the President of the United States, after eight months and over a million dollars, that this committee could come to a conclusion as to what the specifics of this impeachment are, in detail and by specific charge.

And I am ready, as I indicated yesterday, in some instances, in some cases, if the case is put in the proper form and the proper shape, to vote for an article of impeachment.

But I don't think the articles placed before us are in specific enough detail to bring me to that conclusion today.

JAMES R. MANN, Democrat of South Carolina: I don't think that I have to yield to anybody in my desire to say that these proceedings are fairly conducted and if it goes to trial in the Senate the proceedings there will be fairly conducted. But as I read this article the gravamen of the offense is that Richard M. Nixon, using the powers of his high office, made it his policy and in furtherance of such policy did act directly and personally and through his close subordinates and agents to delay, impede and obstruct the investigation of such illegal entry, referring to specific dates, to cover up, conceal and detect those responsible and conceal the existence and scope of unlawful covert activities.

Now this article goes on to list nine means by which that impeachable offense was carried out. I'm astonished

to infer here that there are those here who would assert that we should list in the article all of the evidence that applies to this charge. It's very clear, of course, that if we were to attempt to do that that we would have a document equalling several of these books.

'Every Bit of Evidence'

But what bothers me most of all are the loose statements, some of which we have just now heard, that the President is going to go to trial without knowing what the charge is. The President, if he goes to trial, is going to trial not only knowing what the charge is but knowing what every iota, every word, every "i" and every "t"—every bit of evidence that's been made available to the committee has been presented here in the presence of the President's counsel.

If we get further evidence I can assure you you will have my support to see that the President's counsel is present when it's presented to this committee and that he's present when it's presented to the House of Representatives if new evidence is presented at that time.

So what are we talking about?

Sneaking up on someone?

The evidence, all of it, will be available to the President tomorrow, the next day. He's got it up until now. He's got some, of course, that we would like to have.

So I don't find that this proceeding, which admittedly is—has sparked precedent—is in any way violating anyone's constitutional rights who stands before the bar of justice possessed of every fact known to the prosecution, possessed of the description of the charge of which he stands charged.

Effect of TV Is Seen

What surprise? What surprise?

Can I conclude other than that this is not a substantive objection; is a procedural matter; is a matter that I must suggest that I somewhat predicted as I realized that the arguments made here in front of these cameras would not be made for the benefit of me as a member of this committee.

I don't think Mr. Sandman would be so strident or even so partisan if these proceedings were not being conducted to influence the opinions of the American people. But I am here to study the law and the evidence and to see that Richard Nixon gets a fair trial, that he is apprised of all of the evidence against him.

And in my judgment the charges included in Article 1 notify him of what he's charged with; they spread out something extra, the means by which he is alleged to have committed that offense of obstruction of justice.

Let us be reasonable. We have had the advice of Mr. Jenner, who because of his objectivity stands stripped of his title as minority counsel, a man who was chairman of that body of the American Bar Association, the Advisory Committee, to advise the Supreme Court on rules of evidence and criminal procedure, the foremost expert in the United States, I submit, on this issue and he tells us that in his judgment these are—this article—is adequate to advise the respondent of the charges against him.

Fairness is what is required. I would settle for nothing less and I submit that this article grants fairness in the highest tradition of American jurisprudence and of the power of this body to exercise its serious power of preserving our government through the power of impeachment.

DELBERT L. LATTA, Republican of Ohio: Thank you, Mr. Chairman. It's interesting to sit this far away from the center of power—you get all of these statements before you get an opportunity to speak. Let me just say, Mr. Chairman, that I was surprised, as a member of the Rules Committee, to hear that you propose sending these articles of impeachment in a general form, and attach thereto, as a supplement, I might say, in the report to the Rules Committee for consideration?

Now, Mr. Chairman, members of the Rules Committee are supposed to read those reports before we make a finding and report the rules of the House of Representatives. And certainly you would not want us to void our own rules. I think that we ought to ponder about that.

The same way that the members of the House of Representatives ought to ponder about what you're proposing. You're saying that we're going to send these general articles of impeachment to the floor of the House without being specific, without saying the time, the place, and say to the members of the House of Representatives who are not on this committee: Go through those 38 or 39 volumes, try to sort out what we think, as members of this committee, are impeachable offenses, and make a judgment thereon.

Is that what we're saying? If you are, the members of the House, good luck.

Now Mr. Chairman, I think we ought to rethink what we're proposing. A common jaywalker charged with jaywalking anyplace in the United States is entitled to know when and where the alleged offense is supposed to have occurred.

Is the President of the United States entitled to less? Yes, he's entitled to know even though the Constitution from whence impeachment proceedings come did not specifically spell out that you have to do so.

