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Excerpts From Transcript of the

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Proceedings on Impeachment

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

MORNING SESSION

CHARLES E. WIGGINS, Republican of California: My point of order is that Article II fails to state an impeachable offense under the Constitution. It's quite clear from a full reading of the Proposed Article II that the gravemen of that article is an 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 words "in derogation of" constitutional rights as distinguished from "in violation" of those rights.

The question 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.

It's 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 that is an empty phrase, having meaning only in what we pour into it. It must reflect our subjective view of impropriety as distinguished from the objective view 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, 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 his 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 any given moment.

We are in effect saying 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.

Standards for Future

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

I think it's holding up to a future President an impossible standard that he must anticipate what Congress may declare to be abuses in the future.

Under the law, 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's what we're 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.

GEORGE E. DANIELSON, Democrat of California: This is possibly, probably —I'll make that stronger—it's 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 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 had 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 the impeachment clause of our Constitution, which fortunately we only had to use now for the second time, is that means.

Protection of Presidency

These are high crimes and misdemeanors, meaning that they are crimes or offenses against the very structure of the state, against the system of the 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.

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 process.

PETER W. RODINO Jr., Democrat of New Jersey, chairman: 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 issue of impeachment and the nature of an impeachable offense is the very nature and subject of these proceedings. And no point of order can possibly lie in the nature of a challenge after 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. Therefore the chair rules against the point of order.

WILLIAM L. HUNGATE, Democrat of Missouri: 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 facts 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, and for which I only seek to be a catalyst.

[The text of the substitute Article II of impeachment proposed by Mr. Hungate appears elsewhere on this page].

What we have today involves abuse of powers and whether we shall say that you can be President as long as you're not subject to a criminal charge. Whether that's 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 would support impeachment—and I think more would believe that a combination of one or more or all of them would support impeachment. Because we do discuss, I think, and consider repeated violations. In many cases, repetitive conduct within the article, and certainly repetitive conduct with—I mean within the subparagraph—and certainly repetitive conduct throughout the five articles.

Procedure from History

I would think that if only one instance of improper conduct—and it could perhaps be quite serious—I don't 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 position.

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 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.

EDWARD HUTCHINSON, Republican of Michigan: 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 be 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 established is that the President has repeatedly engaged in unconstitutional and unlawful conduct, I am curious as to what the drafters of this article perceived 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 repetitions 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 alone 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 count on 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, by other subordinate officials of the executive branch of the Government, and to cull from that huge mass of official actions this relative handful of specific allegations and derive from them the proposition that the President's conduct has been repeatedly unlawful?

ROBERT McCLORY, Republican of Illinois: It seems to me that this really gets at the crux of our responsibility here. It directs our attention directly to the President's constitutional oath and his constitutional obligation.

There is nothing mysterious about this and there's nothing evil or malicious about it. It directs its attention directly to this responsibility that is and has been reposed in the President.

This is certainly no bill of attainder. We're not thinking up an offense and then charging the President with the violation of it.

We are calling the President's attention to the fact that he took an oath of office and that he had in his oath of office a solemn obligation to see the faithful execution of the laws.

Taking Care of Laws

In my support of Article II based upon 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 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 found in Article I—which I opposed—it's 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 there is no clear proof of conspiracy in the fact that others surrounding the President have been found guilty of acts of gross misconduct.

However, there's a clear violation of the President's responsibility when he permits multiple acts of wrongdoing by large numbers of those who surround him in positions 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 Watergate.

And that's the same case with respect to his misuse of the F.B.I. and the C.I.A. and the I.R.S.—nothing to do with Watergate for the most part.

While this article may seem less dramatic and less sensational than the Watergate break-in and cover-up, it's nevertheless positive and responsible.

And a positive and responsible approach on our part as investigators of misconduct.

[At this point Mr. Wiggins introduced an amendment to the Hungate substitute. It would state that President Nixon's subordinates acted "with his knowledge or pursuant to his instructions" in committing acts alleged in the Hungate substitute].

Nation's Moral Leader

DANIELSON: You know, we hold the President to a higher standard of conduct than that of the market place. 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.

ROBERT F. DRINAN, Democrat of Massachusetts: I'd like to raise a basic question as to the authorization that is in the proposed amendment by quoting the President himself 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 can't 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.

JOHN F. SEIBERLING, Democrat of Ohio: Of course, I don't believe, and I don't think any other member believes that the President should be held responsible for the acts of his subordinates.

But whether the President has failed to take the actions to make sure that his agents have stayed within the scope of their legitimate authority and 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.

