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IMPEACH MENT REPORT

Judiciary Committee

Resolved, that Richard M. Nixon, President of the United States, is impeached for high crimes and misdemeanors, and that the following articles of impeachment be exhibited to the Senate:

Articles of impeachment exhibited by the House of Representatives of the United States of America in the name of itself and of all of the people of the United States of America, against Richard M. Nixon, President of the United States of America, in maintenance and support of its impeachment against him for high crimes and misdemeanors.

ARTICLE I

In his conduct of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has prevented, obstructed, and impeded the administration of justice, in that:

On June 17, 1972, and prior thereto, agents of the Committee for the Reelection of the President committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence. Subsequent thereto, Richard M. Nixon, using the powers of his high office, engaged personally and through his close subordinates and agents, in a course of conduct or plan designed to delay, impede, and obstruct the investigation of such unlawful entry, to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

The means used to implement this course of conduct or plan included one or more of the following:

1. Making false or misleading statements to lawfully authorized investigative officers and employees of the United States.

2. Withholding relevant and material evidence or information from lawfully authorized investigative officers and employees of the United States.

3 Approving, condoning, acquiescing in, and counseling witnesses with respect to the giving of false or misleading statements to lawfully authorized investigative officers and employees of the United States and false or misleading testimony in duly instituted judicial and congressional proceedings.

4. Interfering or endeavoring to interfere with the conduct of investigation by the Department of Justice of the United States, the Federal Bureau of Investigation, the Office of Watergate Special Prosecutor Force, and congressional committees.

5. Approving, condoning, and acquiescing in, the surreptitious payment of substantial sums of money for the purpose of obtaining the silence or influencing the testimony of witnesses, potential witnesses or individuals who participated in such unlawful entry and other illegal activities.

6. Endeavoring to misuse the Central Intelligence Agency, an agency of the United States.

7. Disseminating information received from officers of the Department of Justice of the United States to subjects of investigations conducted by lawfully authorized investigative officers and employes of the United States, for the purpose of aiding and assisting such subjects in their attempts to avoid criminal liability,

8. Making or causing to be made false or misleading public statements for the purpose of deceiving the people of the United States into believing that a thorough and complete investigation had been conducted with respect to allegations of misconduct on the part of personnel of the executive branch of the United States and personnel of the Committee for the Reelection of the President, and that there was no involvement of such personnel in such misconduct, or

9. Endeavoring to cause prospective defendants, and individuals duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony, or rewarding individuals for their silence or false testimony.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon by such conduct, warrants impeachment and trial, and removal from office.

CONCLUSIONS

After the Committee on the Judiciary had debated whether or not it should recommend Article I to the House of Representatives, 27 of the 38 members of the committee found that the evidenec before it could only lead to one conclusion: that Richard M. Nixon, using the powers of his high office, engaged, personally and through his subordinates and agents, in a course of conduct or plan designed to delay, impede, and obstruct the investigation of the unlawful entry, on June 17, 1972, into the headquarters of the Democratic National Committee; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

This finding is the only one that can explain the President's involvement in a pattern of undisputed acts that occurred after the break-in and that cannot otherwise be rationally explained.

1. The President's decision on June 20, 1972, not to meet with his attorney general, his chief of staff, his counsel, his campaign director and his assistant John Ehrlichman, whom he had put in charge of the investigation when the subject of their meeting was the Watergate matter.

2. The erasure of that portion of the recording of the President's conversation with Haldeman, on June 20, 1972, which dealt with Watergate—when the President stated that the tapes had been under is "sole personal control."

3. The President's public denial on June 22, 1972, or the involvement of members of the Committee for the Reelection of the President or of the White House staff in the Watergate

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burglary, in spite of having discussed Watergate, on or before June 22, 1972, with Haldeman, Colson and Mitchell—all persons aware of that involvement.

4. The President's directive to Haldeman on June 23, 1972, to have the CIA request the FBI to curtail its Watergate investigation.

5. The President's refusal, on July 8, 1972, to inquire and inform himself what Patrick Gray, acting director of the FBI, meant by his warning that some of the President's aides were "trying to mortally wound" him.

6. The President's discussion with Ehrlichman on July 8, 1972, of clemency for the Watergate burglars, more than two months before the return of any indictments.

7. The President's public statement on Aug. 29, 1972, a statement later shown to be untrue, that an investigation by John Dean "indicates that no one in the White House staff, no one in the administration, presently employed, was involved in this very bizarre incident."

8. The President's statement to Dean on Sept. 15, 1972, the day that the Watergate indictments were returned without naming high CRP and White House officials, that Dean had handled his work skillfully, "putting your fingers in the dike every time that leaks have sprung here and sprung there," and that "you just try to button it up as well as you can and hope for the best."

9. The President's discussion with Colson in January, 1973, of clemency for Hunt.

10. The President's discussion with Dean on Feb. 28, 1973, of Kalmbach's upcoming testimony before the Senate Select Committee, in which the President said that it would be hard for Kalmbach because "it'll get out about Hunt," and the deletion of that phrase from the edited White House transcript.

11. The President's appointment in March 1973 of Jeb Stuart Magruder to a high government position when Magruder had previously perjured himself before the Watergate grand jury in order to conceal CRP involvement.

12. The President's inaction in response to Dean's report of March 13, 1973, that Mitchell and Haldeman knew about Liddy's operation at CRP, that Sloan had a compulsion to "cleanse his soul by confession," that Stans and Kalmbach were trying to get him to "settle down," and that Strachan had lied about his prior knowledge of Watergate out of personal loyalty; and the President's reply to Dean that Strachan was the problem "in Bob's case."

13. The President's discussion on March 13, 1973, of a plan to limit future Watergate investigations by making Colson a White House "consultant without doing any consulting," in order to bring him under the doctrine of executive privilege.

14. The omission of the discussion related to Watergate from the edited White House transcript, submitted to the Committee on the Judiciary, of the President's March 17, 1973, conversation with Dean, especially in light of the fact that the President had listened to the conversations on June 4, 1973.

15. The President's instruction to Dean on the evening of March 20, 1973, to make his report on Watergate "very complete," and his subsequent public statements misrepresenting the nature of that instruction.

16. The President's instruction to Haldeman on the morning of March 21, 1973, that Hunt's price was pretty high, but that they should buy the time on it.

17. The President's March 21st statement to Dean that he had "handled it just right," and "contained it;" and the deletion of the above comments from the edited White House transcripts.

18. The President's instruction to Dean on March 21, 1973, to state falsely that payments to the Watergate defendants had been made through a Cuban Committee.

19. The President's refusal to inform officials of the Department of justice that on March 21, 1973, Dean had confessed to obstruction of justice and had said that Haldeman, Ehrlichman and Mitchell were also involved in that crime.

20. The President's approval on March 22, 1973, of a shift in his position on executive privilege "in order to get on with the cover-up plan," and the discrepancy, in that phrase, in the edited White House transcript.

21. The President's instruction to Ronald Ziegler on March 26, 1973, to state publicly that the President had "absolute and total confidence" in Dean.

22. The President's action, in April 1973, in conveying to Haldeman, Ehrlichman, Colson and Kalmbach information furnished to the President by Assistant Attorney General Petersen after the President has assured Petersen that he would not do so.

23. The President's discussions, in April 1973, of the manner in which witnesses should give false and misleading statements.

24. The President's directions, in Arpil 1973, with respect to offering assurances of clemency to Mitchell, Magruder and Dean.

25. The President's lack of full disclosure and misleading statements to Assistant Attorney General Henry Petersen between April 15 and April 27, 1973, when Petersen reported directly to the President about the Watergate investigation.

26. The President's instruction to Ehrlichman on April 17, 1973, to give false testimony concerning Kalmbach's knowledge of the purpose of the payments to the Watergate defendants.

27. The President's decision to give Haldeman on April 25 and 26, 1973, access to tape recordings of presidential conversations, after Assistant Attorney General Petersen had repeatedly warned the President that Haldeman was a suspect in the Watergate investigation.

28. The President's refusal to disclose the existence of the White House taping system.

29. The President's statement to former Attorney General Elliot Richardson on May 25, 1973, that his waiver of executive privilege, announced publicly on May 22, 1973, did not extend to documents.

30. The refusal of the President to cooperate with Special Prosecutor Cox; the President's instruction to Special Prosecutor Cox not to seek additional evidence in the courts and his firing of Cox when Cox refused to comply with that directive.

31 The submission by the President to the Committee on April 30, 1974, and the simultaneous release to the public of transcripts of 43 presidential conversations and statements, which are characterized by omissions of words and passages, misattributions of statements, additions, paraphrases, distortions, nonsequiturs, deletions of sections as "Material Unrelated to Presidential Action," and other signs of editorial intervention; the President's authorization of his counsel to characterize these transcripts as "accurate", and the President's public statement that the transcripts contained "the whole story" of the Watergate matter.

32. The President's refusal in April, was before the committe the follow- subpoenas of the Committee issued in connection with its impeachment inquiry.

In addition to this evidence, there was before the committee the folowing evidence:

1. Beginning immediately after June 17, 1972, the involvement of each of the President's top aides and political associates, Haldeman, Mitchell, Ehrlichman, Colson, Dean, LaRue, Mardian, Magruder, in the Watergate cover-up.

2. The clandestine payment by Kalmbach and LaRue of more than $400,000 to the Watergate defendants.

3. The attempts by Ehrlichman and Dean to interfere with the FBI investigation.

4. The perjury of Magruder, Porter, Mitchell, Krogh, Strachan, Haldeman and Ehrlichman.

Finally, there was before the committee a record of public statements by the President between June 22, 1972, and June 9, 1974, deliberately contrived to deceive the courts, the Department of Justice, the Congress and

Section I

Report in Three Sections

The excerpts from the report of the House Committee on the Judiciary published in this special supplement are divided into three sections.

Section I lists the three articles of impeachment that the committee approved, together with the committee's conclusions for each article.

Section II gives a partial text of the minority views of the 10 Republican congressmen who voted against all three articles of impeachment.

Section III is a collection of additional statements by members of the committee concurring in, dissenting from, or amplifying of the report.

purposes of these agencies.

This conduct has included one or more of the following:

1. He has, acting personally and through his subordinates and agents, endeavored to obtain from the Internal Revenue Service, in violation of the constitutional rights of citizens, confidential information contained in income tax returns for purposes not authorized by law, and to cause, in violation of the constitutional rights of citizens, income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner.

2. He misused the Federal Bureau of Investigation, the Secret Service, and other executive personnel, in violation or disregard of the constitutional rights of citizens, by directing, or authorizing such agencies or personnel to conduct or continue electronic surveillance or other investigations for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; he did direct, authorize, or permit the use of information obtained thereby for purposes unrelated to national security, the enforcement of laws, or any other lawful function of his office; and he did direct the concealment of certain records made by the Federal Bureau of Investigation of electronic surveillance.

3. He has, acting personally and through his subordinates and agents, in violation or disregard of the constitutional rights of citizens, authorized and permitted to be maintained a secret investigative unit within the office of the President, financed in part with money derrived from campaign contributions to him which unlawfully utilized the resources of the Central Intelligence Agency, engaged in covert and unlawful activities, and attempted to prejudice the constitutional right of an accused to a fair trial.

4. 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 endeavored to impede and frustrate lawful inquiries by duly constituted executive, judicial, and legislative entities concerning the unlawful entry into the headquarters of the Democratic National Committee and the cover up thereof; and concerning other unlawful activities including those relating to the confirmation of Richard Kleindienst as attorney general of the United States, the electronic surveillance of private citizens, the break-in into the office of Dr. Lewis Fielding, and the campaign financing practices of the Committee to Re-Elect the President.

5. In disregard of the rule of law. He knowingly misused the executive power by interfering with agencies of the executive branch including the Federal Bureau of Investigation, the Criminal Division, and the Office of Watergate Special Prosecution Force, of the Department of Justice, and the Central Intelligence Agency, in violation of his duty to take care that the laws be faithfully executed.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

Wherefore Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office.

In recommending Article II to the House, the committee finds clear and convincing evidence that Richard M. Nixon, contrary to his trust as President and unmindful of the solemn duties of his high office, has repeatedly used his power as President to violate the Constitution and the law of the land.

In so doing, he has failed in the obligaton that every citizen has to live under the law. But he has done more, for it is the duty of the President not merely to live by the law but to see that law is faithfully applied. Richard M. Nixon has repeatedly and willfully failed to perform that duty. He has failed to perform it by authorizing and directing actions that violated, disregarded the rights of citizens and that corrupted and attempted to corrupt the lawful functionioning of executive agencies. He has failed to perform it by condoning and ratifying, rather than acting to stop, actions by his subordinates that interferred with lawful investigations and impeded the enforcement of the laws.

Article II, Section 3 of the Constitution requires that the President "shall take care that the laws be faithfully executed." Justice Felix Frankfurter described this pronision as "the embracing function of the President", President Benjamin Harrison called it "the central idea of the office." "In a Republic,' Harrison wrote, "the thing to be executed is the law, not the will of the ruler as in despotic governments. The President cannot go beyond the law, and he cannot go beyond the law, and he cannot stop short of it."

The conduct of Richard M. Nixon has constituted a repeated and continuing abuse of the powers of the Presidency in disregard of the fundamental principle o the rule of law in our system of government. This abuse of the powers of the President was carried out by Richard M. Nixon, acting personally and through his subordinates, for his own political advantage, not for any legitimate governmental purpose and without due consideration for the national good.

The rule of law needs no defense by the committee. Reverence for the laws, said Abraham Lincoln, should "become the poltical religion of the nation." Said Theodore Roosevelt, "No man is above the law and no man is below it; not do we ask any man's permission when we require him to obey it."

It is a basic principle of our government that "we submit ourselves to rulers only if they are under rules." "Decency, security, and liberty alike demand that governmental officials shall be subjected to the same rules of conduct that are commands to the citizen," wrote Justice Louis Brandeis.

In a footnote, the committee added that Justice Brandeis went on to say, "In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private citizen — would bring a terrible retribution."

The Supreme Court has said: "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it.

See MAJORITY, A18, Col. 1

"It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy and to observe the limitations upon the exercise of the authority which it gives."

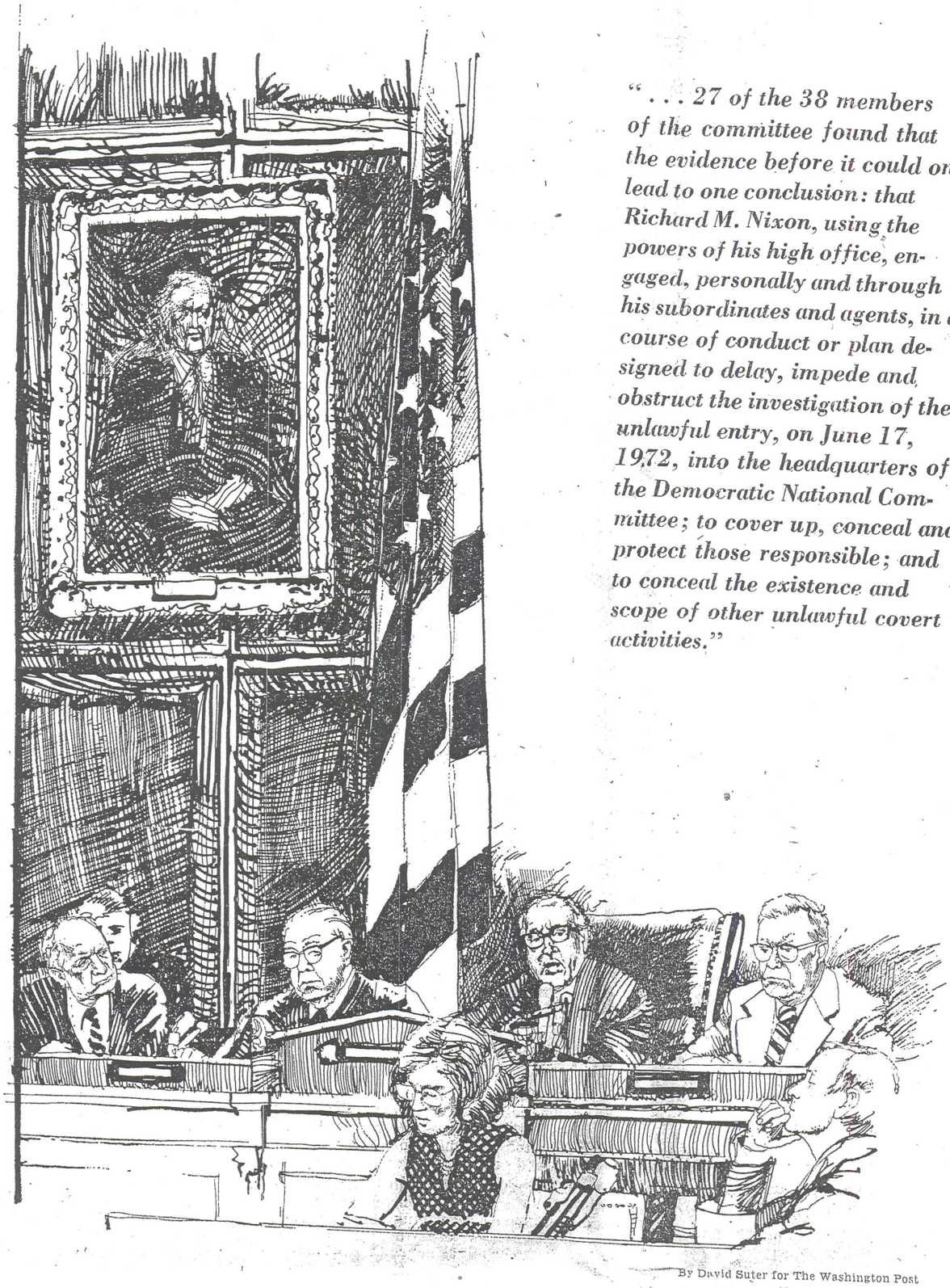
Our nation owes its strength, its stability, and its endurance to this principle.

In asserting the supremacy of the rule of law among the principles of our government, the committee is enunciating no new standard of presidential conduct. The possibility that Presidents have violated this standard in the past does not diminish its current — and future — applicability. Repeated abuse of power by one who holds the highest public office requires prompt and decisive remedial action, for it is in the nature of abuses of power that if they go unchecked they will become overbearing, depriving the people and their representatives of the strength of will or the wherewithal to resist.

Out Constitution provides for a responsible chief executive, accountable for his acts. The framers hoped, in the words of Elbridge Gerry, that "the maxim would never be adopted here that the chief magistrate could do no wrong." They provided for a single executive because, as Alexander Hamilton wrote, "the executive power is more easily confined when it is one" and "there should be a single object for the . . . watchfulness of the people."

The President, said James Wilson, one of the principal authors of the Constitution, "is the dignified, but accountable magistrate of a free and great people." Wilson said, "The executive power is better to be trusted when it has no screen . . . We have a responsibility in the person of our President; . . . he cannot roll upon any other person the weight of his criminality . . ." As both Wilson and Hamilton pointed out, the President should not be able to hide behind his counselors; he must ultimately be accountable for their acts on his behalf. James Iredell of North Carolina, a leading proponent of the proposed Constitution and later a Supreme Court justice, said that the President "is of a very different nature from a monarch. He is to be . . . personally responsible for any abuse of the great trust reposed in him."

In considering this article the committee has relied on evidence of acts directly attributable to Richard M. Nixon himself. He has repeatedly attempted to conceal his accountability for these acts and attempted to deceive and mislead the American people about his own responsibility. He governed behind closed doors, directing the operation of the executive branch through close subordinates, and sought to conceal his knowledge of what they did illegally on his behalf. Although the committee finds it unnecessary in this case to take any position on whether the President should be held accountable, through exercise of the power of impeachment, for the actions of his immediate subordinates, undertaken on his behalf, when his personal



". . . 27 of the 38 members of the committee found that the evidence before it could only lead to one conclusion: that Richard M. Nixon, using the powers of his high office, engaged, personally and through his subordinates and agents, in a course of conduct or plan designed to delay, impede and obstruct the investigation of the unlawful entry, on June 17, 1972, into the headquarters of the Democratic National Committee; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities."

By David Suter for The Washington Post

the American people.

President Nixon's course of conduct following the Watergate break-in, as described in Article I, caused action not only by his subordinates but by the agencies of the United States, including the Department of Justice, the FBI, and the CIA. It required perjury, destruction of evidence, obstruction of justice, all crimes. But, most important, it required deliberate, contrived, and continuing deception of the American people.

President Nixon's actions resulted in a manifest injury to the confidence of the nation and great prejudice to the cause of law and justice, and was subversive of constitutional government. His actions were contrary to his trust as President and unmindful of the solemn duties of his high office. It was this serious violation of Richard M. Nixon's constitutional obligations as President, and not the fact that violations of federal criminal statutes occurred, that lies at the heart of Article I.

The committee finds, based upon clear and convincing evidence, that his conduct, detailed in the foregoing pages of this report, constitutes "high crimes and misdemeanors" as that term is used in Article II, Section 4 of the Constitution. Therefore, the committee recommends that the House of Representatives exercise its constitutional power to impeach Richard M. Nixon.

