

An Explanation: Memos by Lawyers Form Basis for Debate on Article II

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WASHINGTON, July 29—The House Judiciary Committee's second proposed Article of Impeachment contains five separate sections, each alleging abuse of Presidential power.

The arguments made by committee members today in support of the sections were based on a memorandum prepared under the direction of the committee's special counsel, John M. Doar.

The arguments against the sections were based on a separate memorandum prepared under the direction of the minority counsel, Samuel A. Garrison 3d.

Both memorandums were given to committee members this morning, and copies were made available to The New York Times by a committee member who has voted to recommend impeachment.

What follows, based on the memorandums, is an explanation of the arguments for and against including each section in the article of impeachment:

I.R.S.

The article asserts that President Nixon attempted to obtain confidential tax information from the Internal Revenue Service and tried to have tax audits conducted by the agency in a "discriminatory manner."

The Doar memorandum contended that the charge was applicable in four specific instances:

¶In 1970, the I.R.S. made available to the White House a report on a tax investigation of Gerald Wallace, brother of Gov. George C. Wallace of Alabama. Derogatory information from the report was given to Jack Anderson, the columnist.

¶John W. Dean 3d, the President's former legal counsel, obtained other confidential information from John J. Caulfield, a former Treasury Department official.

The memorandum argues that "the President at least knew of Dean's capacity to obtain confidential tax information" and cites the transcript of the March 13, 1973, meeting between Mr. Nixon and Mr. Dean when Mr. Dean told the President that he had such a capacity.

¶At White House orders, the revenue service conducted a special investigation of the tax returns of Lawrence F. O'Brien, former chairman of the Democratic National Committee. J. Fred Buzhardt, the White House counsel, told Fred D. Thompson, Republican counsel to the Senate Watergate committee, that the President and Mr. Dean had discussed the O'Brien investigation at a meeting on Sept. 15, 1972. No such discussion appear on the portion of the tape of the meeting that the White House supplied to the Judiciary Committee.

¶On Sept. 11, 1972, Mr. Dean gave the revenue service commissioner, Johnnie M. Walters, a list of supporters of Senator George McGovern, who ran for President against Mr. Nixon that year, and instructed Mr. Walters to have their tax returns investigated. Four days later, H. R. Haldeman, White House chief of staff, told the President that Mr. Dean was ruthlessly pursuing the McGov-

ern supporters.

Lack of Evidence Asserted

On each of these allegations the Garrison memorandum asserts that there was no concrete evidence that Mr. Nixon was aware of the requests and instructions issued by his aides.

In the case of the O'Brien investigation, the memorandum notes that Mr. Dean, in his testimony, said he did not recall a discussion on that specific subject with the President on Sept. 15, 1972.

The Republican counsel's memorandum declares that the allegation that the I.R.S. was ordered to harass McGovern supporters, "although isolated, is admittedly disturbing."

But the memorandum declares that there remains some doubt as to whether the President actually knew that Dean had sent a list of McGovern contributors to Walters for auditing."

Illegal Surveillance

The Doar memorandum argues that the White House conducted illegal wiretapping or other surveillance in the following instances.

¶The President has acknowledged that he ordered the installation of wiretaps on the telephone of 17 reporters and Government officials.

¶He ordered that records of these taps be concealed and that the logs be delivered to him. When Time magazine published an article exposing the taps, the White House denied that they existed. According to L. Patrick Gray, former acting director of the Federal Bureau of Investigation, the F.B.I. did not pursue the Time allegation because of the White House denial. The summaries sent to the President, the memorandum asserts, "contained only domestic political intelligence personal information and non-classified policy discussion."

¶At White House direction, the F.B.I. conducted surveillance on Joseph Kraft, the newspaper columnist.

¶The President has acknowledged that he knew the Secret Service had followed and tapped the telephone of his brother, F. Donald Nixon.

¶The President gave tempo-

rary approval to a plan drafted by an aide, Tom Charles Huston, "to implement such illegal intelligence gathering procedures as surreptitious entry, electronic surveillance and covert mail coverage."