If the President sets forth a general policy or a general instruction and pursuant thereto his aides misuse the President's power then the President alone can be held to account it.

CHARLES W. SANDMAN Jr., Republican of New Jersey: Isn't this really the crux of what it's all about? The gentleman from California truthfully adds only two words—that's 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 wrongdoing before it happens or he has to be the person directing that the wrong be committed.

Now maybe we're making new laws for Presidents. And I want to say to my colleagues on the other side, some day you may have a Democrat President and you want him to live up to all these kind of new laws that you're making?

Which one of these abuses are you going to attempt to prove? Which one of them?

The Incidents Involved

One of these things starts out with early 1970 that Haldeman directed Mollenhoff—that doesn't say the President did, it said Haldeman does. That was in 1970.

The next thing that you have here, on Page 2, John Caulfield, a member of Dean's staff, he did something at the request of Haldeman. It doesn't say at the request of the President.

Now are you talking about the incident of March 13? We're entitled to know, because if that's the one you're concerned about you're not going to have much of a case.

Then you've got another one here in the spring of '72 Ehrlichman wanted some information on O'Brien, but there's nothing in the info in front of me here—that was handed to you by the staff—that involves the President.

Another time Ehrlichman told Shultz—it doesn't say the President told Shultz. And then we get down to Ehrlichman called Kalmbach. The President didn't tell Kalmbach, Ehrlichman told Kalmbach. And this is another date, September '72. Is that the one you're going to rely on? We should know.

Now in addition to that, the biggest one of all that you're relying upon, apparently, is the conversation of Sept. 15, 1972. Where if you listen to that tape there is no question that the President is extremely disturbed on what Dean is telling him, and it is there that he explodes about Shultz.

No Audits on Anyone

And these are ugly words, taken by themselves they're terrible. But the important thing about that conversation, Sept. 15, 1972, there is no proof that's been presented by this committee or any other committee that shows that the President followed that up by talking to Shultz or anyone else.

And in addition to that why don't we, for the first time admit that not a single audit was made on a single soul on that list. This, I think, is important.

WILLIAM S. COHEN, Republican of Maine: It was 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.

I notice the gentleman from California was rather reticent about expressing this word ratification in his proposed amendment. 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 F.B.I.

Now for example we do have direct evidence taken before this committee, by Mr. John Dean, that on Sept. 11 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 opinion, that would

justify saying the President knew in advance of Mr. Dean's activities. However, on Sept. 15, the conversation to which Mr. Sandman just referred to, we do have direct evidence 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 Sept. 15 tape which was not presented to the committee and 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 Shultz, and if he didn't get cooperation to let him know.

Now the question is is Dean credible? Well, we've had direct evidence from the Internal Revenue Commissioner, who testified before the Senate select committee, that, indeed, Dean did come back to him on Sept. 26—just several days after this conversation with the President—presenting a reduced list and again asking for the audit.

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

'Personal Culpability' Seen

LAWRENCE J. HOGAN, Republican of Maryland: I agree with my colleagues who say that we cannot impeach the President for the wrongdoing of his aides. I've said so myself. I think there's a very strong case of personal culpability on his part. As Mr. Cohen has indicated a number of them, in the short time remaining I'll 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 there's no record that any wiretaps or any overheard conversations of Ellsberg. The reason they filed those briefs is because it was not in the files of the F.B.I. And why wasn't it in the files of the F.B.I.?

Because the Assistant Attorney General Mardian flew to San Clemente and personally 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 said "to whom did you give them" he said "I'd rather not say." Well who sits in the Oval Office except the President. And then they were given to Ehrlichman and Ehrlichman kept them in his files outside of the records of the Department of Justice.

AFTERNOON SESSION

WILEY MAYNE, Republican of Iowa: 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. Ehlichman to Commissioner Randolph Thrower and to 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 cannot 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 to 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 the Internal Revenue Service that 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.

Vote on Amendment

RODINO: The question occurs now on the amendment offered by the gentleman from California. All those in favor of the amendment please signify by saying aye. All those opposed. The no's appear to have it.

SANDMAN: On that, I demand the yeas and nays.

RODINO: The gentleman from New Jersey demands the ayes and nays and clerk will call the roll. All those in favor of the amendment of the gentleman from California, please signify by saying aye. All those opposed, no. The clerk will call the roll.

CLERK: Nine members have voted aye, 28 members have voted no.

RODINO: And the amendment is not agreed to.

WIGGINS: Amendment by Mr. Wiggins. In the Hungate substitute, strike from subparagraph 4 the words and concerning other matters. This raises once again the question which was debated at some length concerning specificity.

