Excerpts From Judiciary Committee Debate

Following are excerpts from yesterday's impeachment debate by the House Judiciary Committee:

Wiggins. Mr. Chairman and members of the committee, it is quite clear from a full reading of proposed Article II that the gravamen of that article is abuse of power on the part of the President of the United States. That concept of abuse is stated in various places by use of the word misuse and in use of the word dereliction of constitutional rights as distinguished from inviolation of those rights.

The question, ladies and gentlemen, is whether an abuse of power falls within the meaning of the phrase "high crimes and misdemeanors," since we can impeach on no other basis. If it does not, then my point of order should be sustained. If it does, then we should proceed with the consideration of that article.

My problem, Mr. Chairman, is that I have no quarrel with abusive conduct when that conduct does in and of itself violate the law. In that case, then we should impeach because of those violations. I do have serious concerns as to whether or not conduct which does not violate the law, but which my be characterized by this committee or the Congress as abusive, falls within the phrase "high crimes and misdemeanors." It is apparent from the proposed article that its author believes that abusive conduct is impeachable.

My problem is this, just what is abusive conduct? What does it mean? I suggest that is an empty phrase, having meaning only in terms of what we pour into it. It must reflect our subjective views of impropriety as distinguished from the objective views enunciated by society in its laws.

It ought to be clear to this committee, a committee of lawyers, that such a phrase as "abuse of power" is sufficiently imprecise to meet the test required by the Fifth Amendment. In my view, Mr. Chairman, the adoption of such an article would imbed in our constitutional history for the first time, for the very first time, the principle that a President may be impeached because of the view of Congress that he has abused those powers, although he may have acted in violation of no law.

If that is true, then we truly are ratifying the statement attributed to the now Vice President that impeachment means exactly what the Congress says it means at a given moment. By declaring punishable conduct which was not illegal when done, this Congress is raising the issue of a bill of attainder, contrary to the express terms of the Constitution. The argument of ex post facto legislation is now before us. If we are to declare punishable that conduct which is not illegal under our laws, in so doing, Mr. Chairman, we ought to recognize the momentous nature of such a decision, because we are taking a step toward a parliamentary system of government in this country rather than the constitutional system which we now have. We are in effect saying, Mr. Chairamn, that a President may be impeached in the future if a Congress expresses no confidence in his conduct, not because he has violated the law, but rather because that Congress declares his conduct to be abusive in terms of their subjective notions of propriety.

In terms of the future, Mr. Chairman, what standard are we setting for the Presidents in the future? How will any future President know precisely what Congress may declare to be an abuse, especially when they have failed to legislate against the very acts which they may condemn.

I think it is holding up to a future President an impossible standard that he must anticipate what Congress may declare to be abusive in the future. Under the law, Mr. Chairman, we have no right to impose our notions of morality and propriety upon others and make it their legal duty to comply therewith. But, that is what we are doing when we say that a President may be impeached for abuses of his office when the acts of alleged abuse are not in themselves violations of the law . . .

Danielson . . . In my opinion, Mr. Chairman, this is possibly, probably — I can make that stronger—it is certainly the most important article that this committee may pass out.

The offense charged in this article is truly a high crime and misdemeanor within the purest meaning of those words as established in Anglo-American jurisprudence over a period of now some 600 years. The offenses charged against the President in this article are uniquely Presidential offenses. No one else can commit them. You or I, the most lowly citizen, can obstruct justice. You or I, the most lowly citizen, can violate any of the statutes in our criminal code. But only the President can violate the oath of office of the President. Only the President can abuse the powers of the Office of the President.

When our Founding Fathers put our Constitution together, it was no accident that they separated the powers against the backdrop of 400 years of history of Anglo-Saxon jurisprudence they have realized the need to have a device, a constitutional means, of removing from office a chief magistrate who had violated his solemn oath of office. And I respectfully submit that impeachment clause of our Constitution which fortunately we have only had to use now for the second time is that means.

These are high crimes and misdemeanors, meaning that they are crimes or offesnse against the very structure of the state, against the system of government, the system that has brought to the American people and has preserved for the American people the freedoms and liberties which we so cherish. This is uniquely a Presidential offense. Mr. Chairman, and the most important thing that we have in this hearing.

There are some — and I would like to respond right now—there are some among us, there are many conscientious, dedicated Americans who harbor a feeling of fear and apprehension at this proceeding. They seem — I submit that it is a sensitivity to the travail through which our Republic is now passing, but they feel, they recognize, they sense that this is a serious a most grave responsibility and proceeding and some of them say that this should not be done because it might harm the presidency.