On Aug. 5, 1974, nine days after the committee had voted on Article I, President Nixon released to the public and submitted to the Committee on the Judiciary three additional edited White House transcripts of presidential conversations that took place on June 23, 1972, six days following the DNC break-in.

Judge Sirica had that day released to the special prosecutor transcripts of those conversations pursuant to the mandate of the United States Supreme Court. The committee had subpoenaed the tape recordings of those conversations, but the President had refused to honor the subpoena.

These transcripts conclusively confirm the finding that the committee had already made, on the basis of clear and convincing evidence, that from shortly after the break-in on June 17, 1972, Richard M. Nixon, acting personally and through his subordinates and agents, made it his plan to and did direct his subordinates to engage in a course of conduct designed to delay, impede and obstruct investigation of the unlawful entry of the headquarters of the Democratic National Committee; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities.

ARTICLE II

Using the powers of the office of President of the United States, Richard M. Nixon, in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the constitution of the United States, and in disregard of his constitutional duty to take care that the laws be faithfully executed has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies of the executive branch and the

authorization and knowledge of them cannot be proved, it is appropriate to call attention to the dangers inherent in the performance of the highest public office in the land in an air of secrecy and concealment.

The abuse of a President's powers poses a serious threat to the lawful and proper functioning of the government and the people's confidence in it. For just such presidential misconduct the impeachment power was included in the Constitution. The impeachment provision, wrote Justice Joseph Story in 1833, "holds out a deep and immediate responsibility, as a check upon arbitrary power; and compels the chief magistrate, as well as the humblest citizen, to bend to the majesty of the law." And Chancellor James Kent wrote in 1826: "If . . . neither the sense of duty, the force of public opinion, nor the transitory nature of the seat, are sufficient to secure a faithful exercise of the executive trust, but the President will use the authority of his station to violate the Constitution or law of the land, the House of Representatives can arrest him in his career, by resorting to the power of impeachment."

The committee has concluded that, to perform its constitutional duty, it must approve this Article of Impeachment and recommend it to the House. If we had been unwilling to carry out the principle that all those who govern, including ourselves, are accountable to the law and the Constitution, we would have failed in our responsibility as representatives of the people, elected under the Constitution. If we had not been prepared to apply the principle of presidential accountability embodied in the impeachment clause of the Constitution, but had instead condoned the conduct of Richard M. Nixon, then another President, perhaps with a different political philosophy, might have used this illegitimate power for further encroachments on the rights of citizens and further usurpations of the power of other branches of our government. By adopting this article, the committee seeks to prevent the recurrence of any such abuse of presidential power.

The committee finds that, in the performance of his duties as President, Richard M. Nixon on many occasions has acted to the detriment of justice, right, and the public good, in violation of his constitutional duty to see to the faithful execution of the laws. This conduct has demonstrated a contempt for the rule of law; it has posed a threat to our democratic republic. The committee finds that this conduct constitutes "high crimes and misdemeanors" within the meaning of the Constitution that it warrants his impeachment by the House, and that it requires that he be put to trial in the Senate.

In recommending Article II to the House, the committee finds clear and convincing evidence that Richard M. Nixon has not faithfully executed the executive trust, but has repeatedly used his authority as President to violate the Constitution and the law of the land. In so doing, he violated the obligation that every citizen has to live under the law. But he did more, for it is the duty of the President not merely to live by the law but to see that law faithfully applied. Richard M. Nixon repeatedly and willfully failed to perform that duty. He failed to perform it by authorizing and directing actions that violated the rights of citizens and that interfered with the functioning of executive agencies. And he failed to perform it by condoning and ratifying, rather than acting to stop, actions by his subordinates interfering with the enforcement of the laws.

ARTICLE III

In his conduct of the office of President of the United States, Richard M. Nixon, contrary to his oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed, has failed without lawful cause or excuse to produce papers and things as directed by duly authorized subpoenas issued by the Committee on the Judiciary of the House of Representatives on April 11, 1974, May 15, 1974, May 30, 1974, and June 24, 1974, and willfully disobeyed such subpoenas, the subpoenaed papers and things were deemed necessary by the committee in order to resolve by direct evidence fundamentally factual questions relating to presidential direction, knowledge or approval of actions demonstrated by other evidence to be substantial grounds for impeachment of the President. In refusing to produce these papers and things Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the President against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgements necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust a President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States. Wherefore, Richard M. Nixon, by uch conduct, warrants impeachment and trial, and removal from office.

CONCLUSION

The undisputed facts, historic precedent, and applicable legal principles support the committee's recommendation of Article III. There can be no question that in refusing to comply with limited, narrowly drawn subpoenas—issued only after the committee was satisfied that there was other evidence pointing to the existence of impeachable offenses—the President interfered with the exercise of the House's function as the "Grant Inquest o fthe Nation." Unless the defiance of the committee's subpoenas under these circumstances is considered grounds for impeachment, it is difficult to conceive of any President acknowledging that he is obligated to supply the relevant evidence necessary for Congress to exercise its constitutional responsibility in an impeachment proceeding. If this were to occur, the impeachment power would be drained of its vitality. Article III, therefore, seeks to preserve the integrity of the impeachment process itself and the ability of Congress to act as the ultimate safeguard against improper presidential conduct.

II: Views of 10 Republicans

Following are excerpts from the minority views of Reps. Edward Hutchinson, Henry P. Smith III, Charles W. Sandman Jr., Charles E. Wiggins, David W. Dennis, Wiley Mayne, Trent Lott, Carlos J. Moorehead, Joseph L. Maraziti, and Delbert R. Latta:

General

It is true, as President Gerald R. Ford said in his inaugural remarks, that "our long national nightmare is over," at least in the sense that anxiety over the impact of a raging Watergate controversy on the ability of the country's Chief Executive to govern effectively, or even to remain in office, abruptly ended upon the resignation of Richard Nixon from the Presidency. That resignation also rendered moot, in our view, the sole question to which the Committee's impeachment inquiry was addressed, namely, whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Mr. Nixon. We see no need for the Members of the House to take any action whatsoever with respect to the filing of this Committee Report, other than to read it and the individual and minority views included herein.

It is perhaps less *urgent*, but it is *surely no less necessary*, that we record our views respecting the more significant questions of law and fact which we perceive to be posed by the record compiled by the Committee in the course of its Impeachment Inquiry. This remains important, not because whatever we in the minority or our colleagues who constituted the Committee's majority on these issues now say about them will affect the tenure in office of any particular President, but because we have an obligation, both to our contemporaries and to posterity, not to perpetuate, unchallenged, certain theories of the evidence, and of law, which are propounded by the majority but which we believe to be erroneous

It is essential that, as the emotional and intellectual tensions of the pre-resignation period subside, neither Members of the Committee nor other Americans so relax their efforts to analyze and understand the evidence accumulated by the Committee that they become indiscriminate in their approach to the various allegations of misconduct which we examined. Our gratitude for his having by his resignation spared the Nation additional agony should not obscure for history our judgment that Richard Nixon, as President, committed certain acts for which he should have been impeached and removed from office. Likewise, having effectively admitted guilt on one impeachable offense—obstruction of justice in connection with the Watergate investigation—Richard Nixon is not consequently to be presumed guilty of all other offenses with which he was charged by the majority of the Committee that approved recommending to the full House three Articles of Impeachment against him. Indeed, it remains our view that, for the most part, he was not guilty of those offenses and that history should so record.

Our views respecting the merits of each of the major allegations made by the majority of the Committee against President Nixon are set out more fully in the separate discussions of the three proposed Articles which follow. To summarize:

(1) With respect to proposed Article I, we believe that the charges of conspiracy to obstruct justice, and obstruction of justice, which are contained in the Article in essence, if not in terms, may be taken as substantially confessed by Mr. Nixon on August 5, 1974, and corroborated by ample other evidence in the record. Prior to Mr. Nixon's revelation of the contents of three conversations between him and his former Chief of Staff, H. R. Haldeman, that took place on June 23, 1972, we did not, and still do not, believe that the evidence of presidential involvement in the Watergate cover-up conspiracy, as developed at that time, was sufficient to warrant Members of the House, or dispassionate jurors in the Senate, in finding Mr. Nixon guilty of an impeachable offense beyond a reasonable doubt, which we believe to be the appropriate standard.

(2) With respect to proposed Article II, we find sufficient evidence to warrant a belief that isolated instances of unlawful conduct presidential aides and subordinates did occur during the five-and-one-half years of the Nixon Administration, with varying degrees of direct personal knowledge or involvement of the President in these respective illegal episodes. We roundly condemn such abuses and unreservedly favor the invocation of existing legal sanctions, or the creation of new ones, where needed, to deter such reprehensible official conduct in the future, no matter in whose Administration, or by what brand or partisan, it might be perpetrated.

Nevertheless, we cannot join with those who claim to perceive an invidious, pervasive "pattern" of illegality in the conduct of official government business generally by President Nixon. In some instances, as noted below, we disagree with the majority's interpretation of the evidence regarding either the intrinsic illegality of the conduct studied or the linkage of Mr. Nixon personally to it. Moreover, even as to those acts which we would concur in characterizing as abusive and which the President appeared to direct or countenance, neither singly nor in the aggregate do they impress us as being offenses for which Richard Nixon, or any President, should be impeached or removed from office, when considered, *as they must be*, on their own footing apart from the obstruction of justice charge under proposed Article I which we believe to be sustained by the evidence.

(3) Likewise, with respect to proposed Article III, we believe that this charge, standing alone, affords insufficient grounds for impeachment. Our concern here, as explicated in the discussion below, is that the Congressional subpoena power itself not be too easily abused as a means of achieving the impeachment and removal of a President against whom no other substantive impeachable offense has been proved by sufficient evidence derived from sources other than the President himself. We believe it is particularly important for the House to refrain from impeachment on the sole basis of noncompliance with subpoenas where, as here, colorable claims of privilege have been asserted in defense of nonproduction of the subpoenaed materials. and the validity of those claims has not been adjudicated in any established, lawful adversary proceeding before the House is called upon to decide whether to impeach a President on grounds of noncompliance with subpoenas issued by a Committee inquiring into the existence of sufficient grounds for impeachment.

Richard Nixon served his country in elective office for the better part of three decades and, in the main, he served it well. Each of the undersigned voted for him, worked for and with him in election campaigns, and supported the major portion of his legislative program during his tenure as President. Even at the risk of seeming paradoxical, since we were prepared to vote for his impeachment on proposed Artice I had he not resigned his office, we hope that in the fullness of time it is his accomplishments—and they were many and significant—rather than the conduct to which this Report is addressed for which Richard Nixon is primarily remembered in history.

We know that it has been said, and perhaps some will continue to say, that Richard Nixon was "hounded from office" by his political opponents and media critics. We feel constrained to point out, however, that it was Richard Nixon who impeded the FBI's investi-

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gation of the Watergate affair by wrongfully attempting to implicate the Central Intelligence Agency; it was Richard Nixon, who created and preserved the evidence of that transgression and who, *knowing that it had been subpoenaed by this Committee and the Special Prosecutor,* concealed its terrible import, even from his own counsel, until he could do so no longer. And it was a unanimous Supreme Court of the United States which, in an opinion authored by the Chief Justice whom he appointed, ordered Richard Nixon to surrender that evidence to the Special Prosecutor, to further the ends of justice.

The tragedy that finally engulfed Richard Nixon had many facets. One was the very self-inflicted nature of the harm. It is striking that such an able, experienced and perceptive man, whose ability to grasp the global implications of events little noticed by others may well have been unsurpassed by any of his predecessors, should fail to comprehend the damage that accrued daily to himself, his Administration, and to the Nation, as day after day, month after month, he imprisoned the truth about his role in the Watergate cover-up so long and so tightly within the solitude of his Oval Office that it could not be unleashed without destroying his Presidency.

We submit these Minority Views in the hope what we might thereby help provide to our colleagues in the House, and to the public at large, a broader perspective than might otherwise be available on these events which have come to play such a surprisingly large part in all of our lives. Joined, we are confident, by our colleagues on the majority of the Committee who, through these past nine months, struggled as we did to find the truth, we conclude by expressing a final, earnest hope: that these observations and all that we have said and done during the course of this Inquiry will prove to have served, as they were intended to serve, the security, liberty and general welfare of the American people.

Meaning of "Treason, Bribery or Other High Crimes and Misdemeanors"

The Constitution of the United States provides that the President "shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Upon impeachment and conviction, removal of the President from office is mandatory. The offenses for which a President may be impeached are limited to those enumerated in the Constitution, namely "Treason, Bribery, or other high Crimes and Misdemeanors." We do not believe that a President or any other civil officer of the United States government may constitutionally be impeached and convicted for errors in the administration of his office.

1. Adoption of "Treason, Bribery, or Other High Crimes and Misdemeanors" at Constitutional Convention.

The original version of the impeachment clause at the Constitutional Convention of 1787 had made "mal-practice or neglect of duty" the grounds for impeachment. On July 20, 1787, the Framers debated whether to retain this clause, and decided to do so.

Gouverneur Morris, who had moved to strike the impeachment clause altogether, began by arguing that it was unnecessary because the executive "can do no criminal act without Coadjutors who may be punished." George Mason disagreed, arguing that "When great crimes were committed he (favored) punishing the principal as well as the Coadjutors." Fearing recourse to assassinations, Benjamin Franklin favored impeachment "to provide in the Constitution for the regular punishment of the executive when his misconduct should deserve it, and for his honorable acquittal when he should be unjustly accused." Gouverneur Morris then admitted that "corruption & some few other offenses" should be impeachable, but thought "the case ought to be enumerated & defined."

Rufus King, a co-sponsor of the motion to strike the impeachment clause, pointed out that the executive, unlike the judiciary, did not hold his office during good behavior, but during a fixed, elective term; and accordingly ought not to be impeachable, like the judiciary, for "misbehaviour:" this would be "destructive of his independence and of the principles of the Constitution." Edmund Randolph, however, made a strong statement in favor of retaining the impeachment clause:

> Guilt wherever found ought to be punished. The Executive will have great opportunitys of abusing his power, particularly in time of war when the military force, and in some respects the public money will be in his hands.

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IMPEACHMENT OF RICHARD M. NIXON PRESIDENT OF THE UNITED STATES

REPORT

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

PETER W. RODINO, JR., *Chairman*

AUGUST 20, 1974.—Referred to the House Calendar and ordered to be printed

. . . He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration . . . requiring some preliminary inquest of whether just grounds for impeachment existed.

Benjamin Franklin again suggested the role of impeachments in releasing tensions, using an example from international affairs involving a secret plot to cause the failure of a rendezvous between the French and Dutch fleets—an example suggestive of treason. Gouverneur Morris, his opinion now changed by the discussion, closed the debate on a note echoing the position of Randolph:

Our Executive . . . may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst. it by displacing him . . . The Executive ought therefore to be impeachable for treachery; Corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office . . . When we make him amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.

After the July 20 vote to retain the impeachment clause, the resolution containing it was referred to the Committee on Detail, which substituted "treason, bribery or corruption" for "mal-practice or neglect of duty." No surviving records explain the reasons for the change, but they are not difficult to understand, in light of the floor discussion just summarized. The change fairly captured the sense of the July 20 debate, in which the grounds for impeachment seem to have been such acts as would either cause danger to the very existence of the United States, or involve the purchase and sale of the "Chief of Magistracy," which would tend to the same result. It is not a fair summary of this debate —which is the only surviving discussion of any length by the Framers as to the grounds for impeachment—to say that the Framers were principally concerned with reaching a course of conduct, whether or not criminal, generally inconsistent with the proper and effective exercise of the office of the presidency. They were concerned with preserving the government from being overthrown by the treachery or corruption of one man. Even in the context of that purpose, they steadfastly reiterated the importance of putting a check on the legislature's use of power and refused to expand the narrow definition they had given to treason in the Constitution. They saw punishment as a significant purpose of impeachment. The changes in language made by the Committee on Detail can be taken to reflect a consensus of the debate that (1) impeachment would be the proper remedy where grave crimes had been committed, and (2) adherence to this standard would satisfy the widely recognized need for a check on potential excesses of the impeachment power itself

The impeachment clause, as amended by the Committee on Detail to refer to "treason, bribery or corruption," was reported to the full Convention on August 6, 1787, as part of the draft constitution. Together with other sections it was referred to the Committee of Eleven on August 31. This Committee further narrowed the grounds to "treason or bribery," while at the same time substituting trial by the Senate for trial by the Supreme Court, and requiring a two-thirds vote to convict. No surviving records explain the purpose of this change. The mention of "corruption" may have been thought redundant, in view of the provision for bribery. Or, corruption might have been regarded by the Committee as too broad, because not a well defined crime. In any case, the change limited the grounds for impeachment to two clearly understood and enumerated crimes.

The revised clause, containing the grounds "treason and bribery," came before the full body again on "September 8, late in the Convention. George Mason moved to add to the enumerated grounds for impeachment. Madison's Journal reflects the following exchange:

Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offenses. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined—as bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He moved to add after "bribery" "or maladministration." Mr. Gerry seconded him—

Mr. Madison. So vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr. Govr. Morris., it will not be put in force & can do no harm—An election of every four years will prevent maladministration. Col. Mason withdraw "maladministration" & substitutes "other high crimes and misdemeanors" agst. the State."

On the question thus altered, the motion of Colonel Mason passed by a vote of eight to three.

Madison's notes reveal no debate as to the meaning of the phrase "other high Crimes and Misdemeanors." All that appears is that Mason was concerned with the narrowness of the definition of treason, that his purpose in proposing "maladministration" was to reach great and dangerous offenses; and that Madison felt that "maladministration," which was included as a ground for impeachment of public officials in the constitutions of six states, including his own, would be too "vague" and would imperil the independence of the President.

It is our judgment, based upon this constitutional history, that the Framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct dangerous to the system of government established by the Constitution. Absent the element of danger to the State, we believe the Delegates to the Federal Convention of 1787, in providing that the President should serve for a fixed elective term rather than during good behavior or popularity, struck the balance in favor of stability in the executive branch. We have never had a British parliamentary system in this country, and we have never adopted the device of a parliamentary vote of no-confidence in the chief executive. If it is thought desirable to adopt such a system of government, the proper way to do so is by amending our written Constitution—not by removing the President.

2. Are "High Crimes and Misdemeanors" Non-Criminal?

a. Language of the Constitution.

The language of the Constitution indicates that impeachment can lie only for serious criminal offenses.

First, of course, treason and bribery were indictable offenses in 1787, as they are now. The words "crime" and "misdemeanor," as well, both had an accepted meaning in he English law of the day, and referred to criminal acts. Sir Wtilliam Blackstone's Commentaries on the Laws of England, (1771), which enjoyed a wide circulation in the American colonies, defined the terms as follows.

I. A crime, or misdemeanor is an act committed, or omitted, in violation of a public law, either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms: though, in common usuage, the word "crimes" is made to denote such offenses as are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of "misdemeanors" only.

See MINORITY, A19, Col. 1

MINORITY, From A18

Thus, it appears that the word "misdemeanor" was used at the time Blackstone wrote, as it is today, to refer to less serious crimes.

Second, the use of the word "other" in the phrase "Treason, Bribery or other high Crimes and Misdemeanors" seems to indicate that high Crimes and Misdemeanors had something in common with Treason and Bribery—both of which are, of course, serious criminal offenses threatening the integrity of government.

Third, the extradition clause of the Articles of Confederation (1781), the governing instrument of the United States prior to the adoption of the Constitution, had provided for extradition from one state to another of any person charged with "treason, felony or other high misdemeanor." If "high misdemeanor" had something in common with treason and felony in this clause, so as to warrant the use of the word "other," it is hard to see what it could have been except that all were regarded as serious crimes. Certainly it would not have been contemplated that a person could be extradited for an offense which was non-criminal.

Finally, the references to impeachment in the Constitution use the language of the criminal law. Removal from office follows "conviction," when the Senate has "tried" the impeachment. The party convicted is "nevertheless . . . liable and subject to Indictment, Trial. Judgment and Punishment, according to Law." The trial of all Crimes is by Jury, "except in cases of Impeachment." The President is given power to grant "Pardons for Offenses against the United States, except in Cases of Impeachment."

This constitutional usage, in its totality, strengthens the notion that the words "Crime" and "Misdemeanor" in the impeachment clause are to be understood in their ordinary sense, i.e., as importing criminality. At the very least, this terminology strongly suggests the criminal or quasi-criminal nature of the impeachment process.

b. English impeachment practice.

It is sometimes argued that officers may be impeached for non-criminal conduct, because the origins of impeachment in England in the fourteenth and seventeenth centuries show that the procedure was not limited to criminal conduct in that country.

Early English impeachment practice, however, often involved a straight power struggle between the Parliament and the King. After parliamentary supremacy had been established, the practice was not no open-ended as

it had been previously. Blackstone wrote (between 1765 and 1769) that

> [A]n impeachment before the Lords by the commons of Great Britain, in parliament, is a prosecution of the already known and established law . . .

The development of English impeachment practice in the eighteenth century is illustrated by the result of the first major nineteenth century impeachment in that country—that of Lord Melville, Treasurer of the Navy, in 1805-1806. Melville was charged with wrongful use of public moneys. Before passing judgment, the House of Lords requested the formal opinion of the judges upon the following question:

> Whether it was lawful for the Treasurer of the Navy, before the passing of the Act. 25 Geo. 3rd, c. 31, to apply any sum of money (imprested) to him for navy (sumpsimus) services to any other use whatsoever, public or private, without express authority for so doing; and whether such application by such treasurer would have been a misdemeanor, or punishable by information or indictment?