I call your attention to the wording of subparagraph 4. It charges the President with failing to take care that the laws were faithfully executed by failing to act in two respects:

One, with respect to the unlawful entry into the headquarters of the Democratic National Committee, and, two, with respect to other matters.

It's my view that this pushes beyond all reason the desire—apparent desire —on the part of the majority to not specify with particularity that conduct which they condemn. I can think of nothing more vague, nor uncertain, than the language concerning other matters.

If we start from the premise required by the Constitution that a defendant in any proceeding, and especially in these, is entitled to reasonable notice of the nature of the charges against him, then I ask you what notice is afforded by the charge that he failed to act concerning other matters.

We should not have extended debate on this. I would hope that the author of the substitute would state with particularity the other matters if he wished to rely upon them.

But failing that, it seems to me appropriate as a matter of law and certainly as a matter of the good sense of this committee to strike the vague and uncertain language now contained in subparagraph 4 that the President failed to act with respect to other matters.

DAVID W. DENNIS, Republican of Indiana: Really, this matter doesn't need much debate, I don't believe, because it's so obvious and plain that under any theory of the law—modern, ancient, whatever you want to call it— you're entitled to know a little something about what you're charged with. And, as a matter of fact, there's a certain amount of specificity in this article as it's drawn, and we've been given some justifications for Article II up here which are fairly specific.

And just thrown here that he failed to take care that the laws were faithfully executed by failing to act when he had reason to know that his subordinates were going to do certain specific things with regard to Democratic headquarters and then throw in a catchall—"and concerning other matters," without any definition at all seems obviously unfair.

If the proof were here, and I don't think it is, but if the proof were here I think in many ways this could be a more serious impeachable offense than that we had presented under the article the other day.

Clear Charges Urged

Because if there were actually a concerted, intentional abuse of the powers and duties of the Presidency for political reasons or other improper reasons, I think you might have something worthy of consideration.

But if you're going to get into that, and particularly if you're going to include things, as we're trying to include here which are not even violations of the statute, you at least owe it to everybody to set out what you are talking about.

TOM RAILSBACK, Republican of Illinois: I rise also in support of his amendment and honestly I would hope that the proponent of the amendment would accept this—the proponent of the article would accept this amendment.

McCLORY: I'd like to speak in opposition to the amendment for this reason: it strikes me that the break-in of the Democratic National Headquarters is only part and in my opinion only a small part of the misdeeds—the misconduct which is attributable to these aides and assistants of the President and where the President through these individuals attempted to impede the Department of Justice and to otherwise interfere—frustrate—the lawful inquiries.

For one thing, certainly, the break-in in Dr. Fielding's office and the events surrounding that are far more reprehensible in my opinion than the break-in—the break-in at the D.N.C. is a political matter, but the other is unrelated to any political campaign and there are a number of other activities that I suppose they could be all delineated but I think they're all well-known.

Now it's possible that some other appropriate language which would cover this would be adequate instead of just the blanket phrase "other matters." A great deal of this does arise from the break-in of the Democratic National Headquarters. In other words, while that seems to generate this sort of clandestine operation which took place in the White House, nevertheless it was only a small part of the over-all activities in which all of these different characters were involved.

And I would hope either that we would retain this language or that some appropriate more explicit language would be offered in order to cure what the gentleman feels is too much of a generalization.

HOGAN: While I think it would be preferable in the drafting of this clause that we did include more specific items, there are many more items than the break-in of the Democratic National Committee.

But I think this argument of specificity that my friends and colleagues have so effectively and articulately made is in effect a red herring, because we should not delude ourselves into thinking that the deliberations in which we are now engaged is a presentation of the evidence.

We do not intend to duplicate the 10 weeks of evidentiary hearings which brought us to this point. We're only trying in the most general way to give a summary of the kinds of items which support the various paragraphs in the article—we are not presenting the evidence.

A 'Chewing' to Remember

COHEN: In addition to the break-in into Dr. Fielding's office, I think of particular concern might be the mat-

ter Mr. Hogan mentioned just prior to to the break, and that was the activities involving the transfer of F.B.I. records from the F.B.I. to the Oval Office at the direction of the President.

HUNGATE: He has failed to take care that the laws were faithfully executed by failing to act when he knew or had reason to know that his close subordinates etc.

Now we're talking of situations of which he should know or should have good reason to know, and as we have said earlier the document of impeachment cannot really be very narrowly confined. It's as broad as the keenest imagination, it has to be. If you confine it closely enough, there'll be somebody figure a way around it.

What about the Kleindienst situation, the testimony, the evidence before the committee was that—as I recall it and was stated—that Mr. Kleindienst received what we would just call a chewing out from the President in rather plain and forceful, clear language.

