Excerpts From Transcript of the 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:

ROBERT McCLORY, Republican of Illinois: In presenting this article, Article III, it seems to me we're getting at somthing very basic and very fundamental insofar as our entire impeachment proceeding and inquiry is concerned.

There had been a total, I believe, of 13 impeachment inquiries — impeachments in the House of Representatives, and a total of 69 cases which have been referred and where there's been some action taken in one kind or another with regard to the subject of impeachment.

Now, implicit in this authority to conduct an impeachment inquiry is the authority to investigate the actions that take place in that office. If we are without that authority, or if the respondent has the right to determine for himself or herself to what extent the investigation shall be carried on of course we don't have the sole power of authority. Someone else is impinging upon our authority.

This has been recognized in our proceeding as a matter of fact in that the House of Representatives delegated to use the authority to issue subpoenas relevant and necessary to our inquiry. And the result of that, we have issued four, I believe, subpoenas to the President, requesting information.

Now, prior to the time that we issued these subpoenas, we directed letters to the President requesting information. And these letters requesting information were sent by the chairman after consultation with the ranking minority member. In other words, we have the joint authority here and the joint expression of Republicans and Democrats with respect to the information that we've requested.

No Presidential Response

Now, the President, of course, did not respond to the requests that we directed to him in the course of our letters.

And so what we did, we exercised the authority which was granted to us by the House resolution to issue subpoenas.

Now, with respect to three of the subpoenas, the vote was 37 to 3, I believe,—no, 37 to 1—no, the vote was 33 to 3 on one, 37 to 1 on two and 34 to 4 on the fourth one.

In other words, the action of the committee was bipartisan and it was overwhelming that we wanted this material, we wanted this response to the requests for information which we felt were necessary and relevant to our inquiry.

I recall when the President came before the joint session of the Congress in January. He said words to the effect that he wanted to provide full cooperation with the Judiciary Committee consistent only with the operation of his office.

Now, I suppose that qualification was more significant than it seemed to be at that time because the words that came across to us were full cooperation with the House Judiciary Committee.

Now, where is that full cooperation with the House Judiciary Committee?

Tapes and Transcripts

Well, we've had some tapes and we've had some transcripts. The transcripts that we got, of course, were transcripts that were issued to the public, not issued in response to this committee and through the committee but publicized—the edited transcripts, as I recall, to the White House transcripts

And the tapes, where did they come from? Well, they didn't come from the White House. They came from the grand jury and they came from the special prosecutor's office. As a matter of fact, of the 147 tapes that we requested, we didn't receive a single one from the White House.

Now, if you ever saw an example of stonewalling, the prime example of stonewalling is right there. Now that's an expression that comes out of the White House. But where is the stonewalling occurring. It's occurring with regards to the Congress of the United States and with regard to this committee.

If we do have the sole power of impeachment and if we do have the authority to investigate, then it is important, of course, that we do receive the kind of cooperation that I thought would be forthcoming.

I've done everything I could to try to impress upon the White House the importance of this cooperation.

Now, the President has raised the question of confidentiality of the taped material. And so, what we suggested was that this material would be received not only under our rules of strict confidentiality but that the—the President himself, the President's counsel, could participate with our counsel in screening out any sensitive or national security information.

But the President's position has been that he should be the sole arbiter of what is—what he should turn over and what he should not turn over.

Well, if he's to be the sole arbiter, then how in the world can we conduct a thorough and complete and fair investigation? Well, we just couldn't.

Now, since we began this inquiry, of course, the President has been involved in litigation and the case went to the Supreme Court. And he made the same kind of plea to the special prosecutor in the district courts that he's made to us.

That he should have the sole right, that there was an absolute executive privilege which prevailed. And he had the absolute right to determine what he would turn over and what he would not turn over.

Now, that doctrine was knocked down. That was knocked down effectively insofar as the Court was concerned.

Now, it's true we weren't involved in that proceeding. Some people thought we should have been and perhaps we should have been. But anyway the doctrine was knocked down and the doctrine of executive privilege or absolute executive privilege has fallen.

As a matter of fact, I have felt and a number of my colleagues here on the committee have felt, that the doctrine of executive privilege has no application whatsoever in an impeachment inquiry because it would be impossible for the President or any other person being investigated to have the right and privilege to determine what was to be submitted in the course of the investigation and what was not to be submitted.

And consequently, that doctrine cannot possibly prevail. Otherwise our case would be—our authority would be frustrated completely.

Future Effect Weighed

If we refuse to recommend impeachment of the President on the basis of this Article III, if we refuse to recommend that the President should be impeached because of his defiance of the Congress with respect to the subpoenas that we have issued, then future Congressess or future respondents will be in the position where they can determine themselves what they're going to provide in inquiries, what they're not going to provide. And this would be particularly so in the case of an inquiry directed toward the President of the United States.

So it not only affects this President, but future Presidents. And it might be that a Republican Congress would be investigating in an impeachment inquiry a Democratic President in a future instance—I hope we don't have any more impeachments but in the case we did, why the precedent that we might establish here would be effective then.

RAY THORNTON, Democrat of Arkansas: I have a perfecting amendment at the desk.

[Mr. Thornton's proposed amendment was read by the clerk].

I previously expressed my own views that the failure to comply with subpoenas does constitute a grave offense and I've also expressed that in my view that offense should have been included within one of the substantive articles which have been previously presented and adopted by this committee.

I think it could have been considered

as an abuse of power or even more logically, as an obstruction of justice in interfering with this committee's exercise of its constitutional duty.

However, that did not occur during the course of the adoption of the articles which have been presented. And I don't see Mr. Doar at the table but I would like to direct the attention of Mr. Jenner, if I may, to paragraph four of Article No. 1, as amended by the gentleman from California, Mr. Danielson, to include within that article a failure to produce materials required by Congressional committees. Are you familiar with that article as amended?]

ALBERT E. JENNER JR. Special Minority Counsel: Yes, I am, Mr. Thornton.