> It was not unlawful for the Treasurer of the Navy before the Act 25 Geo. 3rd, c 31, . . . to apply any sum of money imprested to him for navy services, to other uses, . . . without express authority for so doing, so as to constitute a misdemeanor punishable by information or indictment.

Upon this ruling by the judges that Melville had committed no crime, he was acquitted. The case thus strongly suggests that the Lords in 1805 believed an impeachment conviction to require a "misdemeanor punishable by information or indictment." The case may be taken to cast doubt on the vitality of precedents from an earlier, more turbid political era and to point the way to the Framers' conception of a valid exercise of the impeachment power in the future. As a matter of policy, as well, it is an appropriate precedent to follow in the latter twentieth century.

The argument that the President should be impeachable for general misbehavior, because some English impeachments do not appear to have involved criminal charges, also takes too [illegible] account of the historical fact that the Framers, mindful of the turbulence of parlimentary uses of the impeachment power, cut back on that power in several respects in adapting it to an American context. Congressional bills of attainder and *ex post facto* laws, which had supplemented the impeachment power in England, were expressly forbidden. Treason was defined in the Constitution—and difined narrowly—so that Congress acting alone could not change the definition, as Parliament had been able to do. The consequences of impeachment and conviction, which in England had frequently meant death, were limited to removal from office and disqualification to hold further federal office. Whereas a majority vote of the Lords had sufficed for conviction, in America a two-thirds vote of the Senate would be required. Whereas Parliament had had the power to impeach private citizens, the American procedure could be directed only against civil officers of the national government. The grounds for impeachment—unlike the grounds for impeachment in England—were stated in the Constitution.

In the light of these modifications, it is misreading history to say that the Framers intended, by the mere approval of Mason's substitute amendment, to adopt *in toto* the British grounds for impeachment. Having carefully narrowed the definition of treason, for example, they could scarcely have intended that British treason precedents would guide ours.

c. American impeachment practice

The impeachment of President Andrew Johnson is the most important precedent for a consideration of what constitutes grounds for impeachment of a President, even if it has been historically regarded (and probably fairly so) as an excessively partisan exercise of the impeachment power.

The Johnson impeachment was the product of a fundamental and bitter split between the President and the Congress as to Reconstruction policy in the Southern states following the Civil War. Johnson's vetoes of legislation, his use of pardons, and his choice of appointees in the South all made it impossible for the Reconstruction Acts to be enforced in the manner which Congress not only desired, but thought urgently necessary.

On March 7, 1867, the House referred to the Judiciary Committee a resolution authorizing it

> to inquire into the *official conduct of* Andrew Johnson . . . and to report to this House whether, in their opinion, the said Andrew Johnson, while in said office, has been guilty of acts which were *designed* or *calculated to overthrow or corrupt the government of the United States* . . .; and whether the said Andrew Johnson has been guilty of any act, or has conspired with others to do acts, which, in contemplation of the Constitution, are high crimes and misdemeanors, requiring the interposition of the constitutional powers of this House.

"Our gratitude for his having by his resignation spared the nation additional agony should not obscure for history our judgment that Richard Nixon committed certain acts for which he should have been impeached . . ."

On November 25, 1867, the Committee reported to the full House a resolution recommending impeachment, by a vote of 5 to 4. A minority of the Committee, led by Rep. James F. Wilson of Iowa, took the position that there could be no impeachment because the President had committed no crime:

> In approaching a conclusion, we do not fail to recognize two stand-points from which this case can be viewed —the legal and the political.
>
> . . . Judge him politically, we must condemn him. But the day of political impeachments would be a sad one for this country. Political unfitness and incapacity must be tried at the ballot-box, not in the high court of impeachment. A contrary rule might leave to Congress but little time for other business than the trial of impeachments.
>
> . . . (C)rimes and misdemeanors are not demanding our attention. Do these, within the meaning of the Constitution, appear? Rest the case upon political offenses, and we are prepared to pronounce against the President, for such offenses are numerous and grave. . .(yet) we still affirm that the conclusion awhich we have arrived is correct.

The resolution recommending impeachment was debated in the House on December 5 and 6, 1867. Rep. George S. Boutwell of Massachusetts speaking for the Committee majority in favor of impeachment, and Rep. Wilson speaking in the negative. Aside from characterization of undisputed facts discovered by the Committeee, the only point debated whether the commission of a crime was an essential point element of impeachable conduct by the President. Rep. Boutwell began by saying, "If the theory of the law submitted by the minority of the committee be in the judgment of this House a true theory, then the majority have no case whatsover." "The country was disappointed, no doubt, in the report of the committee," he continued, "and very likely this House participated in the disappointment, that there was no specific charge, to arraign him for this great crime, but is he therefore to escape?"

The House of Representatives answered this question the next day, when the majority resolution recommending, impeachment was defeated by a vote of 57 to 108. The issue of impeachment was thus laid to rest for the time being.

Earlier in 1867, the Congress had passed the Tenure-of-Office Act, which took away the President's authority to remove members of his own Cabinet, and provided that violation of the Act should be punishable by imprisonment of up to five years and a fine of up to ten thousand dollars and "shall be deemed a high misdemeanor"—fair notice that Congress would consider violation of the statute an impeachable, as well as criminal, offense. It was generally known that Johnson's policy toward Reconstruction was not shared by his Secretary of War, Edwin M. Stanton. Although Johnson believed the Tenure-of-Office Act to be unconstitutional, he had not infringed its provisions at the time the 1867 impeachment attempt against him failed by such a decisive margin.

Two and a half months later, however, Johnson removed Stanton from office, in apparent disregard of the Tenure-of-Office Act. The response of Congress was immediate: Johnson was impeached three days later, on February 24, 1868, by a vote of 128 to 47—an even greater margin than that by which the first impeachment vote had failed.

The reversal is a dramatic demonstration that the House of Representatives believed it had to find the President guilty of a crime before impeaching him. The nine articles of impeachment which were adopted against Johnson, on March 2, 1868, all related to his removal of Secretary Stanton, allegedly in deliberate violation of the Tenure-of-Office act, the Constitution, and certain other related statutes. The vote had failed less than three months before; and except for Stanton's removal and related matters, nothing in the new Articles charged Johnson with any act committed subsequent to the previous vote.

The only other case of impeachment of an officer of the executive branch is that of Secretary of War William W. Belknap in 1876. All five articles alleged that Belknap "corruptly" accepted and received considerable sums of money in exchange for exercising his authority to appoint a certain person as a military post trader. The facts alleged would have sufficed to constitute the crime of bribery. Belknap resigned before the adoption of the Articles and was subsequently indicted for the conduct alleged.

It may be acknowledged that in the impeachment of federal judges, as opposed to executive officers, the actual commission of a crime does not appear always to have been thought essential. However, the debates in the House and opinions filed by Senators have made it clear that in the impeachments of federal judges, Congress has placed

great reliance upon the "good behavior" clause. The distinction between officers tenured during good behavior and elected officers, for purposes of grounds for impeachment, was stressed by Rufus King at the Constitutional Convention of 1787. A judge's impeachment or conviction resting upon "general misbehavior," in whatever degree, cannot be an appropriate guide for the impeachment or conviction of an elected officer serving for a fixed term.

The impeachments of federal judges are also different from the case of a President for other reasons: (1) Some of the President's duties, e.g., as chief of a political party, are sufficiently dissimilar to those of the judiciary that conduct perfectly appropriate for him, such as making a partisan political speech, would be grossly improper for a judge. An officer charged with the continual adjudication of disputes labors under a more stringent injunction against the appearance of partisanship than an officer directly charged with the formulation and negotiation of public policy in the political arena—a fact reflected in the adoption of Canons of Judicial Ethics. (2) The phrase "and all civil Officers" was not added until after the debates on the impeachment clause had taken place. The words "high crimes and misdemeanors" were added while the Framers were debating a clause concerned exclusively with the impeachment of the President. There was no discussion during the Convention as to what would constitute impeachable conduct for judges. (3) Finally, the removal of a President from office would obviously have a far greater impact upon the equilibrium of our system of government than the removal of a single federal judge.

d. The need for a standard: criminal intent

When the Framers included the power to impeach the President in our Constitution, they desired to "provide some mode that will not make him dependent on the Legislature."

To this end, they withheld from the Congress many of the powers enjoyed by Parliament in England; and they defined the grounds for impeachment in their written Constitution. It is hardly conceivable that the Framers wished the new Congress to adopt as a starting point the record of all the excesses to which desperate struggles for power had driven Parliament, or to use the impeachment power freely whenever Congress might deem it desirable. The whole tenor of the Framers' discussions, the whole purpose of their many careful departures from English impeachment practice, was in the direction of limits and of standards. An impeachment power exercised without extrinsic and objective standards would be tantamount to the use of bills of attainder and *ex post facto* laws. which are expressly forbidden by the Constitution and are contrary to the American spirit of justice.

It is beyond argument that a violation of the President's oath or a violation of his duty to take care that the laws be faithfully executed. must be impeachable **conduct or there** w be no means of enforcing the Constitution. However, this elementary proposition is inadequate to define the impeachment power. It remains to determine what kind of conduct constitutes a violation of the oath or the duty Furthermore, reliance on the summary phrase, "violation of the Constitution," would not always be appropriate as a standard, because actions constituting an apparent violation of one provision of the Constitution may be justified or even required by other provisions of the Constitution.

There are types of misconduct by public officials—for example, ineptitude, or unintentional or "technical" violations of rules or statutes, or "maladministration"—which would not be criminal; nor could they be made criminal, consonant with the Constitution, because the element of criminal intent or *mens rea* would be lacking. Without a requirement of criminal acts or at least criminal intent, Congress would be free to impeach these officials. The loss of this freedom should not be mourned; such a use of the impeachment power was never intended by the Framers, is not supported by the language of our Constitution, and, if history is to guide us, would be seriously unwise as well.

As Alexander Simpson stated in his *Treatise on Federal impeachments* (1916):

> The Senate must find an intent to do wrong. It is, of course, admitted that a party will be presumed to intend the natural and necessary results of his voluntary acts, but that is a presumption only, and it is not always inferable from the act done. So ancient is this principle, and so universal is its application, that it has long since ripened into the maxim, *Actus non facit reum, (nisi) mens sit rea,* and has come to be regarded as one of the fundamental legal principles of our system of jurisprudence. (p. 29).

The point was thus stated by James Iredell in the North Carolina ratifying convention: "I beg leave to observe that, when any man is impeached, it must be for an error of the heart, and not of the head. God forbid that a man, in any country in the world, should be liable to be punished for want of judgment. This is not the case here. (Death)

peachment power. It remains to determine what kind of conduct constitutes

The evidence before the Committee on the Judiciary

On August 5, 1974, the President released to the Committee and to the public the transcripts of three conversations between himself and H. R. Haldeman on June 23, 1972. Suffice it to say that these transcripts, together with the circumstances of their belat disclosure, foreclosed further debate with respect to the sufficiency of proof of the charges embodied in proposed Article I and led inevitably to the President's resignation three days later.

In the wake of these sudden and decisive events it may seem academic to discuss the character of the evidence which, prior to August 5, 1974, had been adduced in support of the allegations against the President. We are nevertheless constrained to make some general observations about that evidence, for two reasons. First, the disclosure of the June 23, 1972 transcripts, though dispositive of the case under proposed Article I, did not substantially affect the nature of the evidence in support of proposed Article II. Second, the fact that this disclosure cured the evidentiary defects earlier associated with proposed Article I must not be allowed to obscure the fact that a majority of the Members of the Committee had previously, and in our view wrongly, voted to recommend to the House the adoption of that Article on the basis of information then at their disposal.

1. Reliance on Hearsay Evidence

The "evidence" relied on in the committee report is based essentially on the Summary of Information prepared by the majority staff. The facts and inferences contained in this one-sided document were drawn selectively from Statements of Information also prepared by the inquiry staff. The Statements of Information comprise a compilation of documentary materials already produced by other proceedings and investigations, for the impeachment inquiry staff initiated surprisingly little investigative work of its own. The source most frequently cited in the Statement of Information is the record of the 1973 proceedings of the Senate Select Committee on Presidential Campaign Activities.

The testimony before that Committee by John Dean, H. R. Haldeman, John Ehrlichman, and John Mitchell, was not limited to the actions of the persons testifying, but concerned statements made to them by others, motives supposed by them to have been shared by others, assumptions regarding the purposes of others, opinions of the guilt or innocence, truthfulness or perjury, of others. The witnesses before the Senate Select Committee were not always in agreement as to what had happened.

In the face of the sharply conflicting testimony and hotly contested issues of fact, the Committee's staff, unfortunately in our view, relied upon the printed record of proceedings held in another forum, for another purpose. The Committee staff was not able to interview H. R. Haldeman, nor did he give testimony before this Committee. The Committee staff was not able to interview John Ehrlichman, nor did he give testimony before this Committee. Despite a public invitation to do so, the Chairman and Ranking Minority Member of the Committee did not interview the President of the United States under oath, nor, despite a public invitation to do so, did the Committee submit written interrogatories to the President to be answered under oath. The staff did, of course, interview a number of witnesses, such as John Dean, and nine of them gave testimony before this Committee.

Much has been made of the voluminousness of the "evidence" which was accumulated in support of impeachment, and upon which the majority of the Members of the Committee has relied in reporting out three proposed Articles of Impeachment. However, a fair examination of the character of that "evidence" reveals that it is comprised of layer upon layer of hearsay. We venture to say that ninety per cent of the "evidence" against the President would have been inadmissible in any court of law in the United States. We do not regard this as a legal quibble. Multiple hearsay evidence is inadmissible in our system of justice, not for some arcane and technical reason, but *because it is considered unreliable.*

Hearsay evidence is not subject to the test of cross-examination — described by the preeminent American scholar of the law of evidence as "beyond any doubt the greatest legal engine ever invented for the discovery of truth." Our courts have been particularly sensitive to government proceedings which affect an individual's employment, and have required that an individual be afforded an opportunity to cross-examine his accusers before such governmental action can be taken. In *Greene* v. *McElroy,* 360 U.S. 474 (1959), for example, the United States Supreme Court held that the Government could not revoke an individual's security clearance on the basis of written records of testimony and reports by persons whom the individual had no opportunity to cross-examine. This result was reached even though the individual had been able to take several appeals from the action complained of.

It might be argued that the rights of confrontation and cross-examination have less vitality in an impeachment proceeding than in other contexts, because the occupancy of public office is not an individual right of the respondent. But this is precisely the reason

why the Committee's reliance on hearsay evidence, untested by cross-examination, is so disturbing. For it is not the personal rights of the President which were at stake, but rather the collective rights of the electorate which chose him to serve as the Chief Executive for a fixed term of four years.

To emphasize the importance of cross-examination and the deficiencies of hearsay evidence is not to say that the Committee should have declined to take cognizance of any evidence which could not meet the formal tests of admissibility. Surely it was appropriate for the impeachment inqury to conduct a wide-ranging search for all information relevant to allegations of presidential misconduct. In this respect the Committee may be thought to resemble a grand jury, whose investigation is not circumscribed by narrow rules of admissibility. However, in fulfilling its role in the impeachment process the Committee should equally have been influenced by the House's potential prosecutorial function. In our view it would have been irresponsible to recommend to the House any Article of Impeachment grounded upon charges which could not be proved at trial, to whatever standard of proof and under whatever rules of evidence the Senate might reasonably be expected to apply. Because of the Committee's excessive reliance on hearsay and multiple hearsay evidence, we were obliged to conclude — like the subcommittee which investigated the conduct of Judge Emory Speer in 1914 —"that the competent legal evidence at hand is not sufficient to procure a conviction at the hand of the Senate."

2. Reliance on Adverse Inferences

Again putting aside the President's disclosures on August 5, 1974, we would draw attention to a second defect of the approach which the majority of the Committee has taken with respect to the evidence. Seemingly recognizing that even if every fact asserted in hearsay evidence were taken to be true, the case against the President might still have failed, the majority relied further upon inferences from inadmissible evidence, and upon the legal doctrine known as the "adverse inference" rule.

The drawing of an inference is a process whereby a fact not directly established by the evidence is deduced as a logical consequence of some other fact, or state of facts, which is directly established by the evidence. The process is never mandatory: indeed, the same set of facts may give rise to conflicting inferences. However, an inference must lie within the range of reasonable probability, and some courts have held that it is the duty of the judge "to withdraw the case from the jury when the necessary inference is so tenuous that it rests merely upon speculation and conjecture."

It has long been accepted in both civil and criminal cases that an inference may be drawn from a party's withholding or destruction of relevant evidence. The inference which may be drawn is that the unavailable evidence, if produced, would be adverse to the party who has not produced it. This rule is stated by Wigmore as follows:

> The opponent's spoliation (destruction) or suppressions of evidential facts . . . and particularly of a document . . . has always been conceded to be a circumstance against him, and in the case of a document, to be some evidence that its contents are as alleged by the first party. But that a rule of presumption can be predicated is doubtful.

The operation of the adverse inference rule may be illustrated by the following language from a Supreme Court antitrust decision:

> The failure under the circumstances to call as witness those officers who did have authority to act for the distributors and who were in a position to know whether they had acted in pursuance of agreement is itself persuasive that their testimony, if given, would have been unfavorable to appellants.

The operation of the adverse inference rule is subject to several restrictions. First, the party who has the burden of persuasion as to an issue cannot avail himself of the inference until he has produced sufficient evidence to shift the burden of going forward to his opponent. Second, an adverse inference cannot arise against a person for failing to produce evidence which is merely corroborative or cumulative. Third, the adverse inference rule cannot be applied where the evidence sought is the subject of a privilege or where the party has a constitutional right to withhold the evidence.

As the statement of the adverse inference rule by Dean Wigmore indicates, the most familiar application of the rule is in a situaton where one party to a suit demands a specific document from another party, and the other party refuses to produce it. Frequently, that document will have operative legal significance—e.g., in a contract dispute, or, in a criminal case, where the document sought might constitute a means or instrumentality of crime (written threat, attempt to bribe, etc.).

". . . We have an obligation . . . not to perpetuate, unchallenged, certain theories of the evidence, and of law, which are propounded by the majority . . ."

In the present case, the Committee has issued subpoenas for tapes, transcripts, dictabelts, memoranda, or other writings or materials relating to 147 presidential conversations, as well as for the President's daily diaries for an aggregate period of many months, and for various other materials and documents. It is true that these subpoenas have been issued only after the Committee's staff submitted to the Committee memoranda justifying each set of requests, in terms of their necessity to the Committee's inquiry. But in most cases, what these justifications tend to show is that given the chronology of facts known to the Committee, the President was, at a certain point in time, in a position where he could receive certain information, or have discussions with his aides on certain topics. In other words, in many cases the Committee lacks any independent evidence as to the content of the conversations and other materials subpoenaed.

Despite this tenuous basis for the operation of the adverse inference rule, on May 30, 1974, the Committee informed the President by letter:

> The Committee on the Judiciary regards your refusal to comply with its lawful subpoenas as a grave matter . . . Committee members will be free to consider whether your refusals warrant the drawing of adverse inferences concerning the substance of the materials.

Upon examination, however, this portentous statement does little to advance the analysis of the evidence. For even if it were proper to apply the adverse inference rule here, what inferences could plausibly be drawn? The inferences presumably would suggest that the material withheld was in some way damaging to the President; but there is no way of knowing why the material would be damaging. The President might have been reluctant to disclose conversations in which he had used abusive or indelicate language; or had engaged in frank discussions of his political opposition, or of his personal and family life; or had discussed campaign strategy and revealed an interest in raising a great deal of money for his re-election campaign. In short, there are a myriad of reasons why materials withheld from the Committee might have been embarrassing or harmful to the President if disclosed, without in any way constituting evidence of grounds for impeachment. In the absence of extrinsic evidence as to the particular content of a given presidential conversation or memorandum, the application of the adverse inference rule would be a futile exercise.

Finally, the justification for applying the adverse inference rule in the first instance is severely undercut, if not eliminated, by the presidential assertion of executive privilege. The President claimed that disclosure of the subpoenaed materials would destroy the confidentiality of the executive decision-making process—a reasonable and presumptively valid argument. The Committee might have challenged this argument in court, but instead voted 32 to 6 in late May 1974, not to seek the assistance of the federal judiciary in enforcing its subpoenas. The Committee also consistently declined to seek an "adjudication" of the validity of its demands upon the President for evidence, or potential evidence, by resort to formal contempt proceedings, whereby the President would have been afforded the opportunity to show cause before the full House why his invocation of executive privilege rendered non-contemptuous his failure to produce subpoenaed material.

Having thus declined to take some action better calculated to secure the production of the evidence sought, if the Committee was entitled to it, the majority of the Committee can scarcely be heard to argue that the evidence is superfluous because its non-production gives rise to adverse inferences as to its contents.

Standard of Proof

The foregoing discussion of the character of the evidence which was adduced in support of impeachment would not be complete without reference to the standard of proof which that evidence was expected to satisfy.