Then when he was before the Senate committee, they were asked if anybody had approached him concerning the same matter—I.T.T., as I recall—and

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he in effect said, well, he might have casually mentioned it.

Well, I'm telling you the chewing he got was such you'd remember it no matter who gave it to you, and certainly if it came from the President he'd have remembered it.

Now still we find him, the President, after this date, going before the American people and saying—when he knew that this testimony had been given and when he had reasons that he knew—had reason to know—that the testimony was not true and upholding the testimony of Mr. Kleindienst in that situation.

Now there are other examples, I am told, in the Jaworski consideration of the false Diem cables. These are the sort of things that would be covered here.

JEROME R. WALDIE, Democrat of California: We were specific in our allegation in the first portion of that paragraph where we limited the failure to faithfully execute the laws to the unlawful entry into the headquarters of the Democratic National Committee.

Now I happen to believe that the matter of Mr. Kleindienst and the antitrust case might very well fall within the provisions of a general allegation of paragraph 4 but we allege specifically the break-in at the Democratic National Committee and we threw in just absolutely as an afterthought those last four words "and concerning other matters." And I have not at all concurred in what I have thought to be the objective of my friend and my colleague from California, Mr. Wiggins, to limit and narrow this inquiry so precisely that the proof that could be adduced would almost be prohibitive in our ability to produce it.

But in this instance, I think, we have strayed so far into generalities that we would be well advised to adopt his amendment and we would in so doing, in my view, do no violence to our standards of fairness and do no violence to our obligation to have an opportunity to consider and to introduce all proof necessary that bears upon impeachable offenses of the President, so I support the gentleman from California.

PAUL S. SARBANES, Democrat of Maryland: I do think that we ought to take into consideration the point that has been made that in this take-care paragraph here there are other unlawful activities which took place to which the responsibility of the President ought to be provided as part of the proof with respect to this paragraph.

So it seems to me there's a choice available between simply eliminating the clause and having nothing and developing a language that provides a more definite standard than the language that is contained at the end of this paragraph and I would suggest to the gentleman that if we could develop that language it would enable us to maintain the substance of what we are talking about here.

RAY THORNTON, Democrat of Arkansas: I'd like to suggest that we give some attention to the result of this amendment if adopted, in too narrowly defining the inquiry of this article, particularly, in that it would in my view exclude the cover-up of the unlawful entry into the Democratic National Committee or at least the second phase of that cover-up when what was then being considered was the failure of the President himself to advise the Department of Justice of the involvement which he knew of his own men in the cover-up which had occurred.

Change in Amendment

RODINO: The clerk will read the perfecting amendment.

CLERK: Amendment by Mr. McClory. In the Hungate substitute, strike from subparagraph 4 the word "matters" and insert in lieu thereof the following—"unlawful activities."

MCCLORY. All that this perfecting amendment does is to delete the word "matters" and substitute the words "unlawful activities."

What we're talking about here, really, are unlawful activities of those who were employed in the White House and operated during this period prior to and subsequent to the Democratic National Headquarters break-in; and who were involved in all of these other unlawful activities to which we've made reference—the burglary of Dr. Fielding's office, the perjury with respect to Mr. Kleindienst's confirmation and a number of other matters, too, htat we're aware of.

I don't think there's any—it would certainly be inadequate on our part to recommend to the House of Representatives that they ocnsider only the bare breaking in of the Democratic National Headquarters when so many other more serious matters are things that we've investigated and which are involved, and which they chould consider.

I'd like to call attention to the fact that this charge, this Article II, is in the nature of a civil charge or complaint, and it's something upon which the respondent, of course, is well aware. It is stated with definiteness, there's no doubt or uncertainty as to what we're talking about. There shouldn't be any question as to the President being apprised of what's involved in this paragraph.

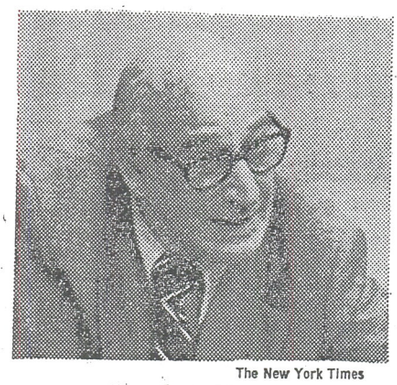
'Pattern of Misconduct'

And if we merely include the words "unlawful activities" it will include these other matters; we don't have to delineate a long string, a long line of matters which are involved in the criminal conduct of—what? 20 different people who were engaged there?