THORNTON: In your view, would that article permit the introduction of evidence with respect to the subpoenas which have been issued by this committee?

JENNER: I think that provision of Article I would not prevent the introduction of evidence on the area but the problem presented is whether it is sufficiently specific in a charging sense to be able to assert that the failure to respond is itself an impeachable offense.

THORNTON: Based on that answer, then, it seems we are faced with the very real issue of giving a proper consideration to the failure of the President to comply with our subpoenas.

I think that it's important that in approaching this we should be aware that here we are dealing very directly and intimately with a matter which can have a bearing upon the constitutional balances of power between the three departments of government. And that what we may do with regard to the adoption of this article is going to in one way or another possibly affect the future of those balances.

The Alternative Described

If we do nothing, we may indeed limit the authority of the legislative branch to make a proper inquiry as to the misconduct under the impeachment provision of individuals in either the executive or judicial branches of government.

If, on the other hand, we draw too broadly upon our power and authority we might distort the balance of power to give the legislative branch under its impeachment clause the authority to continually investigate and determine the actions of members of the executive or judicial branches of government.

For this reason it seems to me that if this article is to be given consideration it must be sharply limited and defined to the presence of offenses established by other evidence which might rise to the level of impeachable offenses.

And that is the purpose and effect of the perfecting amendment which I have adopted—which I have offered, excuse me—and which I ask the members to adopt. Because it seems to me that we are confronted with a very serious problem in Presidential noncompliance with our subpoenas, but that we must draw carefully limiting language to prevent a distortion of the balance of power between the executive and legislative branch.

HAROLD V. FROELICH, Republican of Wisconsin: No matter how sharply limited and defined you try to draw this article, this is clearly a case the alleged absolute power of the President versus the alleged power of the Congress.

A classic case in separation of powers. The President claims constitutional and historic tradition of executive privilege, and the Congress claims exclusive power of impeachment.

What reasonable men would not properly place this impasse before the third branch, the courts, for final arbitration and decision? Both in the interest of obtaining information or substantiating the President's compliance or noncompliance under the Constitution.

Clearly the President has asserted his constitutional responsibility vested in him in Article II, to protect the office of the Presidency against the infringement of other branches. This argument was also advanced by the President in responding to subpoenas sought by the special prosecutor.

Courts Used by President

In fact the President used the courts all the way up to and including the Supreme Court to advance his position.

What the Supreme Court said in the United States versus Nixon, in response to the President's argument, is vitally important for this committee to understand.

It said that in the performance of assigned constitutional duties, each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due respect from the other.

It further stated that in the last analysis it is emphatically the province and duty of the judicial department to say what the law is. Thus the court said in essence that the President was absolutely correct in defending his interpretation of the Constitution.

But that the Supreme Court's decision with respect to claim of executive privilege was this positive in the last analysis. It then held that although the court will afford the utmost deference to the Presidential need for confidentiality, when the claim of privilege is based merely on generalized interest and confidentiality, the assertion of privilege must yield to demonstrated specific need for evidence in a pending criminal trial.

That is, the tapes must be given to the District Court for in camera inspection.

The decision of the Supreme Court did not say that executive privilege was not a viable doctrine. On the contrary, it said that certain powers and privileges flow from the nature of enumerated powers. The protection of confidentiality of Presidential communications has similar constitutional underpinnings.

It also said the privilege is fundamental to the operation of government and rooted in the separation of powers under the Constitution. Thus the Supreme Court has stated emphatically that executive privilege is a constitutional privilege available to the President.

Now we have a situtation where members of this committee, like Mr. Jaworski, are asserting the right to have certain information because under Article I, the House shall have the sole power of impeachment.

But that clause says nothing about a President being powerless to assert what he understands to be his constitutional responsibility to protect his office. Therefore at best we have two great branches of governmen involved in a stalemate, both arguing the Constitution.

Courts Viewed As Key

As the Supreme Court said, it is emphatically the province and duty of the Supreme Court to say what the law is. So if the members of this committee believe their position, they should have gone to court and asked the court to say what the law is.

The committee has to have a right to assert its understanding of the Constitution, but is not the final arbitrator, it is not the judge and jury.

Our Constitution gives the courts the responsibility to interpret the law. And I would remind the committee that the president has responded to every judicial subpoena served upon him, and has recently stated he intends to fully comply with the Supreme Court ruling.

So there is a remedy available to test those theories of constitutional authority to get information, and that is to use the courts. Not to attempt to impeach a President for defending what he believes to be his duty under the Constitution.

JOHN F. SEIBERLING, Democrat of Ohio: I support the Thornton substitute. I also support the McClory original article though I think the substitute is an improvement. And the reason it's an improvement is because it makes it even more clear that we are not stating a broad power to obtain Presidential documents in any type of Congressional proceeding but we are limiting it to an impeachment proceeding, which is what we have before us.

Now it seems to me that the impeachment power—and no one can dispute that without the power to investigate the impeachment power is meaningless. It's inconceivable that the founding fathers believed that the subject of an impeachment inquiry should be able to withhold relevant evidence from an impeachment proceeding.

Certain privileges founded in our concept of due process I believe are applicable even in impeachment proceedings, but certainly a so-called executive privilege is not one of them.

Discovery and Removal

Impeachment is the express exception in the Constitution to the so-called separation of powers doctrine. The very purpose of the impeachment power is to discover and remove those civil officers who committed certain serious offenses against the state. Stonewalling

The Roll-Call on Article III

WASHINGTON, July 30—Following is the roll-call vote by which the House Judiciary Committee today recommended to the House of Representatives Article III of the proposed articles of impeachment of President Nixon:

FOR THE ARTICLE

DEMOCRATS—19

Peter W. Rodino Jr., New Jersey, chairman.
Harold D. Donohue, Massachusetts.
Jack Brooks, Texas.
Robert W. Kastenmeier, Wisconsin.
Don Edwards, California.
William L. Hungate, Missouri.
John Conyers Jr., Michigan.
Joshua Eilberg, Pennsylvania.
Jerome R. Waldie, California.
Paul S. Sarbanes, Maryland.
John F. Seiberling, Ohio.
George E. Danielson, California.
Robert F. Drinan, Massachusetts.
Charles B. Rangel, Manhattan.
Barbara Jordan, Texas.
Ray Thornton, Arkansas.
Elizabeth Holtzman, Brooklyn.
Wayne Owens, Utah.
Edward Mezvinsky, Iowa.