¶At White House instructions, the F.B.I. conducted an investigation of Daniel Schorr, a correspondent of CBS News. The President approved a false cover story that Mr. Schorr was being considered for a position in the Government.

Points Omitted

The memorandum prepared by Mr. Garrison does not address the investigations of Mr. Schorr or the President's brother.

In the case of the Kraft investigation, the memorandum said there was no evidence that the President had approved the surveillance.

Mr. Garrison's memorandum asserts that "emergency" wiretaps like those installed on telephones of the 17 reporters and officials were legal at the time. "In at least 14 of the 17 cases," the memorandum declares "there was sufficient probable cause to undertake the surveillance. Even if, through inadvertence or an honest error in judgment, the remaining three persons were unnecessarily wiretapped, this slight error is not enough to disqualify the whole program."

There was no indication, the memorandum states, that the F.B.I. was instructed by the President to conceal the wiretap records, and there was nothing "in any way wrongful" in having these records delivered to the White House.

Furthermore, the memorandum says, the President was not "obligated" to respond to the Time magazine article exposing the wiretaps.

Mr. Garrison rejected the allegation that the Huston plan was directly linked to the subsequent creation of a special investigating unit known as the "plumbers."

"The problem to which the Huston plan was directed was, essentially, domestic violence, whereas the 'plumbers' were concerned with news leaks and the theft of the Pentagon papers," the memorandum states.

Plumbers

The Doar memorandum asserts that the President created an extralegal police force when he established the plumbers unit, and that its principal purpose was to discredit Daniel Ellsberg, not to protect national security.

Furthermore, the President is accused of having misused the Central Intelligence Agency when White House aides ordered the agency to provide E. Howard Hunt Jr. with intelligence paraphernalia.

The Garrison memorandum defends the President's creation of the special unit, stating, "If the President had not acted decisively against epidemic leaks of national security material, it would have been a breach of his responsibilities for the protection of the nation's security."

The memorandum says that the

President never ordered any information disseminated about Dr. Ellsberg that was not true and states that "a public relations campaign is not illegal."

It was "altogether proper" for the C.I.A. to assist Mr. Hunt, since he was engaged in national security endeavors, according to Mr. Garrison.

The memorandum contended that the President could not be held responsible for the break-in at the psychiatrist's office.

Misprision

The Doar memorandum asserts that the President had "failed to take care that the laws were faithfully executed" by failing to inform authorities about illegal enterprises of his associates. In legal terms, such a failure is called misprision of a felony.

The President, the memorandum states, did not question his aides thoroughly shortly after the Watergate burglary to find out the facts; he told an Assistant Attorney General, Henry E. Petersen, not to investigate the burglary of the psychiatrist's office; he did not pass on to officials the information on illegal activities he was given by Mr. Dean on March 21, 1973, and he did not tell the authorities when he learned that campaign and White House officials had lied to investigators.

The Garrison memorandum does not address the specific allegations but argues generally that the President had not committed misprision of felony.

The President, the memorandum states, "is entitled to balance consideration of national security and the public interest against the countervailing public interest in the punishment of persons who infringe the provisions of a criminal statute."

Obstructing Investigators

The President, according to Mr. Doar's memorandum, interfered with the investigation of the Watergate burglary by the F.B.I., the Criminal Division of the Justice Department and the Watergate special prosecutor.

It cited such instances as the President's instructing the C.I.A. to block the initial Watergate investigation by the F.B.I., his passing on to aides, who were subjects of the Justice Department's inquiry, information that had been given him in confidence by Mr. Petersen, and his ordering the dismissal of the first special prosecutor, Archibald Cox.

Mr. Garrison's memorandum asserts that the President had legitimate reasons to believe that the F.B.I.'s early Watergate inquiry might expose C.I.A. secrets. The memorandum does not mention the President's discussions with Mr. Petersen.

It argues that Mr. Nixon "certainly committed no crime" when he ordered Mr. Cox discharged and stated that the President had done so because Mr. Cox was a "disaffected employe" who had engaged in "unreasonable" acts.