What we're talking about is a pattern of conduct, or a pattern of misconduct. And we include, of course, the initial break-in of the Democratic National Headquarters plus these other things that are also involved and which we will be sending our articles to the House for their consideration and their judgment.

DENNIS:—I was just wondering whether the gentleman from Illinois felt that making it read "concerning other unlawful activities" instead of "concerning other matters" really advances very far as far as specificity is concerned which I understood the gentleman was concerned with a moment ago.

McCLORY: Well, yes, I'll say that it does because we're not talking about



The New York Times

Joseph J. Maraziti

"I believe . . . these wiretaps . . . involved national security."

other matters—other kinds of conduct that are not unlawful or anything that isn't in the nature of a criminal act or some serious wrongdoing and so if we say that its unlawful activity which we're concerned with, I think it apprises the President of what is involved.

RODINO: The question occurs on the amendment offered by the gentleman from Iillinois, Mr. McClory, as a perfecting amendment. All those in favor please say aye. All those opposed. The ayes appear to have it. The ayes have it.

[The committee then voted 24 to 14 to reject the Wiggins amendment, which would have struck the words "and concerning other matters" from subparagraph 4 of the Hungate substitute. It then began considering a Wiggins amendment to strike subparagraph 2 from the substitute.]

WIGGINS: As we all know subparagraph 2 is directed primarily to the area of electronic surveillance for alleged national security purposes.

Since that subject has not been debated before this committee, my motion to strike is to focus our attention on that subject.

I would hope to yield to other members on either side who have thoughts with respect to that. I should like to set the focus of this debate concerning electronic surveillance by recalling that these individual wiretaps commenced early in 1969 and continued for approximately a year thereafter.

Four Groups of Wiretaps

We have before us a series of specific wiretaps, which form the basis of this allegation of abuse of power by the President. They can be categorized, I think, into the following four groups: first the 17 wiretaps which were authorized by the Attorney General and at least the allegation is made by the President that they were instituted in the interest of national security.

In addition to that we have before us evidence with respect to three other wiretaps instituted by Mr. Ehrlichman concerning employes in the White House, and with respect to that the evidence does not extend to any Presidential involvement or knowledge.

And then we have two isolated wiretaps which I'll let the ladies and gentlemen characterize as they wish. We have Donald Nixon and we have the wiretap of Joe Kraft. Now that covers the evidence with respect to wiretaps before us.

The clear bulk of that evidence involves 17 wiretaps which were commenced in the spring of 1969. I want to set the focus of the debate by making one assertion which I believe cannot be contradicted, and that is that the law with respect to wiretaps which are genuinely and honestly in the national interest is that the President does have that authority in 1969 and he has that authority today. It is improper to infer that it is illegal to install a wiretap which relates to national security matters.

The sole question is whether in fact

the President had that motive, or whether this was merely a subterfuge to install wiretaps for some other purpose.

ROBERT W. KASTENMEIER, Democrat of Wisconsin: I think this particular section of Article II is central to the whole theme of abuse of power. As a free country, we have no higher course than to protect really our people against this sort of abuse of power which can come in a modern age in terms of a police state.

What we did as a Congress, and in fact as a committee, in 1969 to limit the use of electronic surveillance wiretapping is as follows:

Court Order Requirement

In the Omnibus Crime Control Act of 1968, which came out of this committee six years ago, we said that if any lawful authority is to conduct wiretapping or electronic surveillance, it must have a court order except—except—and I shall read that the power of the President to take such measures as he deems necessary to protect the nation against the following threats, mind you, one, the actual or potential attack or other hostile acts of a foreign power; two, to obtain foreign intelligence information deemed essential tothe security of the United States; three, to protect the national security information against foreign intelligence activities, and lastly, to protect the United States against overthrow by force or unlawful means, or against any other clear or present danger to the structure of existence of the government.

CARLOS J. MOORHEAD, Republican of California: During the SALT negotiations, a study was published in The New York Times on June 18, 1969, which spelled out our analysis of the Soviet Union's strategic strengths and first strike capability.

Henry Kissinger said each of these disclosures was of the most extreme gravity. As presentations on the Government's thinking on these issues, they provided the Soviet Union with extensive insight as to our approach to the SALT negotiations and severely compromised our assessment of the Soviet Union's missile testing and our apparent inability to accurately assess their exact capability.

Another leak involved the alternative for ending the Vietnam war. One alternative to be studied was unilateral troop withdrawal from Vietnam. Henry Kissinger said concerning this leak: this disclosure was extremely damaging with respect to the Government's relationship and credibility with its allies. Although the initial troop withdrawal increment was small, the decision was extremely important in that it reflected a fundamental change in the United States policy.