Republicans—2

Robert McClory, Illinois.
Lawrence J. Hogan, Maryland.

AGAINST THE ARTICLE—17

Democrats—2

Walter Flowers, Alabama.
James R. Mann, South Carolina.

Republicans—15

Edward Hutchinson, Michigan.
Henry P. Smith 3d, upstate New York.
Charles W. Sandman Jr., New Jersey.
Tom Railsback, Illinois.
Charles E. Wiggins, California.
David W. Dennis, Indiana.
Hamilton Fish Jr., upstate New York.
Wiley Mayne, Iowa.
M. Caldwell Butler, Virginia.
William S. Cohen, Maine.
Trent Lott, Mississippi.
Harold V. Froelich, Wisconsin.
Carlos J. Moorhead, California.
Joseph J. Maraziti, New Jersey.
Delbert L. Latta, Ohio.

tactics have no legitimate place in procedures which are designed to find the truth as rapidly and as completely as possible.

Now if this were a court case the question of privilege would be one for the judge of the court to decide. But here in the first instance at least the committee is the judge, acting for the full House. And the House thereafter. And if the House votes articles of impeachment then the Senate is the ultimate court of appeal in this matter. And it's the Senate that can decide what the issues of law in fact are.

I'd just like to point out that every time this has come up in the past, Presidents starting with George Washington and going through to Franklin Roosevelt have conceded that in an impeachment inquiry the House can obtain whatever information the executive branch possesses.

CHARLES E. WIGGINS, Republican of California: I rise in opposition to the amendment. The maker of the main motion, you see, has dug himself a hole and the purpose of the amendment is to help extricate himself from that logical position.

The situation is this. This committee on yesterday and the day before viewed the evidence and found it, I am told, overwhelming. I believe our good counsel called it a circus of evidence. I take that to be a good bit, Mr. Doar, and voted to impeach and remove the President based thereon, found it to be clear and convincing.

And now we seek to impeach him because he didn't give us enough evidence to do the job.

I would think that you have an option here, if you wish. You can frankly acknowledge the inadequacy of the evidence to impeach the President and perhaps impeach him for failing to provide that evidence, or, on the other hand, you can vote that the evidence is sufficient to impeach the President as you have done and to recognize that the matters subpoenaed were not in fact necessary to the proper conduct of this committee's inquiry.

A Switch on Necessary

That word necessary is important, you understand, because that word is found in the authorizing resolution which gives us the power to issue subpoenas at all.

We made a tentative judgment as to necessity when we authorized the subpoenas. But by your votes yesterday and the day before you conclusively demonstrated that it was not necessary.

McCLORY—I voted against Article I which would involve the criminal charge, a conspiracy charge, obstruction of justice against the President because of the fact that there was insufficient evidence and the amendment which is offered by the gentleman from Arkansas which I propose to accept would make reference to the fact of direct evidence which is the subject which was—the evidence—the kind of evidence that was lacking with respect to the first article.

I did not say there was sufficient evidence to impeach the President on Article I. I said there was insufficient evidence.

WIGGENS: But unless my memory fails me, the gentleman found by some clear and convincing evidence just on yesterday that the President should be impeached and removed from office.

JEROME R. WALDIE, Democrat of California: I think what the author of the resolution, and the author of the amendment, is saying in this instance: that future Presidents, if subjected to an impeachment inquiry, will not be permitted to make the determination that this President has sought to make, that he will determine what is relevant to that inquiry.

GEORGE E. DANIELSON, Democrat of California: I support the article offered by the gentleman from Illinois, Mr. McClory, and also the amendment offered by the gentleman from Arkansas, Mr. Thornton.

The issue has been joined. This committee has issued a number of subpoenas; the President has directly stated that he refuses to obey them and reserves the right to decide what evidence will be presented before us from his office.

The question we have here is very delicate and very finely drawn, but it is critical to the separation and allocation of powers under the Constitution.

A Restraining Amendment

The Thornton amendment brings into this article the type of responsible restraint that we need. It limits the impact of this article solely to the function of the Congress under the impeachment clause, our sole power to impeach. This is a basic issue of constitutional separation and allocation of powers.

I submit that in resolving this question this committee and the Congress must remember that we have no more right to refuse a jurisdiction which is ours than we have to assume a jurisdiction which is not ours. Nor does the judicial department, nor does the executive department.

ELIZABETH HOLTZMAN, Democrat of Brooklyn: There's been some talk that failure of the President to comply with subpoenas wrought no harm. Now I would just like to point to the area of the milk inquiry in which we did seek a number of subpoenas and of which the committee in general has come to the conclusion that the evidence has not been sufficient, even though there have been any number of indictments handed down and some of the conversations that we subpoenaed had to do with these indicted persons.

Secondly the argument is the same as was raised yesterday with respect to I.R.S.—that an illegal act which does not succeed is somehow less illegal. That reminds me of the fact of attempted murder. Do we allow somebody to go free because the victim survived? That's really a doctrine, I think that we can't countenance and I would like to add one other point and that has to do with seeking the route of the court.

You know the founding fathers placed the impeachment powers solely in the hands of the Congress and they explicitly rejected having the Supreme Court as the trier on a conviction, and if we were to allow the Supreme Court to decide on the relevance of the evidence to an impeachment inquiry and if we were to allow the Supreme Court to decide basically what an impeachment inquiry would have to have, I feel we would be violating the decision of the founding fathers to place the right to inquire for the purpose of impeachment solely in the hands of the Congress.