In this context a threshold distinction must be drawn between the sufficiency of the allegation and the sufficiency of the proof. In deciding whether to vote for or against an article of impeachment, each Member of the Committee was obliged to make two separate judgments. First, it was necessary to consider whether a particular offense charged to the President, if proved, would constitute a ground for impeachment and removal. For example, certain Members intimated in debate that even if it were established to a certainty that the President had been guilty of tax fraud, this offense was too peripheral to the performance of his official duties to warrant removal from office. Second, where the

charge was deemed sufficiently serious to justify removal. it was necessary to judge whether the evidence was compelling enough to "prove" the case. Prior to the disclosure of the June 23, 1972 conversations between the President and H.R. Haldeman, for instance, we believed that the evidence adduced in support of Article I did not constitute adequate proof of presidential involvement in the Watergate cover-up.

Neither the House nor the Committee on the Judiciary has ever undertaken to fix by rule the appropriate standard of proof for a vote of impeachment, nor would we advocate such a rule. The question is properly left to the discretion of individual Members. The discussion which follows is intended only to outline the process of reasoning which has persuaded us that the standard of proof must be no less rigorous than proof by "clear and convincing evidence."

Because of the fundamental similarity between an impeachment trial and an ordinary crimina trial, therefore, the standard of proof beyond a reasonable doubt is appropriate in both proceedings. Moreover, the gravity of an impeachment trial and its potentially drastic consequences are additional reasons for requiring a rigorous standard of proof. This is especially true in the case of a presidential impeachment. Unlike a federal judge, an appointed officer who enjoys lifetime tenure during good behavior, the President is elected to office for a fixed term. The proper remedy for many instances of presidential misbehavior is the ballot box. The removal of a President by impeachment in mid-term, however, should not be too easy of accomplishment, for it contravenes the will of the electorate. In providing for a fixed four-year term, not subject to interim votes of No Confidence, the Framers indicated their preference for stability in the executive. That stability should not be jeopardized except on the strongest possible proof of presidential wrongdoing.

2. Standard of Proof for Impeachment by the House

In the light of the foregoing considerations, the temptation is great to insist that the standard of proof for impeachment by the House should also be proof beyond a reasonable doubt. It might be objected that if the House and the Senate were to adopt, the same standard, the trial in the Senate would lose all of its significance since the House would have already adjudicated the case. This conclusion does not necessarily follow, however, because conviction in the Senate requires a two-thirds majority as against the simple majority of the House required for im-

See MINORITY, A20, Col. 1

MINORITY, From A19

peachment. Furthermore, as a logical proposition there is no intrinsic reason why the respondent should not be separately tried in each House and removed from office only after an effective vote in both—a procedure which would reflect the equal importance of the two Houses in the exercise of their legislative functions.

The principal defect in applying the criminal standard of proof in both Houses of Congress is that this approach is not contemplated in the Constitution, which gives the Senate the sole power to try all impeachments. If the vote on impeachment in the House required proof beyond a reasonable doubt, the House would effectively become the trier of fact. Instead, the Constitution intends that the House should frame the accusation but without adjudicating the ultimate guilt or innocence of the respondent.

The proper function of the House in an impeachment inquiry has often been described as analogous to the function of the grand jury. Both conduct an investigation which is not limited to evidence admissible at trial. Both are charged with determining whether that evidence warrants binding the case over for trial by another body, in which the standard of proof beyond a reasonable doubt is applied. In both cases the operative question is whether the trier of fact could reasonably convict the defendant.

The House differs from a grand jury, however, in that after returning the "indictment" it has an ongoing responsibility to bring the case to trial. In this respect the House more nearly resembles a public prosecutor. Like the grand jury, the prosecutor must also ask whether the trier of fact could reasonably convict. But his decision of whether or not to prosecute is typically founded on a greater mass of evidence than was available to the grand jury; and his perspective may involve an analysis of certain pragmatic factors, such as the availability or admissibility at trial of key testimony or evidence, with which the grand jury need not concern itself. These pragmatic factors must also affect the judgment of the House whether or not to impeach, particularly in a case like this one where so much of the evidence is multiple hearsay which might be ruled inadmissible at the Senate trial.

In order to justify bringing a case to trial, the prosecutor must personally believe in the guilt of the accused. It is not necessary, however, that he personally believe the accused to be guilty beyond a reasonable doubt; to impose such a requirement would in effect preempt the role of the trier of the fact Rather, the prosecutor should allow for the possibility that the trier of fact may find the evidence to be even more convincing that he does. Conversely, the prosecutor's mere belief that the accused is more likely guilty than not (i.e., proof by a preponderance of the evidence), would not be a sufficient basis on which to bring the case to trial. On balance, it appears that prosecution is warranted if the prosecutor believes that the guilt of the accused is demonstrated by clear and convincing evidence.

Without unduly overemphasizing the aptness of the analogy to a public prosecutor, we therefore take the position that a vote of impeachment is justified if, and only if, the charges embodied in the articles are proved by clear and convincing evidence. Our confidence in this proposition is enhanced by the fact that both the President's Special Counsel and the Special Counsel to the Committee independently reached the same conclusion.

1. Standard of Proof for Conviction by the Senate

Our jurisprudence has developed a number of formulaic phrases which comprise a spectrum of the various standards of proof applicable in different types of legal proceeding. A Member of the House might most easily resolve his dilemma by simply choosing one of these standards, basing his judgment on some perception of the impeachment process. For example, a Member might require a very strict standard, such as proof beyond a reasonable doubt, on the ground that the drastic step of impeaching a President should not be undertaken except on the most compelling proof of misconduct.

This approach, however, is insensitive to the express terms of the Constitution, which provides that "the House of Representatives shall have the sole Power of Impeachment" but that "the Senate shall have the sole Power to try all Impeachments." The Members of the House might best give effect to this distinction by adopting a standard of proof which reflects the reservation of the ultimate decision of factual issues to the Senate. In other words, Members would be required to make a judgment as to whether the Senate could reasonably convict the respondent on the evidence before the House That judgment would of course necessitate a prior judgment as to the apporpriate standard of proof to be applied in the Senate.

Because the Senate proceeding is a trial, the inquiry may sensibly be narrowed to focus on trial-type standards of proof. In general, the courts recognize three types of burden of persuasion which must be borne by litigants in civil actions and in criminal prosecutions. In most civil actions the party who has the burden of proof must adduce evidence which will sustain his claim by a "preponderance of the evidence." In a certain limited class of civil actions the facts must be proved by "clear and convincing evidence." which is a more exacting standard of proof than is "preponderance of the evidence." In criminal prosecutions the burden is on the prosecutor to prove all elements of the crime "beyond a reasonable doubt." These familiar for-

mulas are not particularly susceptible to meaningful elaboration. One commentator has suggested that the three standards respectively denote proof that a fact is probably true; highly probably true; and almost certainly true.

The Senate has never promulgated a rule fixing the standard of proof for conviction, but the overwhelming weight of opinion from past impeachment trials favors the criminal stadarc of proof beyond a reasonable doubt. Similarly, during the pendency of the present impeachment inquiry at least three Senators have stated on the record that proof of guilt beyond a reasonable doubt would be required.

This view finds strong support in the Constitution, whose provisions pertaining to impeachment are couched in the language of the criminal law. The respondent is to be "tried," and the trial of "all Crimes except ... Impeachment" shall be by jury. The offenses cognizable in an impeachment trial are "Treason, Bribery, or other high Crimes and Misdemeanors." The Senators are asked to vote Guilty or Not Guilty on each article of impeachmen and if two-thirds vote Guilty the respondent is "convicted."

Even if it were admitted that the Senate impeachment proceeding is a criminal trial, and that the grounds for impeachment are limited to criminal offenses, the argument might still be made that the traditional crimina standard of proof should not necessarily apply. Adherents of this view point out that the requirement of a more exacting standard of proof in crimina cases was introduced to mitigate the rigors of the criminal code in Eighteenth Century England, where nearly all crimes were punishable by death The use of capital punishment has virtually disappeared; but thogh his life is no longer at stake, the criminal defendant still stands to be deprived of his liberty. The purpose of the rigorous standard of proof in criminal cases is to guard against the possibility that an innocent man might be wrongly convicted and subjected to this severe punitive sanction. By contrast, it is argued, the primary purpose of impeachment is not punitive but remedi Since removal from office is not punishment, there is no reason to apply the strict criminal standard or proof.

This argument is refuted by reference to the intentions of the Framers, who clearly conceived of removal from office as a punishment. Thus, Mason favored "punishing the principal" for "great crimes"; Franklin thought that the Constitution shouldd provide for "the regular punishment of the executive"; Randolph stated that "guilt wherever found ought to be punished"; and Mason said that the executive should be "punished only by degradation from his office." No one who has witnessed the recent agony and humiliation of President Nixon can seriously doubt that removal from office is a punishment.

III: Additional Views of Members of the Panel

Additional views of Reps. Jack Brooks, Robert W. Kastenmeier, Don Edwards, John M. Conyers, Joshua Eilberg, John F. Seiberling, George E. Danielson, Charles B. Rangel, Barbara Jordan, Elizabeth Holtzman, and Edward Mezvinsky:

On two occasions, Richard M. Nixon has taken the oath set forth in the Constitution of the United States to which all Presidents must swear. In that oath Richard Nixon promised to "faithfully execute the Office of the President of the United States." He swore to "preserve, protect and defend the Constitution of the United States." He promised to "take care that the laws be faithfully executed."

In each of these areas Richard Nixon has violated his solemn obligation to the American people. The evidence is overwhelming that Richard Nixon has used the Office of President to gain political advantage, to retaliate against those who disagreed with him, and to acquire personal wealth. To achieve these objectives he chose a course designed to obstruct the administration of justice, to misuse the functions of agencies of the Federal government, and to abuse the powers of his office in a manner that threatened the sanctity of our democratic form of government and the constitutional rights and safeguards of every American citizen.

Richard Nixon obstructed the due administration of justice by covering up White House involvement in criminal activities. He attempted to prevent the Federal grand juries, Federal prosecutors, the Department of Justice and the Congress of the United States from fully investigating those criminal activities and taking appropriate action. He concurred in the perjury of witnesses, participated in the payment of money to purchase silence, refused to produce evidence, interfered with the Office of the Special Prosecutor and discharged the Special Prosecutor for pursuing the course of justice too forthrightly.

Richard Nixon attempted to use the Iniernal Revenue Service to harass his enemies and to favor his friends. He directed the Federal Bureau of Investigation and the Secret Service to engage in illegal wiretapping. He endeavored to use the Central Intelligence Agency to sidetrack the Federal Bureau of Investigation's investigation into the illegal entry of the National Headquarters of the Democratic National Committee. He authorized a domestic intelligence operation that would have suspended the constitutional rights of all Americans.

Richard Nixon has continually refused to cooperate with the Congress of the United States in the exercise of its constitutional responsibilities. He has concealed information legitimately subpoenaed by the Congress and its committees. He has supplied misleading information to the Congress and the American people; and he has knowingly permitted his aides and appointees to testify erroneously and dishonestly before various congressional committees.

For these activities the House Judiciary Committee has recommended three articles of impeachment against Richard M. Nixon. These articles are fully supported by the evidence presented to the Committee. They do not, however, include all of the offenses committed by Richard Nixon for which he might be impeached, tried and removed from office.

There is ample evidence that Richard Nixon has violated the Constitution and the laws of the United States in an effort to enrich himself at the cost of the American taxpayer.

Shortly after his election in 1968, Mr. Nixon purchased three private homes. He then prevailed upon agencies of the Federal government to spend thousands of dollars of public funds at those properties. Intensive investigations by the House Government Operations Committee, the General Accounting Office, the Joint Committee on Internal Revenue Taxation, and the U.S. Internal Revenue Service have concluded that many of these expenditures were for Mr. Nixon's personal benefit and served no proper government function.

To preclude the possibility that a President might, because of personal financial considerations, either misuse the office for his own benefit or be held hostage to a hostile Congress, the drafters of our Constitution provided:

> The President shall, at stated times, receive for his service, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them of them.

The meaning of this clause is both clear and certain. Alexander Hamilton, writing in the *Federalist Papers No. 73, succinctly stated its purpose as follows.*

> It is imposible to imagine any provision which would have been more eligible than this. The legislature, on the appointment of a President, is once for all to declare what shall be the compensation for his services during the time for which he shall have been elected. This done, they will have no power to alter it, either by increase or diminution, till a new period of service by a new election commences . . . Neither the Union, nor any of its members, will be at liberty to give, nor will be at liberty to receive, any other emolument than that which may have been determined by the first act.

During his term of office, Richard Nixon has received a stated compensation for his services as Chief Executive Officer of our government, including a salary of $200,000. each year and an annual expense account of $50,000 Clearly, the payment of thousands of dollars by the Federal government for new heating systems, remodeling den windows, a sewer line, boundary surveys, landscape maintenance, sprinkler systems, and a shuffle board court constitutes additional "emoluments."

In its audit of Mr. Nixon's income tax returns for 1969 through 1972, the Internal Revenue Service concluded that:

> In view of the taxpayer's relationship to the United States Government as its Chief Executive Officer, the above items constitute additional compensation to him for the performance of his services for the Government.

In addition to receiving unlawful emoluments while in office, Mr. Nixon has attempted to evade the payment of his lawful taxes. There is substantial evidence that when Mr. Nixon signed his Federal income tax returns for 1969, 1970, 1971 and 1972, he knowingly attested to false information intending to defraud the American people of approximately one-half million dollars. On his tax returns for those years, he claimed an unlawful deduction for a charitable contribution of his pre-presidential papers when, in fact, no such gift had been made. He or his agents manufactured misleading and dishonest documents to support the deduction As a result of attesting to false information, Mr. Nixon, for two consecutive years, reduced his tax liability to less than $1,000 on income of approximately one-quarter million dollars a year.

The Internal Revenue Service has also established that Mr. Nixor unlawfully reduced his taxes by failing to report certain income from the sale of properties in California, New York and Florida. The Senate Select Committee has documented Mr. Nixon's failure to report as income the receipt of $5,000 of campaign funds used to purchase platinum and diamond earrings for his wife's birthday present. The Senate Select Committee also determined that $45,000 was paid personally by C. G. Rebozo for improvements at Mr. Nixon's Key Biscayne vacation retreat at a time when Rebozo's personal financial records indicate that he did not have that much money available. Mr. Rebozo avoided being served with a subpoena for the information needed to determine the source of those funds by leaving the United States during the final days of the Senate Select Committee's existence.

The refusal of Mr. Nixon and his as-

sociates to cooperate with efforts to determine the legality of his tax returns led the Commissioner of Internal Revenue Service to refer the matter to the Special Prosecutor for presentation to a grand jury. The IRS Commissioner said·

We have been unable to complete the processing of this matter in view of the lack of cooperation of some of the witnesses and because of many inconsistencies in the testimony of individuals presented to the Service. The use of grand jury process should aid in determining all of the facts in this matter. It is our opinion that a grand jury investigation of this matter is warranted, and because this investigation will involve presidential appointees, we believe it would be appropriate for it to be carried forward by your office.

The three articles of impeachment adopted by the House Judiciary Committee provide ample reason for exercise of the impeachment and removal power of Congress. In addition to these, however, the Committe should have adopted an article citing Mr. Nixon for violation of the emoluments provision of the Constitution and violation of the tax laws of the United States.

A number of Members of the Committee agreed that Mr. Nixon had "set a very sorry example," or that he "did knowingly underpay his taxes in the four years in question by taking unauthorized deductions," or that he was "guilty of bad judgment and gross negligence." Those Members, however, for reasons of their own, chose not to view such actions on the level of impeachable offenses. That, of course, is a matter for each Member to determine. For myself, I find that these offenses bring into focus, in a manner every American can understand, the nature and gravity of the abuses that permeate Mr. Nixon's conduct in office.

The integrity of the Office of President cannot be maintained by one who would convert public funds to his own private benefit and who would refuse to abide by the same laws that govern every American taxpayer. All doubt should be removed that any American, even if he be President, can disregard the laws and the Constitution of the United States with impunity.

Additional views of Rep. Charles B. Rangel:

These separate and additional views are submitted in an effort to establish the historical record of the facts and circumstances surrounding the resignation of the 37th President of the United States. The 38 members of the Judiciary Committee have recorded their support for Article I of the three articles of impeachment voted by the Committee clearly established the existence of clear and convincing evidence of the President's involvement in impeachable crimes; had not the President resigned it is clear that he would have been impeached by the House of Representatives and convicted in the Senate for his criminal activities.

By David Suter for The Washington Post

This record needs to be established for the sake of historical accuracy in view of the fact that even on the day of his resignation President Nixon attempted to convey to the American people the impression that his resignation was caused by erosion of his political base as a result of some poor judgments he made during his term of office The record, as set forth in the Committee report makes it abundantly clear that Richard M. Nixon violated his oath of office as President of the United States, that he committed impeachable crimes. and that on the available evidence he would have been impeached by the House of Representatives.

For only the second time in the one hundred and ninety-eight years of our Constitutional history of the House of Representatives is presented with articles of impeachment against the President of the United States. After seven months of staff preparation, ten weeks of concentrated presentation of ihe evidence to the members of the Committee. and a week of debate, the Committee on the Judiciary by majority vote has recommended three articles of impeachment to the House. I voted in Committee for these three articles and associate myself with the majority report setting forth the recommended articles of impeachment and the evidence underlying them. I wish, however, to set forth my separate views supporting the articles of impeachment voted by the Committee and my dessenting views concerning the two articles of impeachment that were presented to the Committee, but rejected, and another possible article of impeachment that was not voted upon by the Committee

Support of the Articles of Impeachment Voted by the Committee

The articles of impeachment which the Committee on the Judiciary presents to the House of Representatives charge Richard M. Nixon with the following high crimes and misdemeanors against the Presidency and against the people of the United Siates: obstruction of justice in his participation in an effort to impede the investigation the Watergate burglary and related crimes; abuse of power and misuse of the Office of the Presidency to achieve poliiical and personal gain; and contempt of the Congress by his refusal to cooperate with the Constitutionally based and lawfully mandated investigation of the Committee on the Judiciary. We are asking the members of ihe House of Representatives to examine the evidence and find, as we did, that these offenses are sufficiently proven to mandate the impeachment of the President and his trial in the Senate to determine whether he should be removed from office.

I also want to ask the members of the House to consider a responsibility which weighed upon us on the Committee on the Judiciary as we went through the great mass of evidence gathered by the impeachment inquiry staff—a responsibility to act to protect the Constitution, and with it our democratic system of government, from the type of usurpation of power which would have successfully occurred under this President if it had not been for the conscientious performance of his job by Frank Wills, a black, poorly paid night watchman at the Watergate on the night of June 17, 1972.

As a black American, I have been especially struck by th poetic justice of the discovery of the Watergate burglars by a black man. Black people were not considered by the Founding

Fathers of this nation when they undertook to issue the Declaration of Independence in the name of freedom. Although a black man was among the first to fall in the American revolution and blacks fought alongside the revolutionary heroes for freedom, we were not included when citizenship was defined in the Constitution. We have spent the one hundred and ninety-eight year history of this nation trying to become covered by the guarantees of freedom and equality contained in the Constitution. Despite the ending of legal slavery with the Emancipation Proclamation, for which we had to waith eighty-seven years, black Americans have had to win their social and economic freedom in a revolutionary struggle which has characterized our American experience and which continues to the present day. It is only in the last two decades that black Americans have made significant progress in extending the coverage of Constitutional guarantees to us. We therefore value, perhaps to a greater extent than most Americans, the guarantees of freedom and equality expressed in the Constitution and the structure of government whih provides, through demodemocratic participation, for the will of the people to prevail.

The crimes to which Richard M. Nixon was a willing accessory threatened the system of law and justice, and for this alone they are impeachable offenses; but more fundamentally, this President has undermined the very basis of our government. If we do not impeach him for this, then we will be accessories to his crime and jointly responsible for raising the Presidency above the law.

What Richard Nixon has done is to substitute power for law, to define and attempt to impose a standard of amorality upon our government that gives full rein to the rich and powerful to prey upon the poor and weak. What Richard Nixon has done is to demean the importance of national security by using it as a handy alibi to protect common burglars. What Richard Niixon has done is attempt to stain the reputation of the agencies of our government by using them to obstruct justice, harass political enemies, illegally spy upon citizens, and cover-up crimes. What Richard Nixon has done is show contempt for the Congress by refusing to provide information necessary for the Constitutionally legitimate conduct of an inquiry into the question of impeachment by the Committee on the Judiciary of the House f Representatives What Richard Nixon has done is threaten the Constitutional by declaring himself and the Office of the Presidency beyond the reach of law, the Congress, and the courts.

To a large extent he has succeeded. We have reached a state in our national life where responsible members of Congress argue that the President does not have to account for his actions to anyone or recognize any higher authority. Thus we stand on the brink of total subversion of our Constitutional government and dictatorship. A few weeks ago the Supreme Court of the United States ruled unanimously that the President's claim of executive privilege could not justify his refusal to provide the United States District Court for the District of Columbia and the Special Prosecutor with evidence necessary for the successful completion of the investigation and trial of charges of the involvement of White House and other high administration officials in the Watergate cover-up. The contempt in which the law is held by Richard Nixon was never more evident than in his persistent refusal to state that he would abide by the decision of the Supreme Court. On the day of the decision the American people had to wait for hours for the announcement that the President would comply with the unanimous decision of the United States Supreme Court. Some of the President's defenders were even heard to praise to the President for his decision to comply with the Supreme Court decision, as if Richard Nixon was not subject to the Supreme Court, and the law of the land, unless he wanted to be. If we do not act to impeach this President, will we still have a democracy?