The Sixth Amendment is still in the Constitution and are we going to waive it in this case? They're going to waive it in other impeachment cases. Are they going to set a new precedent here and waive that? Where are these civil libertarians? I think it's high time that we stopped and rethink what we're doing.

Nobody is trying to delay the action that the chairman puts down that gavel here because I well know that anytime and says "call the role "the votes are here to do exactly as you like.

Whether or not Mr. Jenner or Mr. Doar prepared these articles — which they probably did—whether they certainly ought to agree with what they've prepared, and I thought that was a question that really didn't have to be asked by the chair as to whether or not these gentlemen agreed with what they had prepared. I think that was useless.

But I think that it's important that we do something fair for the other members of the House. Let's forget about the President of the United States. We're not the only members of the House of Representatives who are going to be called upon to make a judgment.

And to throw 38 or 39 books at them and say, "here, here's what we meant." Let's just take a look at them. On the first page, at the bottom, No. 1, charged with making false or misleading statements to lawfully authorized investigating officers.

Well, now how many investigating officers are there in the United States? And who are they? Where are they? And employes of the United States. Well, in June of 1972 there were only 2,650,000 employes in the United States Government.

In common decency, in common sense, we ought to be more specific than that.

Nixon 'Organized and Managed'

McCLORY: The chairman and members of the committee know I do intend to support an article, perhaps two articles of impeachment. But I think that this article, which is proposed—the substitute article which is proposed by the gentleman from Maryland is very faulty, very poor, the weakest article which I think the committee could recommend.

Now it's been correctly said that the process of impeachment is not a criminal proceeding but a civil one. We know that our counsel has confirmed that by recommending that we should only consider that the rule or doctrine of evidence that must prevail here is that of clear and convincing proof, not proof beyond a reasonable doubt.

But what we have before us here is an allegation of a conspiracy. Now it's called a policy and this is a thesis which our counsel, Mr. Doar, has propounded in his — when he took on this partisan posture in the final days of our investigation and the thesis is that the President organized and managed the cover-up from the time of the break-in itself or immediately afterwards.

And of course this is the thesis upon which my colleagues from California and from Massachusetts are trying to develop. And it just doesn't hold water. It's weak; it's fuzzy, it's contradictory. The theory just doesn't exist.

Now it may be that on the 21st of March of the next year when the President learned about this and talked about it with Mr. Haldeman and Mr. Dean he got involved in another type of activity. But in June and in September they weren't talking about that at all. As a matter of fact, on Sept. 15, when the President talked about this subject with John Dean he asked John Dean—he said, "What the hell do you think is involved? What's your guess?" And what does John Dean say? He says "I think the D.N.C. planted it, quite clearly."

So you see at that time while they're trying to see what the political implications are they suggest that possibly the Democratic National Committee themselves planted the bug in order to try to trap the Republicans and it was a kind of political shenanigans that was going on.

'A Criminal Charge'

And on Sept. 15, if you consider that testimony, if you consider that tape fairly and clearly and honestly, you'll see that they're talking about the political implications, not criminal implications insofar as the White House is concerned.

And so what it seems to me is that we've got here is we've got a criminal charge and then we're trying to support it by noncriminal allegations and noncriminal proof.

Now it's very well and good to say "well all the proof is there; we've got 38 volumes." But you know the kind of proof that you're recommending and supporting this thesis, this policy or this conspiracy is proof of circumstantial evidence, or innuendos, of inferences. Now what circumstantial evidence is the President and his counsel supposed to look at?

RANGEL: It seems to me that our constitutional responsibility is really to respond to the House of Representatives.

It seems to me that we would be taking on more than our mandate allows if we were to draw some very narrow allegations and not have the evidence that we have had over all of these months presented to the members of the House.

Deny Data to Senate

I think that their judgment as to what final allegations, if any, is going to be presented to the Senate. We can't be presumptive enough that it just meets our needs, and to cut off to them the benefit of all of this, all of these months of research.

If members are having some type of a problem in terms of what they are prepared to vote for in connection with an article of impeachment, it seems to me that this does not necessarily have to be done in a parliamentary way to justt delay these proceedings.

I think that each member would have the opportunity as to what, in his own mind, he believes is an impeachable offense. And I personally believe there's enough in the edited transcript for that purpose.

But he should not preclude the information which we have compiled from reaching the floor of the House of Representatives.

We merely have the responsibility to report our findings to the House. If we vote Articles of Impeachment, they may, in fact, be rejected by the House. If we suggest to them that three or four articles have been voted on by the majority members of this committee, they may see fit to expand.

So it seems to me at this late time that if the members want facts, my God, we've had more than enough facts to reach questions of whether or not we should vote on a particular article.

But if there are members who are prepared to vote on a particular article, it seems to me we should be prepared to vote on that and then move so that we can work our will and report back to the House of Representatives.