Mr. Chairman, I submit that only the President can harm the presidency. No one but the President can destroy, the presidency. And it is our function, acting under the impeachment clause to preserve and protect the presidency as we preserve and protect every other part of our marvelous structure of government and we do it through this — do it through this process.

Someone in the opening statement referred to this being a situation of "We, the people" acting. "We, the people," are acting through this procedure, through the wonderful provisions put into our Constitution.

The American people, Mr. President, are entitled to and want a government which they can honor and respect, and they should have it. The American people, Mr. President, are eager to revere their President. They are entitled to a President whom they can revere.

Mr. Chairman, I ask is not the violation of the solemn oath of office an impeachable offense? It is not found in our criminal code. It is implicit in our Constitution but it is necessarily implicit in the Constitution for otherwise why would there be an oath of office?

The offenses charged in this proposed article I respectfully submit Mr. Chairman, are offenses which go directly to that solemn breach of a solemn oath of office. Can anyone argue that if the President breaches his oath of office, he should not be removed?

I say not. And I respectfully submit that this point of order should be denied.

Rodino. The chair has heard arguments for the point of order and in opposition to the point of order and the chair is prepared to rule.

The chair makes reference first of all to Article I, Section 2 of the Constitution, which gives to the House the sole power of impeachment and in Article II, Section 4, the declaration that impeachment shall lie for treason, bribery and other high crimes and misdemeanors. So the issue of impeach-

ment and the nature of an impeachable offense, is as the gentleman knows, the very nature and subject of these proceedings, and no point of order can possibly lie in the nature of a challenge as to the impeachability of such offenses.

That is a matter, as the Constitution has already clearly stated, for the committee which has been delegated with this responsibility by the House, the House itself, and ultimately the Senate, to decide.

The gentleman will be given full opportunity to debate this question and attempt to persuade his colleagues that no grounds for impeachment have been stated in the articles. But the issue does not state a point of order. Rather, the issue presented in the point of order is a constitutional argument that must persuade the Congress. And therefore the chair rules against the point of order.

Hungate. I thank the distinguished gentleman from California, both distinguished gentlemen from California, for drawing the issues and the problems before us in the skillful way as they have done throughout this proceeding.

Mr. Truman once said that, or asked people if they knew what it was like to have a load of hay fall on them, and I think this morning I know what he meant. All I can say is that sometimes when you practice law you would find that the best cases did not come in through the most ideal clients, and that the best cases did not come in that is our problem today.

I apologize to my colleagues for the lateness with which they received my substitute but I know all of them to be distinguished and able attorneys and conversant with the fact and problems before us here and I should make it clear that the Hungate substitute is really a distillation of the thought of many members from many areas and of differing political philosophies and the input of many of the capable members of this committee for which I only seek to be a catalyst.

It would be rather difficult or impossible for me in five minutes to explain all the points that should be and will be considered and debated here. Various of my colleagues, I know, are learned on the various subparagraphs (1) through (5) and will outline this in more detail in our debate. I believe the gentleman from California, Mr. Wiggins touched some elements that are correct in that basically, as I see it, Article I involves obstruction of justice standards of conduct that may be criminal, and basically perhaps what we have today involves abuse of powers and whether we shall say that you can be President as long as you are not subject to a criminal charge, whether that is the level of conduct we require, or whether we shall set a somewhat higher standard, and whether we shall set that standard so that we will realize that the oath of office of the presidency means what it meant to Madison and the founders before the Constitution was even completed.

Now, some would believe that if we find any one of these five subparagraphs which support impeachment, and I think more would believe that combination of one or more, or all of them, would support impeachment, because we do discuss and consider repeatedly violations, in many cases repetitive conduct within the article and certainly repetitive conduct—I mean within the subparagraph and certainly repetitive conduct throughout the five articles.

I would think that if only one instance of improper conduct, and it perhaps could be quite serious, I do not know that we would be here today. I think this sort of impeachment trial was deliberately set up historically so that those who are in political life and political figures try the President, a political figure, those who can understand some of the pressures and nuances involved in serving in a public office. And for my part, I think there is more tolerance in such a political body than one would find in just a body without the experience, as I have said, of the pressures and difficulties in public life.

I say again if only one violation had occurred, I would doubt that we should be here. Men are human. Humans are frail. But I think we discuss and consider here and see here a consistent disregard of the law.