We all have a large stake in preserving our democracy, but I maintain that those without power in our society, the black, the brown, the poor of all col-

See RANGEL, A21, Col. 1

RANGEL, From A20

ors, have the largest stake--not because we have the most to lose, but because we have worked the hardest, and given the most, for what we have achieved. The framers of the Constitution perhaps never conceived that the Republic they created would be defended by the underprivileged, but this has happened in every war in which this nation has been involved. The sons of slaves have joined the sons of poor immigrants on the front lines in disproportionate numbers to defend our democracy. I went to Korea from the streets of Harlem and fought, although I had no understanding of what that socalled "police action" was all about. But I had sworn on oath to defend the Constitution, and I went and fought to do so. Richard M. Nixon swore that oath on two inauguration days, but he had dishonored it. We have all sworn that same oath and we must live up to it by voting the articles of impeachment of Richard M. Nixon voted by the Committee on the Judiciary.

Dissenting Views Concerning the Two Articles Presented to, But Not Voted by the Committee

I do not believe, however, that we will have fulfilled our Constitutional duty if we vote impeachment solely on the basis of the three articles recommended by the Committee. The very nature of the impeachment process, we have recognized in the Judiciary Committee, infuses our decision on the grounds for impeachment with the weight of historical precedent. We are not merely making a judgment on the conduct of the Richard M. Nixon Presidency, we are making judgments that will determine the limits of Presidential, legislative, and judicial power. For this reason I supported the two articles of impeachment which were recommended to the Committee on the Judiciary, but which have not been recommended by the Committee to the House. These two articles, based upon the President's authorization of the secret bombing of Cambodia without the lawful direction of the Congress and the President's use of his office for his self-enrichment in derogation of the Constitutional provision forbidding the taking of emoluments, are as equally indicative of the President's contempt for the law as the three articles recommended by the Committee. The Presidential conduct to which these articles are addressed is as potentially destructive of the Contitution as the President's obstruction of justice, abuse of power and contempt of Congress even though the particular activity involved did not appear to offend as large a number of members of the Judiciary Committee as the activity addressed in the first three articles.

In the last twenty-five years we have become accustomed, it appears, to national involvement in undeclared war. The Korean police action, the invasion of Lebanon, the Bay of Pigs, the intervention in the Dominican Republic, and the Indochina war were all instances of American military involvement initiated by an American President without the Constitutionally required declaration of war by the Congress. In each of these instances the Congress acquiesced in the Presidential action, thus becoming a party to the erosion of the Congressional power to declare war. We in the Congress must share the blame for the taking on to the Presidency of a power to involve our nation militarily that is not contemplated by the Constitution. Yet the secret bombing of Cambodia authorized by President Nixon during 1969 and 1970 is different from these earlier examples of Presidential war making. Instead of the traditional notification of and consultation with Congressional leadership, President Nixon moved unilaterally to authorize the bombing of a neutral country. The evidence that has been presented of Congressional notification is not convincing. Selected members of the House and Senate were allegedly told that the bombing was going on, yet none of the men supposedly informed clearly

Members of the Committee

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Don Edwards, California	Hamilton Fish Jr., New York
William L. Hungate, Missouri	Wiley Mayne, Iowa
John Conyers, Jr., Michigan	Lawrence J. Hogan, Maryland
Joshua Eilberg, Pennsylvania	M. Caldwell Butler, Virginia
Jerome R. Waldie, California	William S. Cohen, Maine
Walter Flowers, Alabama	Trent Lott, Mississippi
James R. Mann, South Carolina	Harold V. Froehlich, Wisconsin
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Barbara Jordan, Texas	
Ray Thornton, Arkansas	
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Wayne Owens, Utah	
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Edward Hutchinson, Michigan	
Robert McClory, Illinois	
Henry P. Smith III, New York	

remembers the notification. Whatever notice was given, it was certainly inadequate to provide the Congress as a whole with the information that was needed to articulate a judgment of the military and diplomatic wisdom of the President's action. The information was insufficient, and its dissemination so controlled, that it was impossible for a position in opposition to be developed. This is Presidential war making and if we are to preserve the integrity of the Constitution's reservation of the war-making power to the Congress, if we are to prevent future Presidents from committing the lives of American youth to adventurous forays, we have a duty to seriously consider President Nixon's authorization of the secret bombing of Cambodia as an abuse of Presidential Power constituting an impeachable offense.

Similarly, to check the potential excesses of future Presidents, the members of the House of Representatives should move to impeach Richard M. Nixon for willful taking of government property for his self-enrichment and his evasion of his lawful tax liability.

Article II, Section I, clause 7 of the Constitution provides that the President shall not receive "any . . . emolument from the United States" during his term of office other than a stated compensation for his services. This explicit Constitutional prohibition applies solely to the President. The Founding Fathers recognized the potential for self-enrichment in the Presidency and provided this language to prevent "powers delegated for the purpose of promoting the happiness of a community" from being "perverted to the advancement of the personal emoluments of the agents of the people." From the wealth of evidence gathered by the investigation of the Government Operations Committee into unlawful expenditures of government funds on President Nixon's private properties at Key Biscayne, Florida, and San Clemente, California, and presented to the Committee on the Judiciary, an article of impeachment was drawn charging Richard M. Nixon with violating the emoluments clause of the Constitution by knowingly receiving the benefits of expenditures on these personal properties. Although the Judiciary Committee did not recommend this Article to the House, I urge its consideration by the full House.

Summarizing from the staff report on the evidence on the question of the President's violation of the emoluments clause, the evidence presented to the Committee on the Judiciary shows that since Richard M. Nixon became President the General Services Administration (GSA) has spent approximately $701,000 directly on his San Clemente property and $575,000 directly on his Key Biscayne property for capital expenses, equipment, and maintenance. The evidence before the Committee further establishes that substantial expenditures for improvments and maintenance services on the President's properties were made by GSA that are unrelated to the lawful duty of the GSA to make expenditures at the direction of the Secret Service for the installation of security devices and equipment on the private property of the President or others to protect the President. Some of these expenditures were made by the GSA at the direction of the President or his representatives with no Secret Service request. Others were made after Secret Service requests, but included substantial amounts to meet aesthetic or personal preferences of the President and his family. Yet others, while they served security purposes, involved items that are normally paid for by a homeowner, such as the replacement of worn-out or obsolete equipment or fixtures and routine landscape maintenance. The staff of the Joint Committe on Internal Revenue Taxation concluded that more than $92,000 of expenditures on the President's properties was for his personal benefit and constituted income to him (Joint Committee Report, p. 201). The Internal Revenue Service concluded that the President had realized $62,000 in such imputed income (HJC Tax Report, Appendix 10).

The evidence presented to the Committee on the Judiciary shows that President Nixon participated in an effort to evade his full income tax liability in 1969 by claiming a huge deduction for a gift of Presidential papers that was actually not made until after the date of final eligibility for claiming a deduction for such a gift.

On December 30, 1969, President Nixon signed the Tax Reform Act of 1969 into law. That Act included a provision eliminating the tax deduction for contributions of collection of private papers made to the government or to charitable organizations after July 25, 1969. On April 10, 1970, the President, who is an attorney who in the past has engaged in tax practice, signed his income tax return for 1969, claiming a deduction for the donation to the National Archives of pre-Presidential personal papers allegedly worth $576 000. The President and his attorney went over the return page by page and discussed the tax consequences of the gift of papers deduction. (Kalmbach testimony, 3 HJC 671). An appraisal valuing the donated papers at that amount and a sheet describing the gift were attached to the return. These documents, which constitute part of the return signed by the President assert that the gift had been made on March 27, 1969.

There can be no doubt, the impeachment inquiry staff report on this matter concludes, that the President knew that the Tax Reform Act required that, for the claim of deduction to be valid, a gift must be completed by July 25, 1969. It is also clear that the President knew that his return indicated that the gift had been made on March 27, 1969. The Internal Revenue Service has disallowed this deduction. The IRS found that, as a matter of fact, the gift of papers was not made on or before July 25, 1969. On the basis of its investigation, the IRS concluded that the President was negligent in the preparation of its taxes and assessed a negligence penalty of 5%. Because the IRS did not assess a civil penalty for fraud, those members of the Judiciary Committee who opposed this article during debate declared that the IRS had reached a definitive conclusion that no civil fraud was involved, thus exonerating the President. It is clear, however, that the IRS investigation of the President's negligence was less than complete out of that agency's deference to his office. The President was never interviewed, nor were others with important information concerning the preparation of the return such as John Ehrlichman. Thus the IRS was unable to make a determination on the question of fraud. Similarly, the Joint Committee on Internal Revenue Taxation's investigation of the 1969 return, after concluding that the gift of papers had not been made by July 25, 1969, as claimed in the report, stopped short of addressing the question of fraud out of deference to the Judiciary Committee's impeachment inquiry.

The Judiciary Committee's impeachment inquiry staff did address the question of criminal tax fraud in its investigation and, in my opinion, found evidence that the President did not file a false tax return for 1969 through mistake or negligence, but knowingly participated in a scheme to defraud the United States Government by claiming falsely that he had made his gift of papers prior to July 25, 1969, the date of expiration of the eligibility for valid tax deductions for such gifts.

The Judiciary Committee heard the expert testimony of Fred Folsom, a consultant to the Committee who for 24 years was an attorney in the Criminal Section of the Justice Department's Tax Division and chief of that section for 12 years. Considering all the circumstances surrounding the alleged gift of papers and its inclusion as a deduction on the President's 1969 return, including the lack of a satisfactory response from the taxpayer, it was the judgment of Folsom that in this case "the case of an ordinary taxpayer, on the facts as we know them in this instance, the case would be referred out for presentation to a Grand Jury for prosecution." (Folsom testimony, June 21, 1974., Tr. 1976).

It is clear to me from the evidence that President Nixon directed or knowingly received the benefit of improper expenditures on his San Clemente and Key Biscayne properties in violation of the law and the emoluments clause of the Constitution. It is equally clear that Richard Nixon had knowledge of and bears full responsibility for the willful evasion of his income tax obligation.

Richard M. Nixon did this while preaching economy in government and imposing devastating cuts on vital social programs in his budgets and through the impoundment of Congressionally appropriated funds. He enriched himself at the taxpayers' expense while children were going hungry and uncared for, the poor and elderly were being denied adequate housing, and growing hope was being turned into despair as Federal assistance to help people out of the bondage of poverty was being brutally terminated in the name of economy. Perhaps the greatest indictment against Richard Nixon that can be voted by the House is that by his actions he created a moral vacuum in the Office of the Presidency and turned that great office away from the service of the people toward the service of his own narrow, selfish interests.

Conclusion

As I stated in my opening statement in the Judiciary Committee's debate on the Articles of Impeachment which are now before the House, I do not approach the impeachment of Richard M. Nixon with a heavy heart. I regard the impeachment of this President, the impeachment of any President, as a grave Constitutional responsibility that cannot be taken lightly. I am saddened by the many personal tragedies that are the legacy of Watergate. A number of otherwise honorable and decent men let their hunger for power and their devotion to a leader overcome their integrity, judgment, and sense of responsibility to the law and the national interest. Because of this, their careers lie in ruin. Yet at the same time I am heartened, and my faith in the Constitution and in our democracy is strengtheneed by the now irrefutable proof that the Contitution is not a dead instrument, that truly no man is above the law, and that if a President acts unlawfully he can be impeached and sent to the Senate for a trial to determine whether he should be removed from office. I am encouraged that our Constitution works, for I am especially dependent upon its protection. I am encouraged that the American system permits a black nightwatchman and the son of an Italian immigrant family sitting as a District Court judge, each through applying the law, to be the instruments of uncovering the most extensive and highly placed corruption in our national history and the bringing to justice of the most powerful men in our society. I

am encouraged that what the Judiciary Committee has done, and what the full House must now do, in voting Articles of Impeachment against Richard M. Nixon, will begin a process of restoring the faith of the American people in our government.

Additional views of Rep. Elizabeth Holtzman, joined by Reps. Robert W. Kastenmeier, Don Edwards, William Hungate, John Conyers, Jerome Waldie, Robert Drinan, Charles B. Rangel, Wayne Owens, and Edward Mezvinsky:

We believe that Richard Nixon committed a high crime and misdemeanor when, as President, he unilaterally ordered the bombing of Cambodia and deliberately concealed this bombing from Congress and the American public, through a series of false and deceptive statements, for more than four years. Proposed Article IV—which would impeach Mr. Nixon for these acts—is one of the most serious the Committee on the Judiciary considered during the course of its inquiry.

It is difficult to imagine Presidential misconduct more dangerously in violation of our constitutional form of government than Mr. Nixon's decision, secretly and unilaterally, to order the use of American military power against another nation, and to deceive and mislead the Congress about this action. By depriving Congress of its constitutional role in the war-making and appropriations processes, the President denied to the American people the most basic right of self-government: the right to participate, through their elected representatives, in the decisions that gravely affect their lives.

The framers of our Constitution were well aware of the horrors of war. They knew it could impoverish a country; they knew the toll it could take in death and ruined lives; they knew the destruction it could wreak. They were therefore careful to construct checks and balances so that a decision to go to war would never be made casually or lightly, without a national consensus. As Jefferson put it, to check the "dog of war," it was necessary to take the war-making power out of the hands of a single person, the President, and place it in the hands of Congress where a majority vote—arrived at after debate and deliberation—would be required.

The decision to make war has enormous human, economic and ethical implications. It is intolerable in a constitutional democracy to permit that decision to be made in secret by a President and to be hidden through deception from the law-making bodies and the public.

For that reason the Committee should have found that President Nixon, in waging a secret war in Cambodia, committee a high crime and misdemeanor.

The President's Role

The central facts with regard to Richard Nixon's role in the concealment of the bombing of Cambodia are undisputed.

On March 17, 1969—less than 2 months after he took office—President Nixon authorized a series of B-52 bombing strikes in Cambodia. The bombing began on March 18, and in the succeeding 14 months, 3,695 B-52 sorties were flown, dropping 105,837 tons of bombs, at a cost of more than 150 million dollars.

President Nixon's decision to conceal the Cambodia bombing operations from the Congress was an integral part of the decision to bomb, made at the same time. On several occasions thereafter he ordered the highest secrecy for the raids and forbade their disclosure.

In accordance with President Nixon's instructions, the top officials in his administration, including the Secretaries of Defense and State, two Chairmen of the Joint Chiefs of Staff and the Chief of Staff for the Air Force, made false and misleading statements to the Congress, even though their testimony was usually given under the cloak of top secret communications. In order to carry out President Nixon's directions, the Defense Department falsified its own classifed records and submitted false reports to Congress based on these records.

President Nixon personally misrepresented to the Congress the facts concerning the bombing of Cambodia when, on February 25, 1971, he stated in his Foreign Policy Report to Congress:

> In Cambodia we pursued the policy of the previous administration until North Vietnamese actions after Prince Sihanouk was deposed made this impossible.
>
> This policy of deception continued until July 16, 1973, more than four years after the bombing began.

When the secret Cambodia bombing was finally exposed, President Nixon told the American people, in his August.1973, press conference, that the secrecy had been necessary. He thus ratified and approved the policy of concealment and deception, a policy which he had ealier ordered.

Purported Justification for Secrecy

The bombing of Cambodia was initiated only two months after Richard Nixon became President in 1969. The concealment of that bombing and deception of the Congress continued uninterrupted for more than *four* years—and persisted even after all American troops had been withdrawn from Vietnam and our prisoners had been returned.

President Nixon has attempted to justify this deceit on diplomatic grounds: that without the secrecy, Prince Sihanouk, the ruler of Cambodia, would have been compelled to abandon his position of "affirmative acquiescence" and publicly protest the bombing strikes. No military justification for the secrecy and deception has been asserted. The V.C. and North Vietnamese knew they were beisg bombed. The only people who did not know about the bombing operations were Members of Congress and the American people.

Assuming, for the moment, that protecting Prince Sihanouk was a legitimate justification for the deception of Congress and the American people, that justification ceased when Sihanouk was overthrown on March 18, 1970. After that date there was no justification for secrecy or deception. Nonetheless, for three years *after* the fall of Sihanouk, Mr. Nixon persistently lied about the bombing.

Thus, on April 30, 1970 (two months after Sihanouk's overthrow and 13 months after the bombing had commenced), in announcing the invasion of Cambodia by American ground troops, President Nixon told the following lie to the American public in a televised address:

> American policy . . . has been to scrupulously respect the neutrality of the Cambodian people.
>
> For five years, neither the United States nor South Vietnam has moved against these enemy sanctuaries because we did not wish to violate the territory of a neutral naton.

Again, on June 30, 1970, President Nixon repeated the lie:

> For five years, American and allied forces—to preserve the concept of Cambodian neturality and to confine the conflict in Southeast Asia—refrained from moving against those sanctuaries.

Because Prince Sihanouk was no longer in office at the time of these Presidential statements, there was no justification for these or subsequent falsehoods.

The fact that the deception went on for years after any purported justification ceased to exist substantially impeaches what little validity that justification may have had for the period prior to March 18, 1970, when Sihanouk was still ruler.

In any event, no authority exists for the proposition that the explicit provision of the Constitution regarding the war-making and appropriations powers of Congress may be overridden by a President in the interest of protecting a foreign prince.

Arguments Offered Against The Article

In the course of debate on this Article, many Members of the Judiciary Committee conceded that President Nixon's deception was improper. The majority of those who voted against the Article, however, appeared to do so for reasons not directly related to the offense charged. Rather, they referred in the debate to assertions that Congress had acquiesced in the bombing or would have if it had been disclosed, that some Members of Congress had been notified of the secret bombing, that former Presidents had acted similarly, and that the recently enacted War Powers Resolution somehow alleviated the problem of future offenses. Examination of these arguments, however, demonstrates that they do not provide a viable defense to impeachment under Article IV.

1. The President's defenders contended that Congress ratified the secret bombing operations in Cambodia through the passage of various appropriations measures.

In fact, there was *no* ratification of this bombing. Congress passed on the Indochina war for the last time on June 29, 1973, when it ordered an August 15th cut-off date for all bombing. The secret bombing of Cambodia did not become effective until July 16th—two weeks later. There is no way in which Congress could have ratified actions of which it was unaware.

2. Other Members opposed to Article IV argued that the disclosure of the Cambodia bombing operations to selected members of Congress constituted sufficient notification to Congress and satisfied the Constitutional requirement.

This position is not supported by the facts or the law. According to the Department of Defense, President Nixon, and newspaper reports, thirteen Members of Congress were allegedly advised about the secret bombing. Of this number, three are deceased, three have denied being informed, and only four definitely recall being told. No record has been found of these briefings. There is no evidence that any Representative or Senator was fully informed of the nature, extent and purpose of the secret bombing or the reasons for its secrecy. In fact, the evidence suggests otherwise. Thus, Senator Stennis, Chairman of the Senate Armed Services Committee and the only Member who has spoken to the issue, specifically stated that he was given "no indication of the massiveness of the bombing."

It is significant, too, that whatever procedures for notification were used in this case, they were not those established and regularly followed for the handling of the most highly secret matters such as the CIA budget and its intelligence activities, nuclear research and new weapons development.

In any event, selective notification to persons who supported President Nixon's war policy hardly satisfied the Constitutional requirement of Congressional participation in appropriations and war-making. That mandate of

the Constitution—to require legislative debate and decision on grave matters such as the bombing of a neutral country—was frustrated by the concealment of the Cambodia bombing from the Congress reguardless of the knowledge, or even consent, of a few Members.

3. It was also argued that the Cambodia bombing aided President Nixon's efforts to end American involvement in the Vietnam War, and that, therefore, Congress would have approved it.

We do not question whether the Congress would have approved the bombing had it been informed. It might well have done so. On the other hand, Congress might have chosen to impose limitations on such actions, as it did with regard to American ground operations in Cambodia, and later, with regard to all other bombing in Cambodia.

The question is not what Congress would have decided had it not been deceived, but whether Mr. Nixon had the right to order that deception. He clearly did not.

4. Another argument advanced on behalf of President Nixon is that other Chief Executives, notably President Johnson, deceived the American people about the Vietnam War, and, thus President Nixon should not be made to answer for wrongs that others have also committed.

The simple answer to this proposition is that5he existence of prior misconduct does not justify its continuation is that the existence of prior mistioned wrongdoings of some do not justify the misdeeds of others. This Committee has firmly rejected the notion that because other Presidents may have abused their powers, the abuses of President Nixon are acceptable.

Moreover, the decption in prior administrations was not related to the very fact of U.S. involvement as in the case of Cambodia, but to the purposes and motives of the disclosed involvement. When the Congress is misled about the purpose of governmental conduct, it can, at least, review the facts independently and adopt or change that conduct. If, however, Congress is unaware of military action, it has no way to decide whether that action should be allowed to continue.