Certainly this gave to foreign agents information concerning the United States's capability and plans which were harmful to our position.

Saving of Troops' Lives

If the President of the United States had not taken steps to determine where the leaks were coming, h would not have been carrying out his constitutional government to take care of our nation and its people.

I submit to you that when such a leak takes place at a time when we are at war, when our troops could lose their lives, it is the responsibility of the President to find out where those leaks are coming from and stop them.

And that's just exactly what he did. The 17 wiretaps were instigated for the purpose of discovering the sources of these leaks.

I know that in the testimony that's been given to our committee there was a question raised as to the effect of the wiretapping in solving the leaks.

Mr. Colson, in his live testimony before this committee, answered that question. He told us that as a result of wiretapping we were definitely able to close one of the major leaks that had occurred, and therefore perhaps saved the lives of many of our troops and helped this country for the future.

I think this ground for impeachment is the weakest of all of those that have been brough up. Certainly there is no grounds to impeach a President of the United States in his attempt to save the lives of our troops and the safety of our nation.

DENNIS: None of us like wiretaps very well. We're talking here about what was legal and what was proper as of the time it was made and as of the time today.

Now at the time of the wiretaps we are talking about, the question is was national security involved? That's a factual question. But the — if it was there was nothing illegal about the wiretaps and it's very doubtful if there's anything illegal today. It had been held for instance, in the Third Circuit, that you could get out a warrant for a national security wiretap used to stem the flow of information out of the governments and the contrary had never been held at the time we're now talking about.

DON EDWARDS, Democrat of California: These 17 wiretaps started on May 12, 1969, as a result of the Beecher article in The New York Times that told the public about the secret bombing of Cambodia. And I want to correct the record right now.

The SALT talks had nothing to do with it. There has never been an allegation that these 17 wiretaps were triggered by any SALT leaks and there's nothing in our evidence that so indicates, nor did it have anything to do with the Vietnam war nor did these taps have anything to do with leaks about the Pentagon Papers, that didn't come until nearly two years later.

I think it's really more important to point out what was done with the information that resulted from these leaks. No, from these wiretaps. Mr. Hoover, the director of the F.B.I., would send them to the White House to the President and a total from 1969 to 1971 — they went on for more than two years — there were a total of 104 summaries sent. And what happened?

Negative Results Found

No — it was found that there were no leaks of confidential information from these 104 summaries; nobody went to jail; nobody was charged; nobody lost their jobs; nobody was transferred.

There were six or seven members of the National Security Council who had their telephones tapped; four newsmen later and several White House employes. Most of these people had no access to any confidential information whatsoever, and, is I pointed out earlier, the summaries indicated that no leaks were going on.

How was this information used by the White House? On Dec. 29, 1969, Mr. Hoover wrote to the President and said that former Secretary of Defense Clark Clifford was about to write an article in Life magazine, attacking Mr. Nixon on his handling of the Vietnam war, and part of Mr. Clifford's attack was to be regarding Mr. Nixon's criticism of President Thieu.

Well, immediately this triggered political action by the White House. Presidential assistant Butterfield wrote Magruder: "The name of the game, of course, is to springboard ourselves into a position from which we can effectively counter whatever Clifford takes." The suggested methods of countering Clifford's article were sent to Haldeman, the chief political adviser to President Nixon and included a proposed discrediting of Clifford by the use of his prior statements for a counter article.

Haldeman directed Magruder to be ready to react and suggested finding methods of pre-action. Mr. Haldeman concluded, "The key now is how to lay groundwork and be ready to go and let's act."

Ehrlichman Characterization

Mr. Ehrlichman characterized the Clifford information as "the kind of early warning we need more of," and he noted to Mr. Haldeman, "Your game planners are now in an excellent position to map anticipatory action."

The basic nature of the material developed from these 17 wiretaps and sent to the White House was political and personal. There were no leaks.

JOSEPH J. MARAZITI, Republican of New Jersey: I support the motion of Mr. Wiggins. There was clear legal authority for the warrantless national wiretaps at the time that the 17 wiretaps were conducted.

The former Attorney General, Mr. Richardson, in referring to case law, has stated that the Department of Justice is justified in relying on lower court decisions permitting national security wiretaps.

And let me say that I certainly agree with what has been said here today that we must look at the circumstances to justify wiretaps on the basis of national security.

But I believe that the circumstances surrounding these wiretaps demonstrate clearly that they involved national security.