To give an example, it is not worthy of the problem before us, I think if a man is driving in his car and he crosses the center line, that is not grounds for a whole lot of punishment, taking his license or thoroughly incarcerating him, but if he crosses the center line fifteen times every mile he drives or if he insists on straddling the center line all the time, then I think we found action has to be taken.

Hutchinson. The proposed article of impeachment now being debated charges that the President has violated his oath of office and his constitutional duty to take care that the laws are faithfully executed. It charges that he has done so by repeatedly engaging in unconstitutional and illegal conduct.

The wording of the proposed Article II raises a number of serious questions which I hope will be addressed by its proponents during the course of this debate. While I strenuously dispute as a matter of fact that the evidence establishes that the President has repeatedly engaged in unconstitutional and unlawful conduct, I am curious as to what the drafters of this article perceive to be the legal significance of the allegation that such acts have been done repeatedly.

What is the gravamen of the offense charged in this article; the supposed repetition of misconduct or the specific instances of it which are alleged?

Would any of these individual allegations standing alone support an article of impeachment? Or do they only amount to impeachable conduct when considered in the aggregate? If some would stand along and others could not tell us which is which. How many of these allegations must a member believe to be supported by the evidence before he would be justified in voting for the entire article?

Even if each and every allegation were proved true, is it fair or is it grossly misleading to say that the President has violated his oath repeatedly? Repeatedly means again and again. Surely this does not mean isolated or even sporadic failures of duty. It can only connote a regular persistent course of conduct warranting a belief that the alleged instances of lawlessness are characteristic and not exceptional.

Is it really fair? Does it depict the whole truth to examine the entire record of this administration during the past five and a half years, to examine the totality of countless tens of thousands of official actions taken by the President personally, by members of his White House staff and by other subordinate officials of the Executive Branch of the government and to cull from that huge mass of official action this relative handful of specific allegations and to derive from them the proposition that the President's conduct has been repeatedly unlawful?

Consider, for example, the question of wiretaps. I do not acknowledge that these wiretaps were unjustified or under all the circumstances illegal as the law existed at the time they took place. But even if some were, which I do not concede, in all fairness can it be said that those few wiretaps, most of which were instituted in two groups, spread over a one-year period and the last of which terminated in February, 1971, furnish evidence of repeated violation of the Constitution?

As in the case of the evidence relating to the plumbers operation they show a specific presidential response to a specific and serious problem, namely, the public disclosure by leaks of highly sensitive information bearing upon the conduct of American foreign policy during that very turbulent period both domestically and internationally.

What effect—what effort has our staff made to bring before this committee a coherent comprehensive reconstruction of the claimant and the circumstances of the 1969 through 1971 period in which those wiretaps occurred?

We have heard no eloquence to stir our memories as to the violence and as to the disorder and the war which nearly had this nation on its knees at the time that Richard Nixon took office.

The President's prosecutors would have us view the actions of which they complained in the abstract, ripped from the very context of the event which precipitated them, giving not even lip service to the serious governmental problems which they were designed, even if designed clumsily, to cope with.

Mr. Chairman, I will vote against this ill-conceived article of impeachment.

McClory. It seems to me that this really gets at the crux of our responsibilities here. It directs our attention directly to the President's constitutional oath and his constitutional obligation. There is nothing mysterious about this, and there is nothing evil and malicious about it. It directs the attention directly to this responsibility that is and has been reposed in the President.

This certainly is no bill of attainder. We are not thinking this up as an offense and then charigng the President with a violation of it. We are calling the President's attention to the facts that he took an oath of office, and that he had in his oath of office a solemn obligation to see to the faithful execution of the laws.

This is quite different and distinct from the elements of criminality that are involved in Article I charging the President with a conspiracy, and with all kinds of criminal acts of misconduct and obstruction of justice and so on, an article which I did not support because I do not believe the facts support that kind of charge.

Now, some of those who have been expressing themselves in support of Article I, the conspiracy and coverup, clearly have included feelings of deep hostility, and bitterness and political bias. On my part, Article II, based on the take care clause of the Constitution which specifies a solemn obligation of the President to take care to see to the faithful execution of the laws, I want to make perfectly clear that clearly I harbor no malice, I attribute no evil thoughts or conduct to the President of the United States. I express no bitterness, no hostility.

What I do want to make clear is that the President is bound by his solemn oath of office to preserve, protect and defend the Constitution, and to take care to see that the laws are faithfully executed.