In addition, in this inquiry we are engaged in setting standards of conduct for Presidents. We should make it clear that Presidential lying and deception, in derogation of the Constitutional powers of Congress, are intolerable. James Iredell, one of the first Supreme Court Justices, made this point in the course of debate on the impeachment clause of the Constitution when he said:

> The President must certainly be unpunishable for giving false information to the Senate.

5 The final opposing argument advanced in the Committee debate was that the War Powers Resolution enacted by Congress in November, 1973, is a sufficient deterrent against repetition of such activity in the future and that, therefore, impeachment of President Nixon on this ground was unnecessary.

This argument is a thin reed. Do its proponents believe, analogously, that the fact Congress is considering a bill to increase the penalties for obstruction of justice bars impeachement of President Nixon under the obstruction count of Article I?

The War Powers Resolution cannot and does not provide any deterrent to secret decisions by a President to institute war in a neutral nation. If a President would violate the clear mandate of the Constitution, the passage of a mere statute reasserting those Constitutional proscriptions can add nothing further in the way of deterrence.

The sole remedy which Congress can employ to bring a President to account for usurpation of the war-making and appropriations powers is impeachment. Only the use of that power is an effective deterrent; and, failure to employ it, when necessary, sets a dangerous precedent.

Conclusion

In these proceedings we have sought to return to the fundamental limitations on Presidential power contained in the Constitution and to reassert the right of the people to self-government through their elected representatives within that Constitutional framework.

The Constitution does not permit the President to nullify the warmaking and appropriations powers given to the Congress. Secrecy and deception which deny to the Congress its lawful role are destructive of the basic right of

See **HOLTZMAN, A22, Co. 1**

HOLTZMAN, From A21

the American people to participate in their government's life-and-death decisions. Adoption of Article IV would give notice to all future Presidents that the American people and the Congress may not be excluded from those decisions.

By failing to recommend the impeachment of President Nixon for the deception of Congress and the American public as to an issue as grave as the systematic bombing of a neutral country, we implicitly accept the argument that any ends—even those a President believes are legitimate—justify unconstitutional means. We cannot permit a President to sidestep constitutional processes simply because he finds them cumbersome.

This Committee has refused to accept that argument elsewhere in the course of our inquiry; we should not do so here. It is inherent in any governement committed to democracy that the representatives of the people must be permitted a voice in the great decisions of state, even if a President believes in good faith that the course of the democratic process itself will make it more difficult or even impossible to achieve the desired goal.

Additional views of Rep. Edward Mezvinsky, joined by Reps. Jack Brooks, Robert W. Kastenmeier, Don Edwards, John M. Conyers, Joshua Bilberg, George E. Danielson, Charles B. Rangel, and Elizabeth Holtzman:

We support the three Articles of Impeachment approved by the Committee for reporting to the House.

The Committee had before it clear and convincing proof that President Nixon committed the offenses described in those Articles. We believe that the Committee also was presented with clear and convincing proof that the President willfully evaded the payment of his federal income taxes. In fact, the proof was such that the Committee was told by a criminal tax fraud expert that on the evidence presented to the Committee, if the President were an ordinary taxpayer, the government would seek to send him to jail.

The President, however, is not an ordinary taxpayer; his willful tax evasion affects the very integrity of our government. Such conduct calls for the constitutional remedy of impeachment.

The facts lead to no other conclusion.

The Internal Revenue Service ruled on April 2, 1974 that Mr. Nixon had underpaid' his federal income taxes by nearly $420,000 during his first term in office. (Book X, 410-11). The IRS found that, on his tax returns for 1969 through 1972, the President had claimed over $565,000 in improper deductions and had failed to report more than $230,000 in taxable income, a total error in excess of $795,000 for those years.

The key to the gross underpayment of taxes was his unlawful claim of a charitable deduction for an alleged gift of his personal papers (stated to be worth $576,000) to the National Archives in 1969. The IRS and the Joint Committee on Internal Revenue Taxation, which, at the President's request, also reviewed his taxes, found that deduction to be improper because:

(a) the gift was not made on or before July 25, 1969, the last date on which such gifts could be made to qualify for a tax deduction; and

(b) restrictions placed on the gift by President Nixon made the papers a gift of a "future interest" and therefore ineligible for tax benefits, even if the gift had been made prior to the change in the tax law.

On his tax return for 1969, the President stated that the gift was made "free and clear with no rights remaining in the taxpayer." (Book X, 348). In fact, the deed of gift retained for Mr. Nixon substantial rights in the papers.

On his tax return, the President also claimed that the gift was made before the July 25, 1969 cut-off date. (Book X, 348) The deed of gift transferring those papers stated on its face that it was executed on April 21, 1969. In fact, that deed was executed on April 10, 1970 and backdated to make it appear that it was signed a year earlier. (Book X, 14-15) The National Archives, the recipient of this alleged half-million dollar gift, did not know until April 1970 that the President's "1969" gift had been made. (Book X, 297)

Considering the solid documentary evidence of the illegality of the gift of papers deduction, which was the key element of the President's gross underpayment of his lawful taxes, the responsibility of the Committee was to determine whether the President was aware of—and either acquiesced or actively participated in—this attempt to defraud the government.

While the IRS assessed only a negligence penalty against the President, and not a fraud penalty, IRS Commissioner Donald Alexander recommended to the Special Prosecutor that he conduct a grand jury investigation into the matter of the President's 1969 tax return. Alexander noted that the lack of cooperation of some witnesses and inconsistencies in testimony prevented the IRS from completing its processing of the case. (Book X, 404)

When the Joint Committee staff issued its report on the President's taxes, it specifically noted that it had not attempted to determine the President's culpability for the irregularities on his tax returns. Instead, that question was referred to this Committee for resolution through the impeachment process.

The Joint Committee staff did formulate and send to President Nixon a series of questions concerning the President's knowledge and participation in the preparation of his tax returns. (Book X, 416-22) The President failed to respond to those questions during the Joint Committee investigation, and later ignored a request that he respond to the inquiries for the benefit of this Committee.

An analysis of the undisputed facts and circumstances makes it abundantly clear that the President knew that the gift of papers was not made on or before July 25, 1969 and did not legally qualify for the tax deductions he claimed on his tax returns.

Mr. Nixon is a lawyer who has prided himself on his knowledge of tax law. The $576,000 gift was by far the largest gift ever made by Mr. Nixon in his lifetime. It was more than twice his statutory annual income as President.

He was personally familiar with the procedures which had to be followed

By David Suter for The Washington Post

By David Suter for The Washington Post

in order to make a valid gift of his papers so as to be entitled to the tax deduction. A much smaller gift of papers —amounting to approximately $80,000 —was made by the President in December 1968. He was an active and interested participant at that time. He discussed the gift and its tax benefits with his attorneys, chose between alternate deeds of gift, and personally executed a deed which was co-signed by a representative of the GSA accepting the gift for the United States. The President also knew that the papers constituting the 1968 gift were selected prior to the end of 1968. (Book X, 41-61) Although the President claimed that less than 3 months later he made a gift six times as large, the record shows that none of these procedures was observed.

No contemporary written evidence has been produced to support the claim that the President intended on or before July 25, 1969 that a large gift be made or that he authorized anyone to sign a deed of gift on his behalf. Rather, the Committee was shown a February 1969 memorandum—which the President received and endorsed—contemplating not a large gift of papers which would use up all the President's charitable deductions for 1969 and the five succeeding years, but, instead, small periodic gifts of papers plus other charitable contributions. (Book X, 64-65)

Two June 1969 memoranda show that the President was an individual interested in the minute details of his tax deductions. Neither these memoranda nor any other writings in 1969 refer to a gift of papers so large as to eliminate all other charitable deductions for six years. (Book X, 177-79)

While the President's papers were delivered to the Archives on March 27, 1969, they were part of and intermingled with a much larger group of papers. The documentary evidence is overwhelming that the Archives did not consider that any of these papers had been given to the United States, but that it was routinely holding all of them in storage. The papers that ultimately were stated to constitute the "1969" gift were not finally selected until late March 1970. They were not even preliminarily valued until early November 1969, and then only as part of the larger group of papers delivered for storage on March 27. The preliminary appraisal was promptly sent to the President on November 7, 1969 who acknowledged to the appraiser, Ralph Newman, on November 16 that he knew of the appraisal. (Book X, 190-98).

The backdated deed was executed on April 10, 1970, in the Executive Office Building by White House attorney Edward Morgan in the presence of Frank DeMarco, the President's tax attorney. (Book X, 319-27). A few hours later, DeMarco met with the President for the execution of the President's tax return. The Committee has heard testimony that the President went over his tax return with his attorneys page by page, and discussed the tax consequences of the gift of papers deduction. (Kalmbach testimony, 3 HJC 670-71)

Finally, logic compels the conclusion that the President knew he made no gift of papers in March 1969. This is true because unless one could know in March 1969 that there would be a July 25, 1969 cutoff date, it would be contrary to rational tax planning for the President: (a) to make a gift of papers in March 1969, which would eliminate the opportunity to take other charitable deductions for six years (especially when he appeared to approve a contrary plan a month before); and (b) to make a gift that early in the year, when many of his financial matters were unsettled, instead of waiting until the end of the year when his income and deductions could be accurately estimated.

The fact is that neither President Nixon nor anyone else could know in March 1969 of a July 25, 1969 cut-off date. Not until May 27, 1969 was there any indication that Congress might consider passing legislation eliminating the gift of papers deduction. And it was not until November 21, 1969 (when the Senate Finance Committee reported its bill to the Senate with a December 31, 1968 cut-off date) that it became a serious possibility that individuals might not have until the end of 1969 to make a gift of papers and take the deduction. On December 22, 1969, Congress finally fixed July 25, 1969 as the cut-off date for the gift of papers deduction. (Book X, 149-51).

It is noteworthy that once officials outside of the White House began investigating the gift of papers deduction, the President's attorneys, DeMarco and Morgan, and his appraiser, Newman, began to tell conflicting versions of events which they had previously agreed upon. Also, documents central to the President's deduction (including a deed allegedly executed in 1969) were found to be missing, and others (such as the affidavit of appraisal which was part of the President's return) proved to be erroneous.

The President's failure to respond to the questions submitted to him by the Joint Committee staff adds an additional inculpatory circumstance to a record which points to intentional wrongdoing in connection with the gift of papers deduction.

The facts and circumstances noted above demonstrate that when President Nixon signed his tax return on April 10, 1970, he knew that he did not make a gift of papers on or before July 25, 1969 valued at $576,000. With respect to how any other taxpayer would be treated under these facts and circumstances, this Committee has heard the expert opinion of Fred Folsom, an attorney who spent 24 years in, and who for 12 years was Chief of, the Justice Department's criminal tax section. Mr. Folsom stated that "in the case of an ordinary taxpayer on the facts as we know them in this instance, the case would be referred out for presentation to a Grand Jury for prosecution."
(Folsom testimony, HJC 6/21/74, TR. 1976) To state it more bluntly, under these facts and circumstances, the government would seek to send any other taxpayer to jail.

The facts set forth above show that the Committee had before it evidence of tax evasion by the President which met the most stringent standards of proof. The use of tape recordings and similar documentary evidence to prove the charges set forth in the Articles recommended by the Committee perhaps led some to expect that type of evidence for all of the Articles. Most cases, however, whether criminal or civil, do not turn on the availability of tape recordings. They are decided on an evaluation of all the proven facts and circumstances and the logical inferences to be drawn from those facts and circumstances. Whatever the applicable standard of proof, the evidence presented to the Committee demonstrated that the President of the United States was guilty of willful income tax evasion for the years 1969 through 1972. He should have been impeached for such conduct.

Tax Evasion an an Impeachable Offense

Some question whether willful tax evasion by a President should be considered an impeachable offense. The President, who is obligated by the Constitution to faithfully execute the laws, is perforce constrained to live within the statutes and regulations which govern all citizens. As with any other citizen. the President's evasion of taxes constituted a serious felony — which, even under the "criminality" standards urged on the Committee by the President, constitutes an impeachable offense. But because of his position, the President's acts went beyond criminal wrongdoing; they necessarily involved taking advantage of the power and prestige of the Presidency.

As Chief Executive, President Nixon could expect that his tax returns would not be subject to the same scrutiny as those of other taxpayers. The superficial examination of his 1971 and 1972 returns conducted in May, 1973, which caused the IRS to write the President commending him (instead of sending him a bill for the more than $130,000 by which he had underpaid his taxes for those two years) bears out this expectation of favoritism.

The President had a special obligation to scrutinize his own returns — especially when those returns showed that he was paying only a nominal amount of tax on a very high income. Rather than so doing, he took advantage of his office to avoid paying his proper taxes. Had his entire Presidency not been subjected to public scrutiny — for the reasons contained in Articles I and II — Mr. Nixon's tax evasion would have succeeded.

A President's noncompliance with the revenue laws does not merely deprive the Treasury of funds from one taxpayer; it affects the very foundation of our voluntary system of tax collection. Allowing such conduct to go unchecked threatens to damage seriously the ability of the government to efficiently raise from all the citizens of the Nation the funds necessary to govern our society. If a President commits willful tax evasion and is not brought to account by the Congress, then not only the tax system, but our entire structure of government risks corrosion. For this most fundamental reason we believe that the willful tax evasion by President Nixon should have been considered an impeachable offense by the Committee, and that the Article charging this offense should have be reported to the House.

Additional views of Rep. Robert McClory, concurred in by Reps. George E. Danielson and Hamilton Fish Jr.:

The power of impeachment is the Constitution's paramount power of self-preservation. This power is textually committed by the Constitution solely to the House of Representatives. The power to impeach includes within it the power to inquire. Without the corollary power to inquire, the power to impeach would be meaningless—and dangerous.

The power of impeachment is made necessary by the allocation of jurisdiction among three separate branches. The Articles of Confederation which reposed all powers in Congress found no need of an impeachment process. For there was no "other" branch whose excesses had to be checked by Congress. But the Constitution dispersed the powers among three separate branches to protect the liberties of the people and hold distant the spectre of tyranny. However, this protection against tyranny raised the question of how Congress could make the executive—who under the Constitution would have the greatest potential for tyranny—answer for wrongs committed against the people.

It was that question that led the framers to adapt the impeachment process to their new government. In addressing the question of possible Presidential misconduct at the Constitutional Convention, George Mason said: "No point is of more importance than that the right of impeachment should be continued." And in *The Federalist* No. 66, Alexander Hamilton

made clear that the purpose of the impeachment process was to serve as "an essential check in the hands of [the legislature] upon the encroachments of the executive."

In the same passage and in others in *The Federalist*, it is explained that the doctrine of separation of powers is modified by the system of checks and balances. In explaining the "true meaning" of the doctrine of separation of powers, Madison states that "it is not possible to give each department an equal power of self defense. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches . . ." *The Federalist*, No. 51.

Moreover, the doctrine of separation of powers does not mean that in a given instance no branch may have "control" over the acts of another; rather, all that is meant by the doctrine is that at no time may the whole power of one branch be exercised by another entity that possesses the whole power of a second branch. *The Federalist*, No. 47, (Madison).

Hamilton refers to Madison's explanation of the doctrine with approval and adds that in the context of the impeachment process the check on the arbitrary action of the House is the requirement of "concurrence of two-thirds of the Senate." *The Federalist*, No. 66. Thus, it is the Senate—not the President—that is the check on the House's power to impeach and its corollary power to inquire.

The doctrine of separation of powers does not mean that no branch can tell another branch what to do. Separation of powers is not the creation of three sovereign governments, but one government of three branches, each with an assigned role. Each branch within its assigned role may "control" another. Thus, for example, a President may "control" a judicial decision by granting a pardon, or he may "control" a legislative act by vetoing it.

The framers not only foresaw but intended that there exist a tension between branches. But the question in each case must be which branch has been, under the Constitution, assigned the role of checking and which branch has been deprived of its "self defense."

If the power of impeachment is assigned solely to the House and if its fundamental purpose is to check encroachments by the executive, it is clear that the separation of powers doctrine does not grant to the executive an institutional privilege which he may assert against either the power to impeach or the corollary power to inquire. For the framers to have granted such a defense to a President would have been a contradictory, irrational act.

The power of impeachment, as stated above, is the Constitution's paramount power of self-preservation. Thus, it has been recognized through our history by every President, every legislator, and every judge that has ever spoken on the question that the impeachment power was sufficient to require of everyone, including the President, all necessary evidence—recognized, that is, until the exigencies of the present inquiry have forced the incumbent President and his defenders to assert an intitutional privilege against the House's power to inquire. This assertion is not only legally mistaken but, upon analysis, frivolous. Whatever success such an assertion may have appears attributable to the fact that it plays to commonly mistaken notions that no branch can tell another branch what to do—a notion which in the everyday workings of our government is regularly disproved.

The principle that is the subject of this discussion is clear and simple: the Constitution does not give to the House of Representatives, exercising its power to impeach, a power to ask while giving to the President—as President—an equal power to refuse. It is respectfully submitted that our Constitution makes more sense than that. The Constitution does not give to the President a privilege to refuse *by virtue of his office* when his use or abuse of that office is at issue.

When the trustee of the highest office in the land is called upon by the representatives of the people to make an accounting of his performance, his assertion that Presidents need not answer is contemptuous of his trust and of the people who have placed their trust in him.

In talking to my colleagues I am greatly disturbed that the issue in Article III is so misunderstood. All that Article III says is that Richard M. Nixon did not present a "lawful cause or excuse" for failing to comply with subpoenas for evidence critically necessary to an impeachment inquiry. The President's basic answer to the subpoenas was that Presidents do not have to comply with such subpoenas by virtue of the office and that if the power to impeach included within it the power to inquire, then no President ever again would be safe.

All that I ask of my colleagues is to think through the ramifications of the President's position. For me, I do not wish to have a Presidency that is safe from the power of the people's representatives to demand an accounting. And that is precisely what is at stake in Article III.

In discussion with my colleagues I am frequently beset with many hypothetical questions—questions that I have not occurred. I am asked whether the President could assert "national security" or "diplomatic secrecy" or some such excuse against impeachment inquiry subpoenas.

The only answer is that Article III does not treat those questions because the President offered no such excuses. We need not decide those questions at this time. Those special circumstances differ substantially from the excuse offered by this President that President *as such* need not comply. And it is that excuse which Article III holds invalid.

To be complete, I must also note that other excuses were offered by the President, but they appear secondary to his basic assertion. In his letter of June 9, 1974, to Chairman Rodino, the President complained that our requests were "umlimited" and suggested that each branch must be immune from unlimited searches by other branches. That excuse is factually without foundation. The facts set forth in this Report make clear that our subpoenas were modest in scope and thoroughly justified.

Additionally, the President said in that letter that the Committee had "the full story of Watergate." That answer had two defects: first, it was not true; second, even if true, it was no answer to outstanding Committee requests for materials in other areas under investigation, such as ITT, the dairy contributions, and misuse of the Internal Revenue Service. When such materials were later subpoenaed, the President offered *no* excuse for his failure to comply. Presumably, we were to try to fashion one for him.

Finally, the President said that "the Executive must remain the final arbiter of demands on its confidentiality." However, it should be noted that no special circumstances were offered as an excuse. Rather, the President was asserting a flat privilege not to comply based on general operational needs of his office lest "the Presidency itself . . . be fatally compromised." He was asserting, in other words, an executive privilege against the House's power to inquire.

Such a privilege was asserted in *United States* v. *Nixon* against the functions of the judicial branch. The Supreme Court unanimously rejected such a flat privilege as one that would make our government unworkable and would impair the role of the courts. The conclusion applies with even stronger force in an impeachment proceeding against the President, the occurrence of which is so rare and the needs of which relate so fundamentally to the welfare of society itself.

Therefore, the sum, Richard Nixon has not offered any "lawful cause or excuse." His offer of excuses on behalf of future President is untenable when he has, in truth, no valid excuse of his own.

It has been suggested we should interpolate an excuse on his behalf because he may have been reluctant to state it. That excuse is the constitutional privilege against self-incrimination which Richard M. Nixon possesses as private citizen. For purposes of Article III, it is sufficient to answer that he did not offer this excuse. But if he had, the Committee could have granted him "use" immunity and ordered him to produce the subpoenaed materials, and thereafter the House could have impeached him for high crimes or misdemeanors on the basis of the produced material because removal from office is not a criminal sanction.

It should not go without comment that the Constitution grants no such "referee power" to any branch in any of its provisions. The only approximation of such a grant is the "case or controversy" jurisdiction of the judicial branch. And, as the Report demonstrates, the history of that phrase rejects any notion that the doors of the courts are open to resolve constitutional confrontations between the two other branches.

It is also commonly argued that no branch can decide its own role under the Constitution, citing a sentence to that effetc from The Federalist, No. 49. Unfortunately, what is not explained is that the sentence is a paraphrase by Madison of an argument that Thomas Jefferson made on behalf of a provision written for a Virginia constitution which the framers rejected in drafting our Constitution. Jefferson argued that disputes between branches should be referred to the people, assembled in convention. Madison answered that this would be unworkable as a general proposition and that the best that could be done was to establish a system of checks and balances, The Federalist, No. 51 Under such a system, each branch is supreme within its assigned role. It is this truth to which United States v. Nixon is living testament.