Now as has been discussed, we know the Government at that time—and we must look back, we cannot look as of today—the Government was faced with massive leaks of sensitive foreign policy information. When the President was just beginning to establish policies of future relations with other nations.

These leaks began in the spring of '69 when President Nixon was exploring the solutions to the Vietnam war. These leaks were damaging to the diplomatic efforts being made to end the war at that time.

And I disagree with Mr. Edwards that these wiretaps had nothing to do with the Vietnam war. Let's listen to Henry Kissinger and see what Henry Kissinger thought. And here's what Mr. Kissinger thought.

Effect on Saigon Weighed

"Each of the above discloseures were extremely damaging with respect to this Government's relationship and credibility with its allies. For the South Vietnam Government to hear publicly of our apparent willingness to consider unilateral withdrawal without first discussing such an approach with them, raised a very serious question as to our reliability and credibility as an ally.

"It had a great deal to do with the Vetnam war, according to Mr. Kissinger.

Now I think he's an authority in this area. Some of the most damaging leaks occurred with regard to the SALT negotiations. And despite what the gentleman from California states. the SALT negotiations were involved. On Jan. 20, 1969, when the President first took office, he immediately directed that an over-all study be undertaken regarding the United States strategic force posture for the internal use of the Government and for the use in the SALT negotiations.

Now withstanding the need for secrecy of this study—and it's obvious—the May 2, '69 issue of a large newspaper reported five strategic options under study. These options were published in the press in advance, before they were considered by the National Security Council of the United States Government.

The damaging nature of these disclosures was summed up by Henry Kissinger, again. He said each of these disclosures was of the most extreme gravity. As presentations of the Government's thinking on these key issues they provided the Soviet Union with extensive insight as to our approach to SALT negotiations.

Now let me say that the results of the wiretaps in several instances were

fruitful. Now we must realize that when wiretaps are placed certainly they will pick up certain personal items that we're not interested in. But in this particular case the results were successful in a number of instances.

The F.B.I. reported that several of the National Security Council staff members had extensive contacts with members of the press, in particular two employes—X and L—discuss many aspects of the internal workings of the National Security Council with a newsman.

JOSHUA EILBERG, Democrat of Pennsylvania: We're told that national security is involved but I'd like to suggest that the mere assertion of national security is not enough.

The gentleman from Wisconsin has given a criteria and I think the members can read for themselves and see that the criteria had not been met but more importantly, they've seen the excerpts for themselves.

Mr. Nixon himself on Feb. 28, 1973, said that the taps were a joke, that they never had proved anything.

It seems to me that this was an adventure into the private life of individual citizens.

The Situation in Russia

I'm sure we all remember the stories on television, the movies and books about spying which has gone on in Nazi Germany and in the Soviet Union.

We've learned that in Russia you must never hold a serious conversation without turning on the water or radio so the conversation could not be heard by the secret listening devices.

Walks in the Park

It's also an axiom that the telephone is tapped so in Russia everyone takes long walks in the park so they can communicate.

It's become an article of faith that in Russia, Big Brother has arrived, that the secret police are always listening.

Now we learn htat in the late 'sixties and early 'seventies and possibly right up to this date secret police have been listening in America.

Only now they have special equipment to eliminate the noise of running water or loud radios.

In Washington, it's become a sardonic joke to say that the phone is tapped whenever there's a strange noise on the line.

We have become a suspicious people, afraid to talk freely, not because what we say might prove that we've committed a crime or endangered the national security, but because our political enemies might use this information against us.

The Nixon White House made the secret police a reality in the United States. The President and his men knew that what they were doing was so morally repugnant that they could not even trust the F.B.I. to keep records of their activities.

Finally, they could not even trust their own subordinates, so the files were taken to the Oval Office in the White House and then locked in a safe of the second most trusted adviser.

Mr. Chairman, in addition to everything else, it seems to me that various crimes have been committed and we are discussing now, it seems to me, not one of the least important but one of the most important of the impeachable offenses.

BARBARA JORDAN, Democrat of Texas: There is no question about the right of the President to institute warrantless wiretaps even in the interests of national security. We don't quarrel about that. It dates back to 1940. President Roosevelt in a memo to his Attorney General, Attorney General Jackson, stating that it is in the interests of national security to prevent subversive activities to instigate these wiretaps.

But that's not what we're concerned about. The question is whether President Nixon used his authority in conformity with and comporting with what the law is, what the law was at the time those wire taps were instituted. The fact is uncontroverted that Mr. Nixon authorized the wiretaps. The threshold question is whether or not the law and the Constitution was complied with.

The New York Times

Charles W. Sandman Jr.
Now maybe we're making new laws for Presidents.