While many of the paragraphs contained in Article II may appear similar to those that are found in Article I, which I opposed, it is important to note carefully that the pattern of conduct which is delineated in Article I is quite distinguishable from that in Article II. For one thing, I would point out

By James K. W. Atherton—The Washington Post

Rep. Charles E. Wiggins (R-Calif.) consults document during committee debate on Article II of impeachment.

there is no clear proof of conspiracy in the fact that others surrounding the President have been guilty of acts of gross misconduct. However, there is a clear violation of the President's responsibility when he permits multiple acts of wrongdoing by large numbers of those who surround him in possession of greatest responsibility and influence in the White House.

The establishment of the plumbers, and many of the activities attributed to them are wholly unrelated to the Watergate, and that is the same case with respect to his misuse of the FBI and the CIA and the IRS. Nothing to do with Watergate for the most part. But, these are clear acts of misconduct which, it seems to me, imporatnt for us to take note of. In other words, the acts and conduct upon which I feel an article of impeachment should be presented to our colleagues is strictly constitutional, relates narrowly and directly to the President himself and his personal oath of office.

While this article may seem less dramatic and less sensational than the Watergate break-in and coverup, it is nevertheless a positive and specific responsibility, and a positive and responsible approach to our power on our part as investigators of misconduct.

One purpose of the impeachment process, it seems to me, is to set a constitutional standard for persons occupying the office of the President. Thus, if we approach our task in constitutional terms, we will be setting such a standard. I view the duty of the House of Representatives as something other than serving as a district courthouse to hold the President accountable for statutory, criminal statutory violations of the criminal law. I think we can agree that the President should not commit crimes, but if we are to set a constitutional standard, we must take a different view of the facts. We must phrase our charges in constitutional terms so that the Presidents to come may know what is meant by our action. If we are to establish our proceedings as a guide for future Presidents, we should speak in terms of the Constitution and specifically in terms of the President's oath and his obligation under the Constitution. It will be of limited value to admonish a future President not to obstruct justice or engage in a cover-up. However, it will aid future Presidents to know this Congress and this House Judiciary Committee will hold them to an oath of office and an obligation to take care to see that the laws are faithfully executed.

I realize that there is no nice way to impeach a President of the United States. I realize also there is distinction between the criminal conspiracy theory and Article I and the purely constitutional aspects of Article II may be misunderstood. But, as a member of this committee, the most I can do is to exercise my independent judgment and to search deeply my own conscience. Both reason and wisdom dictate the judgment I am going to make in support of this Article II as right.

Thank you, Mr. Chairman.

Clerk. Amendment by Mr. Wiggins. In subparagraph (1) after the word "has," strike the words "acting personally and through his subordinates and agents" and add the following: "personally and through his subordinates and agents acting with his knowledge or pursuant to his instructions."

Wiggins. I believe my intent is evident from the words used, and I merely am trying to avoid any possible ambiguity created by the language which is now in subparagraph (1) and subparagraph (3).

Going back to the introductory words in Article II it states, in essence, Richard Nixon has repeatedly engaged in conduct, etcetera. It makes it clear that we are talking about Richard Nixon's acts, and yet, when we move to subparagraph (1) we deviate from that standard and we say, as presently proposed, that he acted personally and through his subordinates and agents.

I have no quarrel with impeaching President Nixon by reason of the acts of his subordinates and agents, so long as we know that we are talking about those acts of his subordinates and agents which were done with his knowledge or pursuant to his instructions. And we are not seeking to impeach the President vicariously by reason of the acts of others about which he had no knowledge, and contrary perhaps to his instructions.

I have every reason to expect, although I have not asked my friend, the gentleman from Illinois to support such an amendment, because this is, in essence, what he was talking about yesterday, that he was willing to impeach the President by reason of his personal misconduct, but was not willing to impute vicariously the acts of others.

My amendment to subparagraph (1) and subparagraph (3) is to make this concept abundantly clear, and I urge its acceptance.

Cohen. Mr. Wiggins, under your proposal that would make it personally and through his subordinates and agents acting with his knowledge or pursuant to his instructions, would that also cover such situations where his agents may have acted without the President's personal knowledge in advance, but such acts were thereafter ratified or condoned by the President?

Wiggins. Yes. I would n[o]t necessarily exclude that. I realize President must of necessity [t]hrough subordinates, and that the a[c]ts of subordinates may not be personally known to the President. But, so long as those acts are pursuant to his instructions, or perhaps policy, to use a word that has been used around here, or ratified and condoned by him as his acts, then I have no objection to attributing them to the President.