SEIBERLING: I am a little bit surprised by the argument of the gentleman from California, Mr. Wiggins. Mr. Wigins is a very, very able lawyer and he knows that in a court trial you are entitled—the parties are entitled to all the relevant evidence, not enough or a bare sufficiency to support a particular point of view, but all the evidence.

Because the more evidence you can get the stronger your case is and the better chance you have of prevailing. That's an argument which I think is so easily disposed of by any lawyer practicing inthe courts that I'm surprised that he would even make it.

WAYNE OWENS, Democrat of Utah: I know this amendment, obviously, is going to pass, but I oppose it. I suppose I feel stronger about this particular article than I do even about the other two that we passed. I would vote to impeach on this basis, on this article, even if there were no other evidence.

'Unfettered' Power Sought

I think that through it all the power and the process of impeachment must come through unfettered. I think that the ultimate weapon against Presidential tyranny, which is the power of impeachment should be as clearly bottomed upon principle as it can be, and I think that the wording of the McClory amendment is even better than that of the Thornton amendment.

The committee, I think, must say to the President—to future Presidents—that impeachment will be automatic if the President asserts his unique power to stonewall Congress in a legitimate impeachment inquiry in the future. The president is the only individual in this country who can refuse to honor a subpoena, and that is quite simply because he is the Commander in Chief of the armed forces, and the head of the executive branch, and we haven't the physical ability to overcome his resistance to a Congressional subpoena.

And I think the power to compel evidence in an impeachment inquiry must be considered absolute. We do not need to decide this morning the Fifth Amendment questions here because the President has not asserted those Fifth Amendments—the Fifth Amendment privilege.

Mr. McClory said in his opening remarks that he hopes we don't have any more impeachment proceedings, and I'm sure we all join him in that. And I think we may not, if out of all this we set down two basic principles. One, we set clear standards for impeachment based on fairness and understandable standards which we are willing to apply to all Presidents. And, two, we say that impeachment power is absolute and is bottomed upon the power to compel documents and evidence.

And we do this by saying that a Presidential stonewall against the committee in an impeachment proceeding will bring automatic impeachment, even if no other evidence is adduced.

[The Thornton amendment was approved, 24 to 14].

LAWRENCE J. HOGAN, Republican of Maryland: I think this is perhaps the most important thing that we've been debating since these current deliberations began.

Checks and Balances

What this issue is here is executive privilege. We know that throughout the Constitution there is a running theme of separation of powers and checks and balances.

There are three areas where the President has challenged executive privilege: one is against Congress, where there is a legislative purpose and clearly he has a valid claim to executive privilege in that instance.

He claimed it in the instance of the criminal prosecutions, and the Supreme Court has by a unanimous 8 to 0 decision rejected his claim.

Opinion Changed by Court

If the Supreme Court rejected it in that instance, certainly the Supreme Court would reject his claim vis a vis the impeachment inquiry by this committee.

I would not have supported this article prior to the Supreme Court's decision, but now that we have it there is no valid claim on the part of the President to ignore our subpoenas.

The historical precedent we're setting here is so great, because in every future impeachment of a President it is inconceivable that the evidence relating to that impeachment will not be in the hands of the executive branch, which is under his control.

ROBERT W. KASTENMEIER, Democrat of Wisconsin: I support this article of impeachment to preserve the power of impeachment which the framers placed in the Constitution. Without the power to subpoena papers, materials, things necessary to its investigation, the Congress cannot meet these Constitutional responsibilities.

I submit that for a chief magistrate to prevent the Congress from meeting its Congressional duties, its constitutional duties, is no different than when the President himself violates the Constitution. The offense is just as grave. It is a high crime in the classic sense which the framers intended when they

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used that phrase in the Constitution.

This committee said at that time we needed this material. The President at that time said he would refuse to turn the material over to us. So we measure this particular article in the time in which it is seen, not in terms of whether subsequent to that fact we have or have not acquired sufficient evidence to make the determinations we're set upon today.

Furthermore, it has been suggested that in many areas we may not have sufficient evidence even to this date. Articles of impeachment could lie in areas such as I.T.T., and other areas may not well be endorsed by this committee for the reason in fact that we do not have the materials which we found necessary to our inquiry but which the President has rejected. This article is the only answer this committee can give.

DON EDWARDS, Democrat of California: I suppose that many times during the past few weeks, all 38 of us looked with envy upon parliaments in our sister countries where by a majority vote members of Parliament can just call a new election and indeed there are—right now there are several of these propositions to amend the Constitution before the House Judiciary Committee, but obviously will not receive attention this year.

But a new election where a person gets into trouble is not provided in the Constitution. Our founders talked about it. But they rejected it for the stability that is inherent in a four-year term. And they rejected it for the power that a four-year term gives to a President.

Only Two Alternatives

This four-year term than can only be interrupted by death or impeachment.

So this power of impeachment that we have in Article II, Section 4 is all we have to protect the country from a President who gravely abuses his offices. We can't have a nice convenient election down the road by a majority vote of Congress.

We can't strike our country to the North—Canada, England or most European countries, call an election in a couple of months.

We just have impeachment. We do have, of course, the power of the purse but that is limited. We do have to enact appropriation bills and the President does have the right to spend the money.

So, I suggest that we would be irresponsible if we don't enact this Title II, that if we don't, we will diminish or destroy this only safety valve in our Constitution. And for this power to impeach to operate, if it is to have any meaning at all, any vitality at all, we simply must be able to get the evidence. That seems very clear.

TOM RAILSBACK, Republican of Illinois: I don't attribute any evil motives to my friend from Illinois for offering this resolution. But I think this is a case where this committee, which has somehow developed the rather fragile bipartisan support of two rather substantial, serious articles of impeachment, is now about to engage in what I call political overkill.

There are many Republicans, I can tell you, on the House floor that have been impressed with the evidence that has been adduced in respect to the obstruction of justice charge, very serious, and also the abuse of power charge.