So why didn't we go to court to be sure? (1) Because the federal district courts can only exercise jurisdiction granted by Congress and none has been granted to cover such a case. (2) Because both the President and the Committee agreed that such questions were not justiciable. (3) Because the House has the sole power of impeachment, which includes the duty of deciding whether certain facts constitute impeachable conduct. (4) Finally, because these constitutional questions are tried in a court specially set aside by the Constitution for this very purpose. It is the Senate, "the court of impeachment," and it exercises judicial power, as Hamilton made clear in The Federalist, No. 66. And, as is the case in all trials of Presidents, the Chief Justice of the United States presides.

Second, it is argued that the Committee should have initiated contempt proceedings as a precondition to recommending Article III to the House. However, it should be noted that Article III does not charge contempt. Arti

cle II does not charge the President merely with refusal to obey the sub poenas of a Congressional Committee Rather it charges that the President vi olated the doctrine of separation o powers by arrogating to himself the functions of the House in an impeach ment inquiry and thereby attempted t nullify the Constitution's ultimat check on what Hamilton referred to a the 'misconduct of public men." O course, the Committee itself does no charge but only recommends that th House make the charge, just as in a statutory contempt proceeding pur suant to 2 U.S.C. 192. The difference i that in a contempt proceeding initiate by the House the defendant is heard i a district court whereas in an impeach ment proceeding the respondent i heard in the Senate. But in term due process requirements, there is n difference. In neigher case is a sanc tion imposed before the opportunity t be heard. If the House's voting im peachment were viewed as a sanction then all three articles would fal equally. And the House could neve impeach without previously conduct ing its own trial to determine the facts

For those who still press that con tempt proceedings should have bee completed as a precondition to charg ing an impeachable offense, it should be noted that the Supreme Court i *United States* v. *Nixon* only when con fronted with the question of whethe contempt proceedings should hav been initiated against the President a a procedural precondition for deter mining the obligatory character of th subpoenas, said that such a precondi tion would be inappropriate against President since it would force an addi tional constitutional confrontation an delay resolution of the merits of th case. The same is true for us.

I trust that those who contend tha contempt proceedings should hav

See McCLORY, A23, Col. 1

McCLORY, From A22

But it appears that for some of my colleagues laying out an impeachable offense on the basis of undisputed facts and clear law is not enough. For some unstated reasons unknown to me, special preconditions are postulated for Article III which were not applied to any other article.

First, it is argued that the presence of a disagreement over an important constitutional issue between the President and the Committee requires that we test our position in court before impeachment. What is incongruous is that this principle is applied only to Article III. Yet there are important constitutional questions relating to Article I and Article II over which the President and the Committee disagree. For example, do either Article I or Article II comply with due process requirements of fair notice of the charges? Why don't we go to court to find out? Is obstruction of justice an impeachable offense? The President's statement on August 5, 1974, appears to say no. So why don't we go to court to find out? Is misuse of executive agencies an impeachable offense? Since it is not an indictable offense, the President's position is no. So why don't we go to court to find out?

In deciding on *any* article of impeachment, one must determine the facts and whether those facts constitute impeachable conduct. The latter is always a construction of the phrase "treason, bribery, or other high crimes and misdemeanors," always a constitutional question. If all constitutional questions should be sent to a court first, not only Article III but all three of the Articles of impeachment must fall.

It is also suggested that simply because two branches have disagreed over their respective roles, the third branch should be called on to referee. But is this how our government works? If the Congress and the Supreme Court disagree on the constitutionality of a bill, does the President act as referee, or does the Court's view prevail because of its assigned role under the Constitution? If the Congress and the President disagree over whether our armed forces should act or continue to act against some foreign land and Congress cuts off appropriations, does the Supreme Court act as referee, or does the Congressional view prevail because of its assigned role under the Constitution? And when the President and the Supreme Court disagreed on the question of whether the President was obligated to produce subpoenaed material, did Congress act as referee, or did the Court's view prevail because of its assigned role under the Constitution?

In short, the asserted principle does not explain how our government actually work. The worth of this assertion can be analyzed by hypothecating an inquiry into the conduct of a Justice of the Supreme Court or of the entire Supreme Court wherein a "judicial privilege" is asserted against Congressional subpoenas. Would the President be the proper referee in that case? The question answers itself.

been completed as a precondition believe that it is legally possible to hold an incumbent President in contempt. If that is so, it would follow that an incumbent President may be indicted for other crimes as well. In which case, it might be asked why the Committee has not urged that charges against the President be filed by the Special Prosecutor as a precondition to recommending Article I.

Again, it seems peculiar that the doctrine of "failure to exhaust other remedies" should be raised against Article III alone. Moreover, those other remedies are, in fact, unavailable. As that doctrine is applied in courts of law, that fact makes the doctrine inapplicable.

Article III compares favorably with the other articles reported by the Committee. Its underlying facts are undisputed. It is the most specific and least duplicitous of the three articles. It is the only article wherein the President was put on notice before he acted that his conduct could result in impeachment. And as a matter of law, since the charge is that the President, in effect, attempted to nullify the constitutional procedure whereby he is made accountable for his conduct to the people he serves, there can be no higher crime against the people with the possible exception of treason.

Article III is no make-weight article. For posterity, it is the most important article. It preserves for future generations the power to hold their public servants accountable.

When we began this inquiry many months ago, no one would have denied that the House of Representatives had the power to impeach a President. In the absence of our recommendation of Article III, serious doubts about this power would have persisted. Indeed, this impeachment will have been made possible by circumstances extraneous to our inquiry. It was not our subpoena that brought to light the additional evidence on August 5, 1974. The same sadly can be said of much of the substantial evidence which we possess. Our subpoenas still stand unanswered. It was only by the coincidence of an investigation into the conduct of private citizens who formerly worked at the White House that evidence necessary to our inquiry into Presidential conduct fell into our hands. By experiencing that coincidence, have we acquitted ourselves of our responsibility to preserve for our grandchildren a workable government wherein even the highest remain accountable to the people through their representatives? Shall we protect the people's rights and prevent the crippling of the Constitution's essential check against unconstitutional government?

In recommending Article III to the House the Committee has sought to answer these questions in the affirmative.

Individual views of Rep. Edward Hutchinson:

I joined in the minority report of the ten Members of the Judiciary Committee who voted against all articles of impeachment and I subscribe to that report. I set forth here those considerations, persuasive to me, which led me to oppose impeachment of the President in the Committee and the subsequent devevlopments which brought me to a decision that a case for impeachment had been made on one count.

General

Impeachment of a President is a drastic remedy and should be resorted to only in cases where the offenses committed by him are so grave as to make his continuance in office intolerable. Unlike criminal jurisprudence, where the sentencing judge has large discretion as to the punishment to be inflicted, the conviction of an impeached President removes him from office, nothing less. The charges against him should be so serious as to fit removal. The three articles of impeachment, when measured against this standard, fall short in all but a single count in my opinion.

I reject the proposition that the impeachment function of the House is nothing more than the indictment function of a grand jury, and that a Member who votes to impeach is merely sending the case to the Senate merely sending the case to the Senate trial. When the House votes a bill of impeachment, the House has the burden of proving its case. It becomes the prosecutor before the Senate. It represents that it believes the President is guilty of the offenses charged; that it has legally admissible evidence to prove that guilt; and that it believes the President should be removed from office because of those offenses. This is a much greater burden than that of a grand jury which represents only that there is probable cause to believe a particular offense was committed and that the indicted person committed it. The grand jury has no burden to maintain its cause before any court.

In my judgment, a Member who votes to impeach is recommending to the Senate the removal of the President from office, nothing less. In order to warrant such drastic action, the offenses charged should be serious and grievous violations by the President of his Constitutional duties. They should be described in the articles of impeachment with the particularity required in criminal law. The evidence supportive of each overt act charged should be proof of guilt beyond a reasonable doubt. The lowliest person in the land, charged with wrong-doing is accorded no less.

If the strict standards of criminal jurisprudence are not required in cases of Presidential impeachment, the issue falls away from the high plane of law and becomes political. In a divided government, with the Congress in control by one political party and the President of another, impeachment becomes a threatening political tool, if one group of politicians can decide over another what is an abuse of power.

In weighing the evidence, if an inference or conclusion unfavorable to him, I believe the President should be given the benefit of the doubt.

In my judgment, not any of the

By David Suter for The Washington Post

three articles of impeachment are drawn with the particularity which is required to give the House information of the precise offenses charged and the overt acts claimed to be supportive of them; nor to give the President the notice which constitutional process accorded him, had he chosen to defend against those charges in the Senate.

ARTICLE I

The first article charges the President with conspiracy to obstruct justice: in the words of the article, that the President "engaged personally and through his close subordinates and agents in a course of conduct or plan designed to delay, impede and obstruct the investigation of (the Watergate break-in); to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful covert activities."

Until the August 5th release of conversations held between the President and Mr. Haldeman on June 23, 1972, there was no direct evidence of complicity by the President in the cover-up. The President said he knew nothing about any cover-up until his conversations with John Dean in mid-March, 1973; there was no direct evidence to the contrary and he was entitled to the benefit of the doubt.

It is now evident that the President knew as early as June 23, 1972, six days following the Watergate break-in, of a plan to obstruct the FBI investigation into that event, and that he authorized the plan. Here are the words spoken:

> Haldeman. Now, on the investigation, you know the Democratic break-in thing, we're back in the problem area because the FBI is not under control, because Gray doesn't exactly know how to control it and they have—their investigation is now leading into some productive areas—because they've been able to trace the money—not through the money itself—but through the bank sources—the banker. And it goes in some direc-

By David Suter for The Washington Post

tions we don't want it to go. Also there have been some things—like an informant came in off the street to the FBI in Miami who was a photographer or has a friend who is a photographer who developed some films through this guy Barker and the films had pictures of Democratic National Committee letter head documents and things. So it's things like that that are filtering in. Mitchell came up with yesterday, and John Dean analysed very carefully last night and concludes, concurs now with Mitchell's recommendation that the only way to solve this, and we're set up beautifully to do it . . . is for us to have Walters call Pat Gray and just say, "Stay to hell out of this—this is business we don't want you to go any further on it." That's not an unusual development, and that would take care of it.

President. What about Pat Gray —you mean Pat Gray doesn't want to?

Haldeman. Pat does want to. He doesn't know how to, and he doesn't have any basis for doing it. Given this, he will have the basis. He'll call Mark Felt in and the two of them—and Mark Felt wants to cooperate because he's ambitious —he'll call him in and say, "We've got the signal from across the river to put the hold on this" and that will fit rather well because the FBI agents who are working on the case, at this point feel that's what it is.

President. This is CIA? They've traced the money? Who'd they trace it to?

Haldeman. Well, they've traced it to a name, but they haven't gotten to the guy yet.

President. Would it be somebody here?

Haldeman. Ken Dahlberg.

President. Who the hell is Ken Dahlberg?

Haldeman. He gave $25,000 in Minnesota and the check went directly to this guy Barker.

President. It isn't from the Committee though, from Stans?

Haldeman. Yeah, it is. It's directly traceable and there's some more through some Texan people that went to the Mexican bank—which can be traced to the Mexican bank—they'll get their names today.

President. Well, I mean, there's no way—I'm just thinking if they don't cooperate what do they say? That they were aproached by the Cubans. That's what Dahlberg has to say, the Texans too, that they—

Haldeman. Well, if they will. But then we're relying on more and more people all the time. That's the problem and they'll stop it if we take this other route.

President. All right.

Haldeman. And you seem to think the thing to do is to get them to stop?

President. Right. Fine.

The Watergate burglary occurred in the early hours of Saturday, June 17, 1972. The Committee to re-elect the President was already organized and functioning. By the time the pieces of the Watergate event were put together the Democrats had nominated their candidates. If in July President Nixon had disclosed the excesses of the Committee to Re-elect and denounced their foolhardy and illegal performance, that's all there ever would have been to Watergate. Those who broke the law would have been punished in the Courts.

Even the evidence set forth above would not have greatly disturbed the Congress or the country had it been disclosed in the spring of 1973. The damage was done by the apparent policy of the President to withhold until he finally was forced to yield information which because of the timing of disclosure put him in the worst possible light.

But without the evidence of the June 23, 1972, conversation I was prepared to defend the President against the charge of obstructing justice on the basis that he had no knowledge of it until March 1973. At that time he moved to purge his administration of those involved in the conspiracy and had accomplished that by April 30. Until the disclosures of August 5, 1974, which set forth the June 23, 1972, conversations, proponents for impeachment pinned their case for complicity of the President in the cover-up largly on eight taped conversations between the President and John Dean et al, running from September 15, 1972, to April 16, 1973. The Committee published these conversations in a separate volume entitled *Transcripts of Eight Recorded Presidential Conservations.*

If one assumed that the President had knowledge of the conspiracy and was directing it, these conversations are damaging indeed to his claim of innocence. But if one assumed he didn't know, as he said he didn't, these conversations are filled with statements of supportive of his cause. And without the evidence on the June 23, 1972, conversations I felt justified in making the assumption that he didn't know, giving him the benefit of doubt.

Through all of these conversations, the President's position was that there should be no withholding from a grand jury. He urged everyone in his administration who was implicated to testify freely and truthfully. He waived the doctrine of Executive privilege and even the attorney-client relation, before a grand jury.

In fact, it is clear that when the implications of the whole mess were laid out to him on March 21, 1973, he proposed that it all be presented to a grand jury. This would not be the position of a man engaged in a plan to obstruct justice. That he was dissuaded from that immediate course by his advisors, who were so engaged would not make him part of the conspiracy himself.

The President's position regarding the Senate Watergate Committee was different. He viewed that legislative investigating committee for what it was, a political attack against him and his administration. Resistance to the demands of the Senate committee was not an obstruction of justice, since that committee was no part of the system of justice. Its legitimate function was to inquire into the need for changes in statute law. The timing of its investigation, publicly exposing the scandal at the same time the grand jury was inquiring under the strictures of secrecy, probably delayed the work of the grand jury, and in the opinion of many people, constituted a political

intrusion into an arena which should have been left to law enforcement agencies and he courts. The President may have viewed the Senate committee as a political move to embarass him and his administration, and he reacted to it politically. Certainly his initial assertion of executive privilege, and his discussions with his aides as to how to deal with the Senate committee are not relevant to an obstruction of justice charge. Such discussions were had with a view to public relations and political response, not at all with a view to law enforcement and the administration of justice. Those conversations should be considered in that light.

The taped conversations clearly exhibit the President's instructions to his subordinates to talk freely with the prosecutors and to tell the truth, and to appear willingly before the grand jury.

In the face of his personal policy of cooperation with law enforcement agencies, and his expressions to his subordinates that they do likewise, why did the President resist delivery of taped conversations to the Special Prosecutor, even until the Surpeme Court directed his compliance? Drawing an inference in the President's favor, perhaps he did not think of a taped conversation as essential evidence of that conversation, since the parties to them were available as witnesses. At the time of the conversaitons, most of the parties to them were unaware they were being recorded and they might not have spoken exactly as they did had they been so aware. Perhaps the President was concerned about the possible constitutional rights of those participants. Obviously, the taping system was not installed for evidentiary purposes, but for historical purposes, to enable the President to refresh his memory in writing his memoirs. Since the witnesses were available for questioning, the President did not think of the tapes as evidence; he thought of them as his personal papers. And since he never thought of himself as a party in any wrong-doing, his personal papers, in his view, were not properly to be brought into question.

But even more importantly, the President felt that he was constitutionally bound to defend the doctrine of executive privilege, a doctrine as old as the Presidency itself. All of his predecessors had stubbornly defended their office against the intrusion of either the Congress or the Courts. The doctrine of executive privilege runs back to the administration of George Washington. It is based on the principle of the separation of powers between three co-equal branches of government; legislative, executive, and judicial. Just as this House asserts its privileges and will not answer the subpoena of any court without its consent, and would tolerate no order of any President directing any action by the House, so the President asserts the privileges of his office under the same constitutional right.

His reluctance in surrendering tapes must be viewed as an assertion by the President of constitutional privileges as against the other co-equal branches of government. It is based upon a claim of constitutional duty to preserve the character of his office in a struggle to keep that office co-equal. It cannot fairly be evidentiary of any attempt to obstruct justice, and no inferences of wrong-doing by the President can properly be drawn from that reluctance.

The conversation in the morning of March 21, 1973, must be commented upon under this article of impeachment. at that time Dean revealed to the President the full extent of the mess his subordinates had gotten themselves into. They had even stooped to yielding to Hunt's blackmail. During that conversation, the President fell into his practice of examining all of the options. The majority staff of the impeachment inquiry apparently concluded that the President came to two resolutions: That in the long run Hunt's demands were wrong and intolerable, but that Hunt's immediate demand for $120,000 must be met. The grand jury named the President an unindicted co-conspirator on the theory that following this conversation Haldeman called Mitchell at the President's suggestion, that Mitchell called LaRue, and that LaRue caused $75,000 to be delivered to Hunt's lawyer, Bittman, before that day was out.

But Dean says he talked with LaRue on that morning before he saw the President and LaRue corroborates this. Their conversation was that LaRue told Dean of Hunt's demands and that Dean said he was out of the money business. When LaRue asked what to do, Dean suggested that LaRue might call Mitchell. LaRue did call Mitchell in New York but told Mitchell only about the $75,000 Hunt needed for lawyer's fees, not about an additional $60,000 Hunt was demanding for family support during his incarceration. Mitchell apparently said that if it were for attoney's fees, he would probably pay it if he were LaRue, and LaRue did so.

The President had no input into the matter, and knew nothing about the payment until mid-April. So the hush money charge against the President has been demolished by the facts and the testimony of Mitchell and LaRue before the Committee.

There remains the question whether the evidence making the President part of a conspiracy to obstruct justice rises to the magnitude of an impeachable offense. In my opinion, standing by itself, it probably would not have provoked the House to exercise its impeachment powers. The timing of the disclosure, which for the first time tied the President to the conspiracy, was his undoing. Those who had been defending the President were left without a defense and without time to build a new defense. Under the circumstances impeachment became a certainty and resignation the only viable alternative.

Article II

This article accuses the President of abusing the powers of his office, in that he "has repeatedly engaged in conduct violating the constitutional rights of citizens, impairing the due and proper administration of justice and the conduct of lawful inquiries, or contravening the laws governing agencies in the Executive branch." During the inquiry this area was called agency practices. It was apparent that Watergate and its aftermath had been the events which provoked the inquiry, especially the dismissal of Special Prosecutor Archibald Cox by the Acting Attorney General at the orders of the President, and the searching for occasional excesses in the attempt to exercise power by the White House over the agencies of government was at the outset a mere adjunct. Yet, this article gained the largest affirmative vote of the three articles reported by the Judiciary Committee. In my opinion, Article II is as weak a basis for removing a President from office as is Article III.

Article II is a catch-all. Culling from tens of thousands of transactions between the White House and the agencies of the Executive branch a few isolated instances of conceived pressure described as abuses of power, and with no evidence of the President's personal involvement, the proponents allege repeated engagement, that is time after time, by the White House in such a course of action.

Would you remove a President from office because one of his subordinates asked for some income tax audits, which requests were denied out of hand by the Commissioner of Internal Revenue whom the President had appointed? Would you remove a President because on a single occasion another of his subordinates did succeed in obtaining income tax information on a political candidate's brother, which information was leaked to a newspaper columnist? Would you remove a President because some wiretaps were installed in the name of national security, at a time when such installations were clearly legal, and there were serious leaks in the confidentiality of negotiations with foreign nations?

Article II next charges that the President should be removed from office because the so-called plumbers unit was set up in the White House. How many times have modern Presidents set up operating units within the White House? If Congress thinks they ought not to do so, then Congress should forbid it by law, not impeach a President who does so with a great number of precedents behind him. But perhaps the evil here is not the creation of the unit, but rather the secret creation of an investigative unit. Was not the CIA secretly organized by another administration? And even today can a Member of Congress find out what that agency is doing or how it is funded, or what its budget is? A Member cannot. There is no evidence the President ever armed the plumbers with any pretended power to operate outside the law, and if the plumbers did that on one or more occasions, those guilty of breaking the laws should be held accountable, as they are, and not the President.

In considering this abuse of power article, whether it be the IRS, the FBI, the CIA or the Justice Department or any other agency of the government which might have been asked by the subordinates of the President for special action in the name of the President, the House should be reminded of

See HUTCHINSON, A24, Col. 1

HUTCHINSON, From A23

what has gone on in other administrations. The House is entitled to a standard by which to measure this administration. In the absence of proof, I believe the public generally believes that most administrations have been about alike, and that this one is no different. If the inquiry had researched prior administrations it is a fair assumption such research would have turned upon several so-called abuses of power, perhaps as many on the average as are now alleged. That is why, in my judgment, it is manifestly unfair to attack the present President for these things.

Early in this impeachment inquiry the minority requested that a qualified individual be employed to undertake the research of how prior administrations dealt with agencies of government. But we were denied our request. We are thus without a standard of past performance to measure this one, and the abuse of power charge is therefore not fairly sustainable.

The proponents for impeachment rely on the conversation of September 15, 1972, to connect the President with the use of some agencies for political purposes. It must be remembered that the September 15 conversation was the mere talk, without action, of partisans in a political campaign. How many times in their experience have not Members talked to their campaign directors about the opposition? There is absolutely no evidence that anything ever came of any of the mere talk at that September 15 meeting.