Cohen. So, if he acquired knowledge thereafter and ratified in effect the prior acts, that would be within the scope of your amendment. Thank you.

Wiggins. I will submit that question.

Railsback. I have only the same, I think the same questions that were raised by the gentleman from Maine. What worries me about this, the President, in some cases, perhaps had knowledge not initially, perhaps, but learned of improper activities and saw fit to either condone or acquiesce in such activities, and what I am wondering is if it is the intent of his amendment, and again let's make it very clear, is it the intent of your amendment to rule out that kind of what I believe is serious misconduct?

Wiggins. It is not my own intent to rule it out, but I do not wish to say I embrace it. I will, as you said yesterday, let the words speak for themselves.

Seiberling. I would like to ask the gentleman if his amendment would cover a situation such as we have testimony on that the President would give instruction sometimes saying now, I want you to get this done, but I don't care how you do it, don't bother me with the details. Would that be sufficient to cover the instructions under the gentleman's amendment?

Wiggins. Well, I think the instructions are subject to interpretation. I know the incident to which the gentleman refers, and I could not conceive that the President was by that instruction authorizing the doing of an illegal act. So long as the act is consistent with a reasonable interpretation of his policy and direction, I have no quarrel with attributing that conduct to the President.

Brooks. Mr. Chairman, I oppose the gentleman's motion. The specific act included within the scope of this session involved an awesome array of impeachable offenses against the United States Constitution and the American people. The evidence that we have gathered clearly establishes that Richard M. Nixon and his agents sought and obtained confidential tax information from the Internal Revenue Service in a manner unauthorized by law and for unlawful purposes. Specifically he and his subordinates made repeated attempts to influence the selection of citizens to be targeted for audit and other special action by the Internal Revenue Service. . . .

Dennis. Mr. Chairman and my colleagues, I think this amendment is a very important one which we all ought to give careful consideration. Actually it would be my belief and certainly my hope that this is what the Hungate substitute means even as unamended because when you say acting personally and through your subordinates and agents, surely that means through actions of theirs which you have ordered or of which you have proved under normal principles of law and in any kind of a criminal or quasi-criminal situation such as we have here.

Hungate. I believe the gentleman correctly states the intention, the gentleman from Indiana correctly states the intention of the drafting of the Hungate substitute at that point and really my argument would be that the amendment is superfluous for that reason. The gentleman—I agree I think with his remarks.

Dennis. I am very glad to know that is what the gentleman means and knowing the gentleman's capacity as a distinguished lawyer I felt confident that that is what he meant. But that being what he meant, in other words, it does have to be with the knowledge or pursuant to the instruction of the principle, there can be no harm in writing that in and I think it is extremely important that we do so.

For one thing, if we voted such an amendement down which the author of the original amendment agrees means what I say it means, it then seems to indicate that the majority of the committee thinks it means something else. And for another thing, it is quite important that this principle be nailed down here because as you go through this, listen to the argument, you hear an awful lot about Haldeman. You hear an awful lot of Ehrlichman. Very rarely do you hear the mention of the President and it is important that we keep in mind that there has got to be a connection, that he is the man we are going to impeach, if anyone.

This is just a matter of ordinary fairness. We all have staffs of our own, not nearly as large as the President of the United States, but I think everyone of us has had enough experience to know what people on your staff can get you into some very, very embarrasing situations sometimes and things which you knew nothing about, didn't authorize, didn't want them to do, and to be held responsible therefor and this is just an illustrative thing, but one which could come home because it is kind of familiar.

Now, I would—I would say, of course, ratification, sure, that is ordinary law. If your agent went out and did something improper and I said, well, fine, that is great, I am all for it, approved and ratified it afterwards, in my judgment that is ordinary law, too. But otherwise you have got to have an instruction to the man, you have got to have knowledge of what he is doing, or you have got to approve it and ratify it after he had done it and—

Dennis. Mr. Hungate and I agree that is really all we are saying here. We are just making crystal clear what he and I agree is already reasonably clear . . . Under the factual circumstances here and under the frequency with which we hear testimony about other individuals and the infrequency with which we hear anything about the President, and the importance of not forgetting the necessity and the importance of the connection, I think in simple fairness that this is . . . a reasonable and important amendment and I hope it will—

See TRANSCRIPTS, A17, Col. 1

TRANSCRIPTS, From A16

Hungate. Will the gentleman yield, lease?

Dennis. Briefly, I yield to my friend rom Missouri.