Now what is this committee about to do? We are about to be asked to impeach a President for refusing to comply with some subpoenas when he has produced substantial quantities of evidence.

What other alternatives did we have available to us? Well, No. 1, we've been asked by our counsel, and they made a persuasive argument, that if the President should refuse to comply—and frankly, I don't like the President stonewalling us or refusing to cooperate completely, I'll admit that. But, No. 1, we did not try to cite him for contempt, and No. 2, we've been asked to draw negative inferences by reason of his failure to produce.

Alternatives To Impeachment

Now we're going one step further and we're saying: now let's impeach him for his failure to comply. What could we have done? We could have done what has been done for years—for hundreds of years the established procedure has been for the witness to be given an opportunity to appear before the full House, or the Senate, as the case may be, and give reasons why he should not be held in contempt.

For example, he can argue that his refusal was justified, or he can agree to turn over the material to the full House.

The Supreme Court has held that this kind of notice and opportunity for hearing are constitutionally required under the Fifth and Fourteenth Amendments to the United States Constitution.

We're bypassing that procedure because we didn't think we had time to follow it; we refused to go to court when there were many of us that think a President has the right to assert executive privilege.

You have two contesting political, separate but co-equal branches. What could be more natural but then to ask the third branch, which has been the traditional arbiter in disputes, to arbitrate this dispute and determine once and for all whether the President's assertion of executive privilege would fail?

Now let me just say I have no doubt in my mind but what in this case the Court would have ruled in our favor and I'll tell you, it's probably the only way we ever would have been able to get the evidence so that we could determine the truth or the falsity of these allegations against the President.

I think that with these remaining articles—I understand we're going to have one on Cambodia, we're going to—we may have one on Cambodia, we may have one on fees and emoluments. This would be political overkill, and you watch what happens to your fragile coalition that thinks there have been two serious offenses committed under Articles I and II.

McCLORY: In suggesting that the courts might resolve this the President has had the right all along to move to quash the subpoenas, if he wanted to inject the courts into this. The committee has decided that we were not subject to the Court's jurisdiction.

RAILSBACK: Let me just say to the gentleman. In retrospect I think history is going to show—Alexander Bickel, one of the top constitutional experts in the country came out about a week too late after we decided this in committee and said that's exactly what we should have done because it wouldn't determine whether there's a right to final or ultimate review. It was trying to get an enforcement of a subpoena. We made a mistake but we certainly should not impeach a President because we made a mistake.

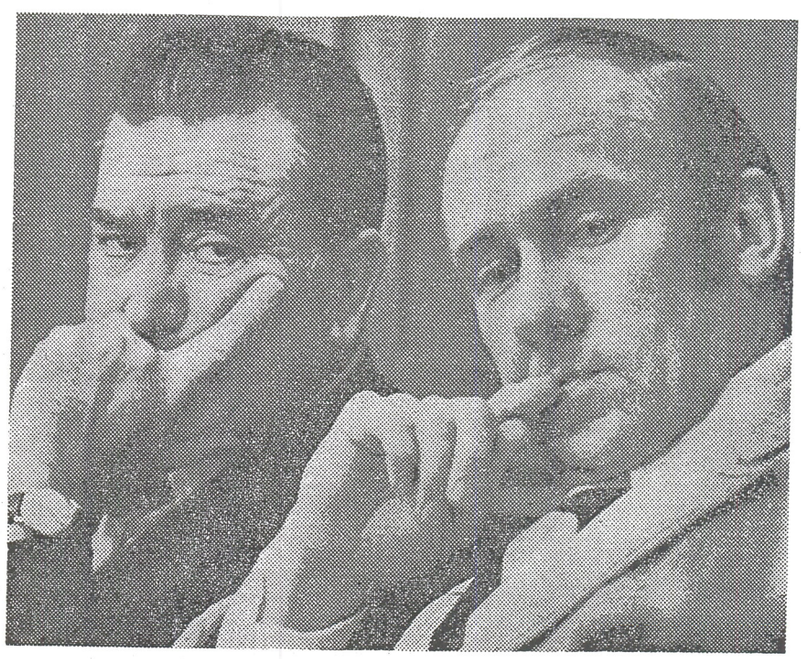
SEIBERLING: Well, I believe the gentleman sat over in the hearing before the Supreme Court when Mr. St. Clair and Mr. Jaworski argued the case of U.S. versus Nixon and I was there and I heard Mr. St. Clair make a very strong argument that the Court should not rule in behalf of the special prosecutor because to do so would inject the courts into the impeachment process which is a constitutional process.

RAILSBACK: We're in a separate status. We're the Congress. We're not the special prosecutor. We have even greater rights to get the material.

JOHN CONYERS, Jr., Democrat of Michigan: I'd first like to indicate that the reason that I supported the McClory article in its full and undiluted form was simply because there was no reason in the face of this first historic instance of wilful non-compliance on the part of the President to refuse to comply, that we should have to modify in any respect the enormity of the challenge that he himself has put before us.

Now I think it's more important than to begin worrying whether we're going to have articles that do not meet with the approval of everyone on this committee that we continue this process as thoughtfully as we are able. To not include this article, one that is of enormous importance to the Constitution itself, would speak very poorly of the recommendations coming from the Judiciary Committee, and certainly ultimately the decision that must be made on the floor.

Now too many members here are beginning to think that they are casting the final decision on impeachment in the Judiciary Committee. Well, let me remind you there are 400 other members that are going to decide this, and I resent any implications of people on the committee suggesting what ought to and what not to be introduced now that we have two articles of im-



United Press International

Charles W. Sandman Jr. of New Jersey, left, and Tom Railsback of Illinois, Republicans. Both voted against Article III, and Article IV yesterday.

peachment.

DENNIS: Articles I and II can be debated on the law and on the facts as indeed they have been and will be. But this proposed article we have before us now is utterly without merit.

The President, in this instance, asserted what he claimed to be a constitutional right, based on executive privilege and the separation of powers. And it's a right, incidentally, which under certain circumstances has now been recognized by the Court in the course of its recent opinion.