We have the decision which said that wiretaps do come under the Fourth Amendment against unreasonable searches and seizures. We have the 1968 Omnibus Crime Control Act. Now what I want to hear the opposition address themselves to is whether the omnibus crime safe streets act, which was signed into law in 1968, was in fact the law even in the absence of clarifying regulations or in clarifying decisions issued by the Supreme Court of the United States.

There is no such thing as a law awaiting some clarification by the courts. The 1968 decision was law. And the President did not abide by the law which was in effect at the time these wiretaps — 1969 to 1971 — were instituted.

Wiretaps on Newsmen

I want to hear the opposition address themselves not simply to those wiretaps which relate to perhaps National Security Council employes, but what about those which related to newsmen who certainly know a lot but know nothing about state secrets.

What about those instances where wiretaps were instigated on employes who had left the Government and long since had nothing to do with national security matters.

We read the summaries of those wiretaps and you have heard us state that there was gossip and personal matters involved in some of the information adduced.

I want the opposition then to address themselves to all of the taps, not just those which may under some stretch of the imagination have had something to do with national security. A climate of leaks do not necessarily justify and in my judgment do not in any instance justify a violation of Fourth Amendment freedoms.

DENNIS: I would like to call attention to exactly what the decision—which had not become law at the time we're talking about—the decision stated that it was necessary to get a court warrant before instituting wiretaps in matters which involve only the domestic aspects of the national security.

That was not handed down at the time we were talking about, which was back in 1969. And the general assumption in governmental circles was that you didn't need a prior court order to institute wiretaps for the domestic aspects of national security at that time. The contrary had never been held.

But it's important to know that the decision did not hold even when it was handed down, and I read from the opinion of the court.

We emphasize before concluding this opinion the scope of our decision. As stated at the outset this case involves only the domestic aspects of national security. We have not addressed and express no opinion as to the issues which may be involved with respect to activities of foreign powers or their agents.

And in a footnote they say: For the view that warrantless surveillance, though impermissable in domestic security cases, may be constitutional where foreign powers are involved, see United States versus Smith, and so on.

Now a great many of these wiretaps here were cases where foreign affairs were certainly involved and where foreign powers were certainly interested and where some people might even have been agents of foreign powers. And even under this decision would still in all probability be lawful.

Basis for Ruling

Addressing what the gentle lady from Texas said, the court said further: Nor does our decision rest on the language in the Omnibus Crime Control and Safe Streets Act of 1968. That act does not attempt to define or delineate the powers of the President to meet domestic threats to the national security. It didn't apply to it, it had to do with ordinary crime.

So they didn't take any guidance from the act, they didn't speak where foreign people were involved, and they then held for the first time that strictly domestic national security required a court order.

Now back in '69 there were a lot of important leaks. In early March of '69—and this is from the President's presentation to our committee—a decision was reached to conduct B-52 raids into Cambodia. They were conducted secretly and we had it in our testimony, too, to maintain the tactit approval of Prince Norodom Sihanouk.

However, on May 6, '69, William Beecher accurately reported these raids in The New York Times, jeopardizing the relationship with Prince Sihanouk.

On April 3, '69, the Department of Defense made a troop study about withdrawing troops from Vietnam. It had not yet been discussed with the South Vietnamese government. Before it was discussed with the South Vietnamese government, on April 6, '69, Mr. Frankel ran an article in The New York Times about it. It jeolardized our relationship with the South Vietnamese government. Mr. Kissinger so testified in an affidavit which he filed.

[The Wiggins amendment to strike sub paragraph 2 of the Hungate substitute was defeated 28 to 10, and a new amendment was offered].

CLERK: Amendment by Mr. Cohen.

On Page 3 subparagraph 4, strike line seven and insert in lieu thereof the following new language.

National committee and the cover-up there of and concerning other unlawful activities, including those relating to the confirmation of Richard Kleindienst as Attorney General of the United States, electronic surveillance of private citizens, the break-in into the offices of Dr. Louis Fielding and the campaign financing practices of the Committee to Re-elect the President.

COHEN: Mr. Chairman, I'd like to briefly indicate that this is the long awaited amendment put together by Mr. Butler and myself calling for greater specifics in the subparagraph 4, I think we all agree—at least I do, and Mr. Butler—that the statement was too general.

HUNGATE: I would be pleased to accept that as an improvement in the language and accept it.

RODINO: [After calling for the vote]. The ayes have it. The amendment is agreed to.

CLERK: Amendment by Mr. Wiggins —in the Hungate substitute, strike subparagraph 3.

MAYNE. This particular paragraph is the one which makes the charge of