Hungate. I think I would just let im, perhaps, and I would not—

Dennis. I would not want to do—

Hungate. —to the extent of our greement, certainly ratification is ithin our agreement, but I would unerstand that the President's acts rough suobrdinates, and I am not lking about the rural mail carrier, I m talking about Haldeman, Ehrlichan, Mitchell and Dean and I think ie language in the original substitute peaks for itself and I just point out I ink there is an area of agreement ut I believe I would oppose—

Dennis. I understood my friend to ay that he agreed with the language acting with his knowledge or purant to his instructions."

I hope he did, but if he does not gree with that, then the amendment ecomes tremendously important. We ave just got to have it.

Hungate. I could not agree with that nguage, I regret to inform—

Dennis. Well, if the gentleman does ot agree with it, then we are in a sitation where it is going to be sugested that the President can be imeached for actions of his subordinates ho were acting without his knowldge, not pursuant to, even against his structions, I would assume, and without any ratification thereafter, and relly and truly, I wonder seriously hether the majority of the committee hich has already indicated it wants to ring articles of impeachment want to ake that line. That is not, I think, ven in accordance with the Constituon of the United States.

Hungate. I would caution the gentlean not to do that.

McClory. I do want to say I did have ie privilege of taking part, a small art in the drafting of this proposed rticle and I think it is a good article ie way it is drafted at the present me. I interpret this article as that hich embodies the "take care" clause f the Constitution and I would just ke to read just one line from this volme which is made availble to members of the Congress interpreting the onstitution and with regard to the take care" clause.

The volume reads as follows: "The onstitution does not say that the resident shall execute the laws but iat he shall take care that the laws be ithfully executed: that is, by others ho are commonly but not always with rict accuracy termed his subordiates."

In other words, what we are charg-ig here is that the President has a reponsibility to see to the faithful exeution of the laws. We are not charging iat he has gone out and personally ommitted some criminal act but we re saying that there are 20 some perons who are either charged or conicted or serving time or have already ompleted their service of time, of beig engaged in criminal conduct in and round the White House, some of his op aides, and I think that this is involved here.

We can only—the President can only et through his agents and subordiates, but is he—is he tolerating and as he tolerated this kind of conduct i the White House and in and around im? Well, it seems to me that that is ie charge we are making and I think iat to erode this charge in any way ould be a mistake and I think that ie articl eis adequate the way it is nd I hope the amendment will be re-ected.

Danielson. Mr. Chairman, I, too, opose the amendment offered by my olleague, Mr. Wiggins. I respectfully ubmit if this amendment were put ito the article, it would unduly and nnecessarily limit and restrict the roofs which the managers will be ompelled to make before the Senate.

I concede that the managers must prove each and every charge before it can serve as a basis for an impeachment, but they should not be unreasonably and unrealistically limited in that proof. The wording of this proposed amendment would require that there is proof that the President in each and

every instance knew in advance of the precise act that was going to be carried out by his agents and subordinates.

I respectfully submit that that is unrealistic. Let's look at, for example, Mr. Segretti. Do you suppose as a — is it reasonable to suppose that if Mr. Segretti if we were to prove that he was authorized by the President to commit these dirty tricks, do you suppose that he picked up the phone every time just before he did one of them and called the President, and said, "Mr. President, I am now about to order 400 pizzas for Mr. Muskie's fund raiser? That is unrealistic and yet the language of Mr. Wiggins' amendment would require that type of prior action by the President in each and every instance.

I respectfully submit that the managers before the Senate must prove each and every charge against the President, but this must be done in the context of the real world.

If they should prove that the President knowingly and intentionally set one of these forces in motion, then the President is responsible for the natural and probable consequences of having set that force in motion.

I mention Segretti's dirty tricks. This goes to many other things. Let's take a look at the Watergate burglary. Someone mentioned properly the other day that it was improbable that the burglars called the President down in Key Biscayne and said—I believe it was my colleague, Mr. Rangel, "Mr. President, we are about to make a hit." Of course, they didn't. But if it can be shown that he set this force in motion and that the activities of the perpetrators were the natural and probable culmination of the force he set in motion, then I submit that he is responsible.

You know, we hold the President to a higher standard of conduct than that of the marketplace. He is the person who is to set the moral and ethical standard of the nation, of the entire Republic. I submit that Mr. Wiggins' amendment would unduly and unnecessarily restrict proof and for that reason it should be defeated.