We took a different position and now we're going to say without any resolution of that question that because you, Mr. President, invoked a constitutional position, we're going to impeach you.

Now, that argument ought to carry its own answer. We elected never to test the question. We never went to the floor of the House and asked the House to vote a contempt as we might have done and should have done if we thought he was in contempt. We elected by vote of this committee not to test the matter in the Court as we might have done and even though, as the Court reiterated the other day, the courts are emphatically the province to determine what the law is.

We could have been parties to the recent suit or a similar suit and we would probably have prevailed and we know now that the President would have complied and we would have this evidence if we just gone and asked for it in the proper form.

But we refused to do that.

Now, the sole right to impeach doesn't with it the sole right to determine what the Constitution means. It doesn't make us the sole arbitrator of the Constitution.

This is a bootstrap operation. We are in effect trying to say to the President, if you don't agree with our view of the Constitution, we're going to impeach you.

Now, that is not a reasonable position to take. The Court in Nixon against Sirica the other day said this: If a President concludes that compliance with a subpoena would be injurious to the public interest, he may properly invoke a claim of privilege and that's exactly what the President did. And it will reflect no credit on this committee if we try to impeach him for doing that.

AFTERNOON SESSION

JOSHUA EILBERG, Democrat of Pennsylvania: I think there is no justifiable defense for the President's refusal to comply with the subpoenas.

I respectfully submit that if members now considering voting against approving this article of impeachment did not think the President should be disciplined or punished for refusing to comply with the subpoenas, why did they vote for them in the first place?

Isn't it true that subpoenas are demands backed up by the threat of punishment for noncompliance? If not by impeachment, how can the President as a practical matter—and I emphasize practical matter—be disciplined or punished for noncompliance?

At no time has any reasonbale argument been advanced for the President's refusal. His lawyer argued that the President has executive privilege in this matter; he said disclosure of those conversations could endanger the principle of confidentiality and threaten the ability of the President to conduct the business of his office.

But during the impeachment of Andrew Johnson, there was a far-reaching inquiry into the conversation between that President and his aides, no information was withheld from the committee making that investigation, and it cannot be argued that this resulted in any way in limiting any subsequent President's ability to communicate with his aides.

M. CALDWELL BUTLER, Republican of Virginia: The principal problem with me with reference to this article is whether the conduct standing alone is an impeachable offense under the Constitution. I think not. I am concerned, however, that what we do in substance by Article III is to impeach a President for a failure to cooperate in his own impeachment. And to me that is basically unfair. In my judgment the House of Representatives has a responsibility to go further down the road than we have at this moment before we impeach the President for his noncompliance with our subpoenas.

I would prefer that our determination be affirmed by the courts in an appropriate proceeding or at least by a preliminary determination of contempt in an appropriate proceeding before the House.

The issue is also one of legislative responsibility. We are saying today, if we pass Article III, that 20 members—a bare majority of a 38-member committee—can for reasons deemed sufficient unto itself, issue a subpoena to the President and recommend his impeachment for their judgment as to the sufficiency of his partial compliance with the subpoena. This article offends my sense of fair play and I intend to vote aginst it

WILLIAM S. COHEN, Republican of Maine: I'd like to point out initially that whether this article passes or fails, I want to make it clear that this member of that fragile coalition intends to remain firm in his adherence to Articles I and II.

The able gentleman from California, Mr. Wiggins, suggested that this article is logically inconsistent with a vote for Articles I and II, and I simply cannot agree with that statement.

Late Decision on Text

The fact that one can arrive at a conclusion based upon clear and convincing evidence in no way diminishes the need to review all of the revelant evidence, and I would point out that it was not decided until just recently, in the final days of our proceedings, whether the test that we would apply would be that of probable cause, clear and convincing evidence, or beyond a reasonable doubt.

But to conclude that the evidence was sufficient for the committee to reach a decision does not mean that we were not entitled to all of the information that was relevant, and that the President was obligated to furnish it to us. Or that the Senate is not entitled to the evidence if they insist upon a standard of beyond a reasonable doubt.

The reference to logic prompted me to think of Justice Holmes's statement that a page of history is worth a volume of logic. And I think it's clear that the information that was relevant to our inquiry, and necessary, was withheld. Some of it had to come through the special prosecutor or through the grand jury.

And I suppose that had the committee been unable to reach a decision to its satisfaction on the issues it would have been argued logically that you cannot impeach a President for invoking the executive privilege when the issue had not been resolved by the final arbiter, being the Supreme Court.

I stated the other day that one of the most unfortunate aspects of this case, whereby the saddest and most melancholy wounds were those that were self-inflicted, has been the degradation of valuable doctrines such as executive privilege and national security. Because they, in my belief, have been invoked for illegitimate purposes and I only hope the wounds aren't fatal.

Example of Impediment

I believe that the withholding of the [illegible] evidence was just one other example of Presidential action that was calculated to impede rather than expedite the administration of justice. And to the extent that it's not covered by Article I or by Article II, I'd like to put my colleagues on notice that I will propose to introduce an amendment to include such a provision on the House floor.

ROBERT F. DRINAN, Democrat of Massachusetts: Since I have been in Congress, I have voted on two contempt citations. On the first, Dr. Frank Stanton on July 13, 1971, I found myself with a vast majority voting to recommit that particular citation of contempt.

It turned out to be subcommittee in question already had the full text of the material deleted by CBS and as a result, I voted to recommit it and I was happy to see that Mr. Dennis and Mr. Williams and many others on this committee were—joined me.

The question of Gordon Liddy was different. On Sept. 10, 1973, I voted for contempt with the overwhelming majority of the House of Representatives. Mr. Liddy refused even to give his name and he did not even get to the question of invoking the Fifth Amendment.

So I find the question of the President really in the same category as these two individuals and any other person whose documents this Congress does in fact seek to subpoena. And in Prof. Raoul Berger's book that I looked at just now, I find nothing that would justify defiance of our subpoena and in the Supreme Court's decision last week the Court went out of its way to say that the President had not actually invoked any military or diplomatic justification for his refusal for the subpoenas.