Paragraph (4) of Article II alleges that the President has "failed to take care that the laws were faithfully executed" because of the unlawful activity carried on by his close subordinates, when he "had reason to know" of such

activities.

The President's duty to take care that the laws be faithfully executed does not impose a liability upon him for the misdeeds of others, but to discharge them. Unquestionably, when serious charges were brought to his attention, he should be permitted a reasonable time in which to satisfy himself of the probability of the truth of them, and in this case the period of examination ran for about six weeks, during which he worked with the Criminal Division of the Department of Justice, and delayed the discharge of Dean at the request of the chief of the Criminal Division. This cannot be fairly said to amount to failure of his constitutional duty.

Article III

The idea that a President should be removed from office because he does not comply with a subpoena of a committee of the House, even if the precedent be limited to impeachment cases, is frightening. The committee issues its subpoena under the constitutional power of the House to impeach. The President refuses to comply with a subpoena because the constitutional separation of powers demands of him that he maintain the office of President as a co-equal with the House; that to yield to its mandate would make the office of President subservient to the House. How can the House determine that the President should be removed from office, when his failure to comply is based on a constitutional principle as strong as the one on which the House relies?

I opposed issuance of subpoenas by the Committee to the President because such subpoenas would be unenforceable; and because I do not believe the House can order presidential action any more than the President can order the House. The President and the House are co-equal in our system. Neither is above or below the other.

I think Article III does not state an impeachable offense.

Conclusion

History will deal more kindly with Richard Nixon than did his contemporaries. As the Watergate affair moves into the past it may be seen for what a little thing a President was forced to resign from office when compared with the accomplishments of his administration. A legal case of obstruction of justice was made against him. But instructions by other Presidents have undoubtedly altered the course of other investigations without controversy. The abuses of power charged against the President were probably no greater than have occurred in some other administrations. What to one man seems an abuse of power appears to another to be strong executive discretion. The President should not have been impeached under Article II. And I believe the House would have rejected Article III.

Additional views of Rep. Thomas F. Railsback, joined by Rep. Henry P. Smith III, Charles W. Sandman Jr., David W. Dennis, Wiley Mayne, M. Caldwell Butler, Harold V. Froelich, Carlos J. Moorhead, Joseph J. Maraziti and Delbert R. Latta:

Refusal to fully comply with a Congressional subpoena in and of itself without further action on the part of the Congress is not a ground upon which an impeachment can be based. The House has neither exhausted available remedies on this issue nor can the House in this instance be the ultimate judge of the scope of its own power.

Presently, Congress has two methods of enforcing compliance with its subpoenas. First, is its inherent common law authority and second, is its statutory authority under Title 2, United States Code 192-94. Both methods are forms of criminal contempt. Under its common law power, the House may conduct its own trial for contempt of Congress. By a majority vote, the House may find a person in contempt of Congress. A person adjudged in contempt under this procedure may, under an order of the House, be subjected to one of the three enforcement procedures:

(1) containment in close custody by the Sergeant-At-Arms;

(2) commitment to a common jail in the District of Columbia; or

(3) commitment by the Sergeant-at-Arms to the guardroom of the Capitol Police.

Confinement under the common law procedure cannot extend beyond a particular Congress In recent times the Congress has not chosen to utilize its common law power but has turned to its statutory provisions contained in Title 2, United State Code 192.

Under Title 2, United States Code 194, when a witness refuses to comply with an order of a Committee that fact is reported to the House of Representatives and if the House agrees by a majority vote the Speaker is required to certify to a U.S. Attorney the question of contempt. The U.S Attorney will present the matter to a grand jury. If the grand juty should return an indictment, then there would have to be a regular criminal trial before a judge and jury. If the individual subpoenaed should be found guilty of the misdemeanor, it is mandatory under 2 United States Code 192 that the defendant be punished by a fine of not more than $1,000 nor less than $100 and that the defendant be imprisoned in a common jail for not more than 12 months nor less than one month.

A third method available to the Congress for enforcing compliance with its subpoenas would be through legislation. On November 9, 1973, the Other Body passed by unanimous consent S.2641, conferring jurisdiction upon the District Court of the U.S. for the District of Columbia of civil actions brought by the Senate Select Committee to enforce or secure a declaration concerning the validity of any subpoena or order issued by it. Prior to its enactment, on October 17, 1973, an action of the Senate Select Committee to enforce its subpoenas requesting certain tape recordings which were in the possession of the President was dismissed by the U.S. District Court for the District of Columbia because the court found that there was no jurisdictional statute upon which the action could be based. Judge John J. Sirica stated in his opinion,

only Congress can grant but which Congress has heretofore withheld. (Senate Select Committee v. Nixon, 366 Fed Supp. 51)

On November 13, Senator Ervin sent a letter to Chairman Rodino requesting that S. 2641 be expedited by the House Judiciary Committee. In less than three weeks following Senator Ervin's letter the House enacted S. 2641. This Act became law December 18, 1973, without the President's signature (P. Law 93-190).

The Senate Select Committee investigating "Watergate" chose not to attempt an adjudication of the matter by resort to a contempt proceeding under Title 2, United States Code, 192, or via congressional commonlaw powers which permit the Sergeant-at-Arms to forcibly secure attendance of the offending party. Either method, the Select Committee stated, "would be inappropriate and unseemly" when the offending party is the President.

Pending before the House Judiciary Committee is a bill similar to S. 2641, H.R. 13708. The purpose of H.R. 13708 is to confer upon the U.S. District Court for the District of Columbia jurisdiction over civil actions brought by the House Judiciary Committee to enforce any subpoena or order issued by it for the production of information relevant to the Committee's constitutional inquiry. Under this legislation the House Judiciary Committee would have authority to prosecute such civil actions to enforce or secure a declaration concerning the validity of such subpoenas. The Committee may be represented by such attorneys as it may designate in any action brought under the bill. H.R. 13708 also contains a provision that would expedite such civil proceedings through the courts.

Irving Younger in a study of separation of powers stated that:

> We should not forget that the Supreme Court has decided disputes between Congress and the President under its general power to hold the other two departments within the ambit of the Constitution. (20 U. Pitt. L. Rev. 755, 777 N. 100, 1959; Raoul Berger, "Executive Privilege" Harvard Univ. Press, 1974, p. 332).

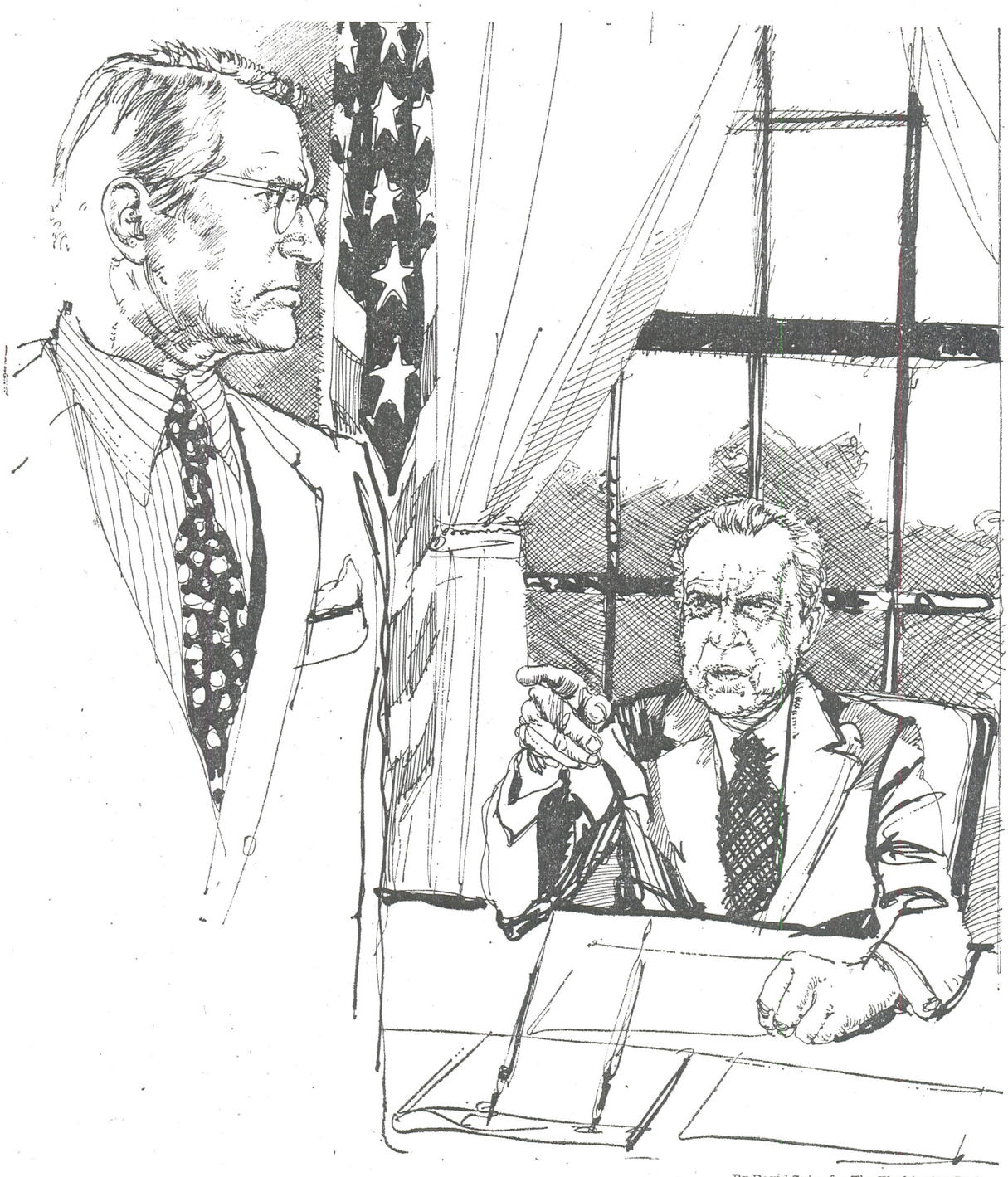
Alexander M. Bickel, an eminent constitutional lawyer, also supported the Committee's use of the Courts to enforce its subpoenas. In his article that appeared in The New Republic, June 8, 1974, pp. 11-14, Mr. Bickel wrote that:

> **IT ¼ There is no way open to Congress other than a lawsuit of actually getting its hands on the evidence it wants. . . . To be sure if it does not go to Court, and does not run the risk of a court's refusal to enforce a subpoena, the House might cite the President for contempt and base a separate Article of impeachment on his refusal to honor the subpoena. But these are gestures. The contempt citation by itself is pure gesture. An additional Article of impeachment based on it is a makeweight. It is difficult to imagine that the House would vote it without also approving other Articles, or that the Senate would convict on it without convicting other Articles. So what is gained?**

The Supreme Court proceeds from the premise that it is the "ultimate interpreter of the Constitution" vested with the responsibility to decide "whether the action of another branch . . exceeds whatever authority has been committed." (United States v. Nixon, decided July 24, 1974, Slip Opinion Page 18: Powell v. McCormack, 395 U.S. 486 at 521). In Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803), the Court stated that "It is emphatically the province and duty of the judicial department to say what the law is."

Whether the Congress has an absolute right to demand information or the President the absolute discretion to refuse such information is plainly not stated in the Constitution. Essentially this is a dispute about the scope of intersection powers. "One branch cannot finally decide the reach of its own power when the result is to curtail that claimed by another. Neither of the two departments, said Madison in Federalist No. 49, 'can pretend to an exclusive or superior right of settling the boundaries between their respective powers. Some arbiter, said Justice Jackson, is almost indispensable when power is . . . balanced between branches, as the legislative and executive . . . Each unit cannot be left to judge the limits of its own power . . ." (Raoul Berger, "Executive Privilege" Harvard Univ. Press, (1974) PP. 330-31).

In late May, 1974, the Judiciary Committee by a vote of 32-6 chose not to seek the assistance of the courts in enforcing compliance with its subpoenas. The Committee also chose not to utilize its common law power or its contempt of Congress power under Title 2, United States Code 19294. The President does have certain inherent constitutional rights and privileges. What the President's true motives are in



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withholding information only history may know but this President or any President should not be impeached for acts based on his assertion of certain constitutional rights. The Supreme Court is the ultimate judge of the boundaries of conflicting constitutional powers, not the Congress.

The enactment of Article III would seriously weaken the Presidency. Such enactment would be dangerous, and a pure exercise of raw legislative power. Article III should be rejected by the House of Representatives.

Additional and separate views of Rep. Wiley Mayne:

Additional and separate views of Rep. Wiley Mayne:

I join in the minority views of my colleagues insofar as Articles I and II are concerned. I do not join the minority views as to Article II because I believe the admisions made by the President on August 5 1974, when added to the evidence previously submitted to the Committee, make a case for impeachment under Paragraphs 1, 4 and 5 of that Article.

ARTICLE I

I supoprt the result reached by my colleagues in the minority views discussion of Article I but wish to add the following additional views:

I voted against Article I on July 27, 1974, after carefully considering such

evidence as was available to the Committee at that time. It was my conscientious best judgment that no direct evidence had been presented to prove the President was personnally involved in the Watergate cover-up or any obstruction of justice in connection with it. I was particularly impressed by the testimony of witnesses who appeared to testify before our Committee in person on this subject. Some stated their strong conviction that the President was in no way involved in the cover-up. Others expressed a complete lack of any information connecting him to it although they were in a position to know if he had been implicated. Only John Dean indicated an impression that the President had any knowledge of the cover-up prior to March 21, 1973. I did not feel his testimony and the inferences drawn from purely circumstantial evidence constituted the clear and convincing proof necessary to link the President personally to a high crime or misdeameanor sufficient to impeach under constitutional standards.

The state of the evidence changed completely on August 5, 1974, when the President made his statement admitting he knew at least as early as June 23, 1972, that the break-in was directed by employees of his re-election committee for political purposes. He not only withheld this important relevant information from the American people and the investigating authorities but obstructed the investigation by having his subordinates tell the FBI it should stop the investigation because it was exposing important undercover operations of the CIA.

The President also admitted on August 5 that he had continued to conceal these important facts and to deceive and mislead the American people and our Committee right up until that date when he made the transcripts of three conversations with H. R. Haldeman on June 23, 1972, available to the public and the Committee. These transcripts and the presidential admissions contained in his two-page statement of August 5 supply the direct evidence of personal involvement of the President in the cover-up which had previously been lacking. They furnish clear and convincing evidence that the President committed an obstruction of justice sufficient to constitute grounds for impeachment under the Constitution. I would, therefore, vote in the full House to impeach on Article I.

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Article II

I file views separate from those of my minority colleagues for the following reasons:

1. I would vote in the House to impeach under Article II because I believe a case for impeachment has now been made under Paragraphs 1, 4 and 5 of that Article.

2 The minority views do not give sufficient treatment to the evidence in support of the grave allegations of Paragraph 1, Article II that the President tried to obtain income tax audits or other income tax investigations to be initiated or conducted in a discriminatory manner, i.e. to harass political opponents. During the debate I voted against an amendment to this Paragraph offered by the gentleman from California Mr. Wiggins which in my opinion would have seriously diluted the President's responsibility to prevent the improper use of the Internal Revenue Service for political purposes. The amendment would have stricken the words "acting personally and through his subordinates and agents" and added the following words "personally and through his subordinates and agents *acting with his knowledge or pursuant to his instructions.*" (Italics added) page 819, Report of Proceedings.

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

"I think that not only does the President have a responsibility not 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 does not occur. There is nothing in this record which to me is more disappointing or more cause for concern for the continuation of free government than the way in which the Internal Revenue Service was attempted to be used for this base purpose."

The minority views fail to give sufficient attention to the following significant evidence:

(a) The affidavit of former IRS Commissioner Johnnie Walters that on September 11, 1972, John W. Dean gave him a list of persons on the 1972 Presidential campaign staff of George McGovern and of contributors to that

campaign and requested that IRS undertake examinations or investigations of those on the list. Mr. Walters replied this would be disastrous for the IRS and the Administration and he would recommend to Secretary of the Treasury Shultz that nothing be done on the request. On September 25, 1972, Mr Dean telephoned Mr. Walters inquiring "as to what progress I had made with the list. I told him that no progress had been made. He asked if it might be possible to develop information on fifty-sixty-seventy of the names. I again told him, that although I would reconsider the matter with Secretary Shultz, any activity of this type would be inviting disaster." Mr. Walters' affidavit states that he discussed these requests with Secretary Shultz on September 13 and September 29 and on both occasions was told to do nothing with the list. At no time did he furnish any name from the list to anyone or request any IRS employee or official to take any action with respect to the list. ("Statement of Information," Book VIII, 238-240)

(b) The conversation between the President and Haldeman on September 15, 1972, four days after Dean had delivered the list to Walters, Dean's activities were discussed by the President and Haldeman in the following recorded conversation:

Haldeman. Between times, he's doing he's moving ruthlessly on the investigation of McGovern people, Kennedy stuff, and all that too. I just don't know how much progress he's making, 'cause I—

President. The problem is that's kind of hard to find.

Haldeman. Chuck, Chuck has gone through, you know, has worked on the list, and Dean's working the, the thing through IRS and, uh, in some cases, I think, some other (unintelligible) things. (HJCT 1).

(c) The following testimony by Dean describing his taking the list of McGovern contributors drawn by Murray Chotiner to Walters and discussing it subsequently with the President:

Mr. Doar. What was the purpose of that meeting?

Mr. Dean. I had then received the Chotiner list, and my assignment was to ask Mr. Walters if it was possible to have audits conducted on all or any of these people.

Mr. Doar. Did you discuss your assignment with respect to the IRS with the President during your meeting on September 15?

Mr. Dean. I am not sure how directly or specifically it came up, but there was a, indeed, a rather extended discussion with the President on the use of IRS. He made some rather specific comments to me, which in turn resulted in me going back to Mr. Walters again.

Mr. Doar. When you say the use of IRS, what are you talking about?

Mr. Dean. Well, as I recall the conversation, we were talking about the problems of having IRS conduct audits, and I told him that we hadn't been very successful at this because Mr Walters had told me that he just didn't want to do it. I did—I did not push him. As far as I was concerned I was off the hook. I had done what I had been asked, and I related this to the President.

And he said something to the effect, well, if Shultz thinks he's been put over there to be some sort of (expletive), he is mistaken, and if you have got any problems, you just come tell me, and I will get it straightened out. (HJCT 229)

Mr. St. Clair. Well, on September 15, 1972, you did meet with the President?

Mr. Dean. Yes, I did.

Mr. St. Clair. And you say that during the course of that conversation, among other things, you discussed a list being prepared for submission to the IRS?

Mr. Dean. I am not sure we got into the so-called list of 500 at that time. It may well have come up. I recall general discussions by IRS and the fact that the President—telling the President that I had been less than successful in dealing with IRS and the President became quite annoyed at it. And then that he got very explicit about his thinking about IRS being responsive to the White House. (Dean testimony, 2HJC 285).

The above affidavil and testimony clearly established that Dean and Haldeman were guilty of trying to use the IRS for illegal purposes and gave rise to strong inferences that the President was personally involved. In weighing whether a sufficient case had been made against the President under Article II, I had to consider the fact that Paragraph 1 alleging abuse of the Internal Revenue Service had unfortunately been lumped together with 4 other Paragraphs, which had little if any connection with each other and were supported by less proof than Paragraph 1. Paragraph 3 relative to a special investigative unit set up in the White House to identify and plug national security leaks struck me as especially weak. I could not accept the argument based on inferences alone that a President who had been advised by his closest foreign policy and national defense advisers that it was necessary to take decisive action to stop leaks which were threatening the security of the United States, could be subject to impeachment for taking such action, even though he did not implement it in the best way and it would have been much wiser to rely on the FBI which is the established agency responsible for National Security investigations. My argument in opposition to Paragraph 3 appears at pages 1016-1018 of the Report of Proceedings.

Faced with the choice of voting for a 5 paragraph Article in which there did not seem to me to be clear and convincing evidence sufficient to impeach on 4 of the 5 Paragraphs. I voted against Article II on July 29.

Thereafter the President's admissions of August 5 made available direct evidence sufficient to make a case for impeachment on Paragraphs 4 and 5. It is now clear that he did indeed fail to take care that the laws were faithfully executed and failed to exercise his authority to adequately supervise his close subordinates when he should have done so to prevent their obstructing and interfering with investigations into criminal or improper actions as stated in Paragraph 4.

When the presidential admissions of August 5, 1974, are viewed against the background of the evidence already considered by the Committee with reference to Paragraph 5, I must conclude that the President did in fact misuse his executive power in the manner in which he interfered with the Federal Bureau of Investigation, the Criminal Division of the Department of Justice and the Central Intelligence Agency.

His admissions of August 5 also further strengthen the evidence that he violated the constitutional rights of citizens as alleged in Paragraph 1 related to abuse of the Internal Revenue Service.

Three of the 5 Paragraphs of Article II having now been proved by clear and convincing evidence I would vote to impeach on this Article in the full House.

Article III

I join in and support the minority views of my colleagues on Article III. No case for impeachment has been made on this Article.