Father Drinan. . . I would like to raise a basic question as to the authorization that is in the proposed amendment by quoting the President just before the establishment of the Plumbers. The President speaking to Mr. Haldeman and Mr. Colson according to Mr. Colson's affidavit in the Ehrlichman case, said this:

"The President said: 'I want these leaks to be stopped. I don't want to be told why it cannot be done. I don't want excuses. I want results. I want it done, whatever the cost.' "

I have difficulty in accepting the proposed amendment in view of this type of blanket authorization.

Seiberling. Mr. Chairman, I would like to add one more point.

Of course, I do not believe and I do not think any other member believes that the President should be held responsible for the acts of his subordinates under a general doctrine of respondeat superior which simply says that he is liable for whatever his agents do within the scope of their general authority, but where the President has failed to take the actions to make sure that his agents have stayed within the scope of their legitimate authority and furthermore, as Father Drinan has indicated, has told them, "I don't care how you do it, just get it done." implying that he didn't care about the niceties of the law or anything else, why, we have a totally different situation and yet the amendment proposed would not take into account that type of situation.

Danielson. I should like to conclude by stating, Mr. Chairman, that if the President set forth a general policy or general instruction and pursuant thereto his aides misuse of the Presidents' power, then the President alone can be held to account.

Sandman. It would be untruthful for me to say I am surprised because so many things have happened here that would surprise anybody, so I guess we are following a normal course. But isn't this really the crux of what it is all about? The gentleman from California truthfully adds only two words, that is all he adds, for him to be responsible so that he can be removed from office.

My colleague from California says he either has to have knowledge of the wrong-doing before it happens or he has to be the person directing that the wrong be committed.

it. No other human being can be held responsible for the acts of his agents in any kind of a criminal conviction unless he has one or the other of those conditions present . . .

Now, I have asked that we make a simple sentence out of each charge. The opposition have danced around that request for several days . . .

Cohen. Mr. Sandman just indicated that the motion of Mr. Wiggins adds just two things. But, he failed to state I think that it omits one very important thing, and that is the question of ratification. And I notice that the gentleman from California was rather reticent about expressing this word "ratification" in his proposed amendment.

Now, there are two major areas which are of concern to me in this subject of abuse of agencies under the Internal Revenue Service and the FBI. Now, for example, we do have direct eivdence before this committee, taken before this committee and taken by John Dean, that on September 11th he did have a conversation with the Director of the Internal Revenue Service during which time he presented a list of political enemies for the purpose of having those enemies audited. Now, there is no evidence before this committee, in my opinon, that would justify saying the President knew in advance of Mr. Dean's activities.

By James K. W. Atherton—The Washington Post

Rep. George E. Danielson (D-Calif.) makes a point during Judiciary Committee debate on Article II of impeachment.

Now, maybe we are making new laws for Presidents and I want to say to my colleagues on the other side some day you might have a Democratic President and you want him to live up to all these kinds of new laws that you are making? We heard yesterday that the Fifth Amendment and due process has become outmoded. You want that to apply to your Presidents like you are trying to apply it to this one. You want all of these things to be done the hard way.

Now, let's go through just a couple of things. An I am not going to prolong the argument on specificity, that long word.

But, isn't this why you will not agree to that particular thing? Which one of these abuses are you going to attempt to prove, which one of them?

And now we understand that the gentleman from California, Mr. Danielson, says that it is all right even if you can show that the President did not know about it, or that he did not direct

However, on September 15 the conversation to which Mr. Sandman just referred to, we do have direct evidence that the President was, indeed, interested in having this matter pursued. Mr. Sandman forgot to indicate that or failed to point out, I should say, that we were missing 17 minutes of this September 15 tape which was not presented to the committee which we have subpoenaed. This is the alleged portion of the tape, according to Mr. Dean, whereby the President directed Dean

to go back and see George Schultz, and if he did not get cooperation to let him know.

Now, the question is, is Dean credible? Well, we have direct evidence from the Internal Revenue Commissioner who testified before the Senate Select Committee that, indeed, Dean did come back to him on September 26th, just several days thereafter his conversation with the President, presenting a reduced list and again asking for audits.

Now, I suggest and submit to this committee that the President's activities on September 15 would, indeed, constitute a ratification of the prior act, which would make him responsible for such activities.

With respect to the FBI abuse, I am referring specifically to the investigation of Daniel Schorr, that there is evidence before this committee that Daniel Schorr did criticize one of the President's speeches, and that while aboard Air Force One, Mr. Higby and Mr. Haldeman asked the FBI to conduct an investigation. Again we have no evidence before us to say that the President knew that they had called while aboard Air Force One to ask for that investigation. But, we do have direct evidence before the committee, taken from the lips of Mr. Colson, and Mr. Colson told this committee that once that FBI investigation was exposed to the press, that he then came to the President and said we've got a problem here, we are in a jam, what do you think about sending out a statement that indicates that Mr. Schorr is being investigated because we are considering him as a consultant to the White House, to which the President approved.