Similarly, in this case we have not even approached any justification by the President in the area of military or diplomatic justification.

CARLOS J. MOORHEAD, Republican of California: The assertion by the Congress that under the impeachment powers it can exercise absolute power over impeachment or any ancillary matter in connection with impeachment without court review certainly would lay the groundwork for legislative abuse of power.

I think that it's important that we do have a check and balance. Under our system the courts are the final determiner of what the law is. There are many things about the power that was given to Congress that might well have to be interpreted by the courts. There are other constitutional rights that have been set down under our United States Constitution. Those rights on occasion come into conflict with the power that was given to the House of Representatives to bring impeachment proceedings.

Those powers have to be weighed and balanced and it's the courts that have been given that authority under our Constitution. I think that it is vitally important that this committee before it considers impeaching a President for failure to follow their demands and a subpoena, to take the matter to court as I and some of the other members on this committee voted to do.

Some have said there no longer is a privilege of confidentiality in the Presidency, but in the United States v. Nixon the Court said specifically as to the case they were deciding, "In this case we must weigh the importance of the general privilege of confidentiality of Presidential communications in performance of his responsibility against the inroads of such a privilege on the fair administration of the civil justice." But they did not rule out the claim in all cases to the privilege.

Supreme Court Quoted

Later on they said: "Moreover, a President's communications and activities encompass a vastly wider range of sensitive material than would be true

of any ordinary individual. It is therefore necessary in the public interest to afford Presidential confidentiality the greatest protection consistent with fair administration of justice."

The need for confidentiality even as to the idle conversations of associates in which casual references might be made concerning political leaders within the country or foreign statesmen is too obvious to call for further treatment. It is important that the President or any other citizen of the United States have a right to have a judicial determination of the validity of any section of the Constitution or any law before he places himself in jeopardy of being impeached. I ask for a no vote.

BARBARA JORDAN, Democrat of Texas: When Mr. St. Clair, the President's attorney, started to present to us his closing summation of the case before this committee he said as a matter of first instance that a President cannot be impeached by piling inference upon inference.

Now I agree with that, but if the President had complied with the subpoenas for information issued by this committee, there would be no necessity for an inference to be drawn in the first instance.

If the President had provided the best evidence which this committee sought there would be no necessity for us to infer anything. Example: the June 20 conversation is important, the 18½-minute gap is on that conversation that the President had with Mr. Haldeman.

We subpoenaed — this committee subpoenaed conversations which the President had on the 20th of June with Mr. Charles Colson. He talked to Mr. Colson four times that day. Mr. Colson knew about the Liddy plan for intelligence-gathering. If we had had compliance with the subpoena of this committee and had secured those four conversations, we may not have to infer what the President knew on the June 20 tape which was manually erased.

Three Governments Denied

The argument that this subpoena power of this committee violates separation of powers doctrine has no validity, in my judgment, in that the fact that we have three separate branches of government does not mean that we have three governments: they are independent but relatively dependent.

Consequently this partial intermixture of powers gives rise to the whole workings and the whole functioning of the Government.

If the President had cooperated with this committee it would have been a part of the whole working of the matter of the impeachment process, as we have tried to go forward with it.

JOSEPH J. MARAZITI, Republican of New Jersey: In a recent case—a recent case last week—the Court decided that if the President felt that he must exercise a right or a privilege for the welfare of the people of this nation, he should do so.

And the President did exactly that in the Jaworski case. And the Court decided it.

Now, contrary to what's been said here today, the doctrine of executive privilege is still alive. It is a valid doctrine and the Court stated that the bare exercise—that they can exercise that the privilege is not sufficient, there must be a showing of national security interest or diplomatic considerations and so on.

So the doctrine is still valid.

Now, this committee certainly has the right to recommend and to decide to recommend any number of articles of impeachment to the House but as Mr. Dennis has stated, this committee does not have the right—and thank God it does not—to decide all constitutional questions and just what the Constitution means in every particular

'Very Simple Solution'

Now here we have a dispute between the executive branch and the legislative branch and in cases of disputes between departments, the Supreme Court must decide and does decide.

I submit that this committee had a very, very simple solution to this dilemma. It was proposed in the Dennis motion several months ago supported by some of us to join the Jaworski application, make our application, get a decision, and let me say here and now that if the Court had decided that the President should exhibit those tapes and deliver those tapes to this committee and if he refused, I would have voted impeachment on that ground. But failing in this committee—this committee failing to take the action and support the Dennis motion and get a definitive decision, I cannot support this article of impeachment.

McCLORY: This committee has urged the President to provide us with the necessary and relevant information to conclude and to do a thorough and complete inquiry.

We have issued the subpoenas; he's rejected those. Following the rejection of our subpoenas we warned the President in a letter of May 30 that if he did not respond we would consider this as a ground of impeachment.

The President's counsel has urged, and I think that he's doing this appropriately, that charges against the President should be in separate and specific articles. This is a separate and specific article and it's a separate type of charge, it seems to me.

I hope, myself, that the additional evidence which will be presented, if it is presented in the Senate or at any other time, would exculpate and exonerate the President. And I've kept urging that during these weeks, that I've been urging the President to respond favorably to our subpoenas.

That same urging of the President has been directed by the Vice President, by the Republican leader of the House.

Now what did the President turn over in response to our request? He turned over nothing. If it were not for the fact that we got materials from the special prosecutor we wouldn't have evidence upon which to operate, to conduct our inquiry.

Now it's pure speculation that by going to the courts that we would be able to get some kind of a remedy. As a matter of fact, this committee has taken the position definitely, and over and over again, we did not want to subject ourselves to the jurisdiction or authority of the courts.