I would submit to this committee that that in turn would constitute a ratification of the prior activities on behalf of the FBI, which I think were an abuse.

And for those reasons, I cannot, without express wording in the motion offered in the motion by Mr. Wiggins, support that without the word ratification.

Mr. Butler. I just would take one moment, but I feel like we ought to complete what was said by the gentleman from Texas, Mr. Brooks, with reference to the O'Brien investigation, and point out that there is among the evidence which was brought to our attention the affidavit of Mr. Thompson with reference to the conversation with Mr. Fred Buzhardt on behalf of the White House in which he advised on September 15th, 1972, Dean reported on the IRS investigation of Larry O'Brien. There would be some question in my mind under this amendment as to whether that would, in fact, be relevant and admissible, but under the proposed amendment, substitute by Mr. Hungate, I am quite satisfied that it would.

In my judgment, the proposal by Mr. Wiggins expressly excludes the opportunity for ratification and evidence of ratification . . . And I think that is very significant.

Wiggins. It is not my intention as the maker of the motion to exclude the concept of ratification. That is not my intention. My words were only intended to convey to the gentleman that I did not accept the view that the facts constituted a ratification, but that the issue of ratification is still before us in terms of my language.

Hogan. I agree with my colleagues who say that we cannot impeach the President for the wrongdoing of his aides. I have said so myself.

I think there is a very strong case of personal culpability on his part, as Mr. Cohen has indicated, and there are a number of them, and in the short time remaining, I will try to hit some of them myself.

We have his words on record, but one of the strongest things of personal involvement to me is when the Department of Justice files briefs in the Ellsberg case and says that there is no record of any wiretaps or any overheard conversations of Ellsberg. The reason they filed those briefs is because it was not in the files of the FBI. And why was it not in the files of the FBI? Because the assistant Attorney General, Mardian, flew to San Clemente and prsonally discussed the matter with the President, not his aides, personally with the President and he said what shall I do with these records, and the President said deliver them all to the White House. And Mr. Mardian testified that he delivered them to the Oval Office. When he was asked, well, to whom did you deliver them, he said I would rather not say. Well, who sits in the Oval Office except the President? They were then given to Ehrlichman, and Ehrlichman kept them in his files outside of the records of the Department of Justice.

This is one of the reasons the Ellsberg case was dismissed, which I think was a calamity.

In February, '73, when Time magazine came out with a story about a White House wiretap program, the President personally approved the cover story, as he did in the Daniel Schorr case, and there was no such wiretap program . . . He denied the existence of the wiretap program when Time magazine came out with the story. That is in February, '73.

In May, 1973, he publicly states that he, the President, personally had authorized and directed the electronic surveillance of 17 persons. A number of these wiretaps were blatantly illegal. There was no justification for them whatsoever under criminal or domestic security bases. And is it reasonable for reasonable and prudent men to conclude that White House aides would tap the phone of the President's own brother without his approval in advance? I think there is ample material linking impeachable offenses directly to the President, not to his aides. Directly to him.

I agree we should do that and I think we have done so.

At this point the committee recessed for a roll call vote on the House floor.

At this point the committee recessed for lunch and reconvened at 3:15 p.m.

Mayne. . . . I must speak in opposition to the amendment of my friend from California because I certainly do not want to do anything to dilute or limit in any way whatever responsibility the President may have for the very outrageous attempts to use the Internal Revenue Service for political purposes.

I consider the evidence shows that the approaches that were made by Mr. Dean and Mr. Ehrlichman to Commissioner Randolph Thrower and Commissioner Johnny Walters to be absolutely indefensible. Our tax collection system in this country is based on a voluntary contribution assessed and paid by people on a voluntary basis and it will certainly be destroyed if people can not have confidence that it is not being used to reward political friends and to harass political opponents.

I think that not only does the President have a responsibility not do directly approve such indefensible action but he has a responsibility not to ratify it after it has occurred and has a responsibility over and above that to have enough idea of what is going on in his administration to be very sure that this kind of political prostitution of Internal Revenue Service does not occur. There is nothing in this record which to me is more disappointing or more cause for concern of the continuation of free government than the way in which this Internal Revenue Service was attempted to be used for this base purpose. . . .