In the arguments which just took place in the case of U. S. against Nixon, the question was asked of Mr. St. Clair, and he responded quite clearly, that the Congress had the sole jurisdiction of the subject of impeachment. And this was not a justiciable subject before the Supreme Court. The courts are excluded from our consideration of this. The House has the sole power of impeachment and we have expressed that.

Now it seems to me that the other process that we could have gone through of contempt would be quite unacceptable and we did not want to go through that. I suggested that some months ago, but I was deterred in that by leaders from both sides of the aisle.

Decisive Action Needed

And with the prospect that we would take this up when it came to the consideration of an article of impeachment. And that's what we're doing at this time. It seems to me that it's entirely appropriate that we should tell the President — and this will be a guide for future Presidents or future impeachments — that if there is no response, or if the response is inadequate to the request that we made, if our subpoenas are defied, well then, the Congress is going to take the kind of decisive action.

Contempt, of course, is a strong action. You can have summary contempt in a court, and in prison, and there are all kinds of strong penalties. So that this is decisive action, this is firm action. But it seems to me that this is the only kind of action we can take under the circumstances.

[The proposed Article III was adopted on a vote of 21 to 17, and the proposed Article IV was offered by Mr. Conyers.]

CONYERS: We have said here again and again during the course of these deliberations that the one power of the Congress that might in fact be even more powerful than that which brings us here is the power to declare war.

You know, many people don't know or have forgotten who has the authority to declare war in 1974 in the United States. Many people have forgotten that the Congress constitutionally has that sole authority.

I don't think that we can absolve the fact that the Congress has failed to declare officially that war that has haunted us for nearly 10 years.

But that we can use this moment as a new beginning, as a point of departure, where the Congress says "from this moment on, from this day forward" we will reinstitute that law constitutionally asserted from the beginning that somehow during the course of previous Administrations, I am frank to admit, has eroded and we find that that power is no longer ours and ours alone.

But on March 17, 1969, the President of the United States, and I might note less than two months after he had been given the oath of office, approved the beginning of bombing strikes in Cambodia which continued until Aug. 15, 1973. But it was not until July 16 that Secretary of Defense Schlesinger, before the Senate Armed Services Committee, revealed formally that bombing had occurred in Cambodia prior to May, 1970, the date of the American invasion or incursion into Cambodia.

DELBERT L. LATTA, Republican of Ohio: I think that we have to recognize that when Mr. Nixon took office he had a very serious problem. We had over 500,000 American troops in South Vietnam. The casualties were heavy; we had hit-and-run activities by the enemy going into sanctuaries that were not being hit.

Action had to be taken to save American lives. In listening to the gentleman from Michigan I noticed that he overlooked mentioning the fact that we didn't have very much dissent from the Cambodian Government. In fact, they indicated that publicly they couldn't say anything but they were giving us passive consent.

No 'Chore Boy' President

I think it's important that we continue to have in this country co-equal branches of government, that we don't reduce that office of President to chore boy, that we let him remain as Commander in Chief. It seems as though we forget that responsibility given to him under the Constitution. And a Commander in Chief sometimes has to take actions to protect the lives of his troops. And here we had a Commander in Chief, taking decisive action.

COHEN: The basis, as I understand, for this article is that this constituted a usurpation of power by the President, a power properly belonging to Congress. And I don't think that anyone here will contest that.

I think the bombing was wrong because it was done secretly and it was done without Congress's consent. But while this usurpation may have taken place, I happen to believe that the usurpation has come about not through the bold power of the President but rather through the sloth and default on the

part of the Congress.

TRENT LOTT, Republican of Mississippi: Congress had another opportunity to act when we passed last year the so-called war powers resolution. But the effect of the actual wording of that resolution, in my opinion and in others that have studied this question, instead of really restraining the President, it actually authorized resumption of the Cambodian bombing that Congress had tried to end.

A Share of Blame

So, it's obvious to me that Congress has to share the blame here. I think once again we must look at the results. President Nixon didn't start this war but he ended it and the Cambodian bombing obviously was one of the things that was used to bring it to a conclusion.

HOLZTMAN: When Congress voted to cut off the bombing of August 15, Congress was not aware at that point of the secret bombing. The secret was revealed on July 16, 1973, and the votes regarding Cambodia bombing took place prior thereto. There has never been a vote in Congress which in any way could be construed to have ratified that secret bombing.

HOGAN: I oppose this article, and I might say it's comfortable being back in the bosom of my friends.

My friend from Michigan, Mr. Conyers, said that whoever heard of anyone approving getting bombed. Now implicit in this statement is that the bombs were dropped on Cambodian citizens, and that's not the case.

There is no testimony from any source indicating that Prince Sihanouk did not approve these bombings.

If the Cambodian Government had opposed this, they had every right to go to the United Nations and protest it.

All military experts agree that the Cambodian bombing helped to accelerate the end of the war and the return of the prisoners of war.

HAMILTON FISH JR., Republican of upstate New York: The fact is that we in the Congress share responsibility. The facts of the lack of concealment have come out in this debate, and I don't think it was necessary to characterize not only the political leadership but the committee leadership in both parties, in both the House and the Senate as having been carefully selected.

But these men did know on our behalf and so the Congress does have this responsibility. I liken this particular proposed article to that which concerned unauthorized impoundments. In both cases, as has been said in this debate, the fact was that for decades the Congress itself was giving ground to the executive.

WALTER FLOWERS, Democrat of Alabama: This a bad rap on President Nixon and we ought to recognize it as that.

Purpose: 'To Get Us Out'

Let's remember what the President's purpose was in any of his activity in Vietnam or Southeast Asia—it was to get us out over there.

Let's also remember that those advisers that advised him in the early spring of 1969 earned their stars under President Lyndon Johnson, a Democrat if you will.

We might as well resurrect President Johnson and impeach him postumously for Vietnam and Laos as impeach President Nixon for Cambodia.

We might as well resurrect the memory of John Kennedy for Santo Domingo and the Bay of Pigs. President Eisenhower had his U-2 incident. President Truman in Korea.

[The proposed Article IV was defeated on a vote of 26 to 12.]