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CIVIL LIBERTIES



Wide World

Richard M. Nixon

**Always remember
others may hate you
but those who hate you
don't win unless
you hate them.
And then
you destroy yourself.**

**—Farewell speech
August 9, 1974**

WATERGATE AND IMPEACHMENT



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

Wide World

"Therefore I shall resign the presidency," Richard M. Nixon told the nation on Thursday, and the next day, August 9, 1974, after an emotional farewell speech to his staff, he paused at the ramp for the familiar wave one last time and then flew off to exile in San Clemente.

The certainty of impeachment by the House and conviction in the Senate had forced Nixon to finally bring to a close his reign of power. His departure, however, did not automatically signal an end to Watergate, or even impeachment.

"Mr. Nixon's resignation from the presidency leaves unresolved grave constitutional and civil liberties questions," stated Edward J. Ennis, ACLU chairman, on the day Nixon left. Ennis cited the impeachment of a former

secretary of war in 1876 as precedent for continuing the process.

"Accordingly, the ACLU urges the House of Representatives to consider and vote approval of the recommended grounds of impeachment so that there will remain no question whatever that Mr. Nixon's departure from the presidency was constitutionally justified."

How the ACLU has acted so far in the momentous affairs of Watergate and impeachment is recorded in the chronology that follows, and in Arlie Schardt's commentary on page 2. The chronology shows a concern both for the rights of individuals caught in the web of Watergate and for the rights of the American people which were violated by all that Watergate now stands for.

An ACLU Chronology

January 4, 1973—ACLU attorneys, acting on behalf of persons whose telephone conversations were illegally overheard on wiretaps at the Watergate headquarters of the Democratic National Committee, ask Judge John J. Sirica to block any disclosure of the contents of those conversations in the course of the trial of *United States v. George Gordon Liddy*. The motion is opposed by the United States attorney who argues that the conversations should be introduced into evidence in order to show the motives of the wiretappers. Previously the U.S. attorney had contended that the wiretappers were engaged in a black-mail scheme.

January 5, 1973—Judge Sirica denies the ACLU motion and rules that the illegally overheard conversations may be introduced into evidence.

January 11, 1973—ACLU attorneys appeal Judge Sirica's ruling to the United States Court of Appeals for the District of Columbia.

January 12, 1973—The U.S. court of appeals upholds the ACLU's contention that the illegally overheard conversations should not be publicly disclosed, allows ACLU attorneys to participate in the trial to protect the privacy of the conversations, and overrules Judge Sirica.

January 17, 1973—In the course of the examination of Alfred Baldwin by the U.S. attorney during the trial, Baldwin is asked about information learned from the illegal wiretaps. After an objection by ACLU Washington Office director Charles Morgan, acting for the persons overheard on the wiretaps, an *in camera* hearing is held.

January 18, 1973—Judge Sirica rules that the information provided at the *in camera* hearing is "potentially highly probative on the issue of motive." Therefore, Sirica rules, "the Court will submit the evidence of the content of the intercepted communications as proffered by the Government."

January 19, 1973—The ACLU again appeals Judge Sirica's decision to the U.S. court of appeals. And again, the court of appeals upholds the ACLU and reverses Judge Sirica: "Proof of the contents of intercepted telephone conversations is not required to prove the charges for which the defendants are on trial. Disclosure of such contents would frustrate the purpose of Congress in making wiretapping a crime." Thereafter, Judge Sirica sustains objections to the introduction of such evidence.

March 6, 1973—ACLU contends that the FBI's Watergate files which relate to persons other than L. Patrick Gray, III, should not be provided to the Senate during the Judiciary Committee's hearings on the confirmation of Gray as FBI director. The Nixon Administration refers to and adopts the ACLU's position.

May 11, 1973—ACLU issues statement regarding Senate Watergate Committee's adoption of rules which deny a witness his lawyer or the subject of investigation, the right to cross-examine witnesses, confront his accusers, or to compel the presentation of other witnesses and evidence. The statement also rebuts criticism of the press role in investigating Watergate. According to the statement, "When government officials pillory citizens because of their political beliefs, that is

McCarthyism. When citizens, including the press—especially the press—unearth and publish information critical of government officers, that is a duty to the nation and its citizens.”

May 24, 1973—Senate Watergate Committee adopts ACLU's position that the illegally overheard conversations cannot be introduced into evidence.

June 14, 1973—The ACLU files suit against Henry Kissinger, John Mitchell, H.R. Haldeman, John D. Ehrlichman and Alexander Haig on behalf of Dr. Morton Halperin, a former member of the National Security Council staff. It is the first suit to challenge what Richard Nixon termed in his May 22, 1973 statement, “a special program of wiretaps initiated in mid-1969 and terminated in February 1971...I authorized this entire program.”

June 18, 1973—ACLU for itself and the Watergate wiretap victims files a “Report to the Special Prosecutor” urging his selection of a staff of independent non-Justice Department personnel. Special Prosecutor Cox follows this course.

June 21, 1973—ACLU files friend of court motion in *United States v. George Gordon Liddy* seeking to set aside the convictions on due process grounds alleging that the five guilty pleas had been purchased and the two convictions obtained by use of perjured testimony. James W. McCord joins in the motion.

July 6, 1973—Judge Sirica denies ACLU the right to participate as friend of court in *United States v. George Gordon Liddy*.

July 11, 1973—ACLU issues a comprehensive public statement on “Watergate and Civil Liberties.” In question and answer format, the statement sets forth the ACLU's views on: the claim that the Watergate events were justified by considerations of national security; executive privilege; the responsibilities of government officials who say they did not know what their subordinates were doing and the responsibilities of subordinates who were following orders; the claim that the Watergate events are analogous to civil disobedience; the sentencing procedures followed by Judge Sirica; the charge of “McCarthyism by the press;” the 1970 “Huston plan;” the propriety of the Senate Watergate investigation; prejudicial publicity; whether the work of the special prosecutor should take precedence over the Senate investigation; the use of grants of immunity to compel testimony; the procedures followed by the Senate Watergate Committee.

July 31, 1973—Federal Judge James McMillan, acting in a suit brought by

the ACLU of North Carolina, finds that White House officials “systematically, arbitrarily, and discriminatorily and without pretense of due process of law, committed wholesale assaults, exclusions, embarrassments, slanders and deprivations of free speech, of right to freedom of assembly and right to petition for redress of grievances” during Richard Nixon's visit to Charlotte for “Billy Graham Day” celebrations. The next day, August 1, 1973, H.R. Haldeman testifies before the Senate Watergate Committee on his own role in supervising the actions which led to Judge McMillan's finding.

August 14, 1973—On behalf of Messrs. Kissinger, Haldeman, Ehrlichman, Mitchell, Haig et al, the Justice Department responds to the suit filed by the ACLU seeking damages for the wiretapping of Morton Halperin and his family. While admitting the allegations made in the suit about the extent of wiretapping, the Justice Department invokes “national security” and “official immunity” defenses.

September 13, 1973—The ACLU protests Judge Sirica's order gagging Jeb Stuart Magruder and James W. McCord, Jr. pending sentencing in their cases.

September 14, 1973—The ACLU files a friend of the court brief with the United States court of appeals on the dispute between Special Prosecutor Archibald Cox and Richard Nixon on the release and disclosure of the White House tapes. The brief asks the court to reject the president's claim of “executive privilege” as a ground for withholding the tapes. However, the brief argues other persons unknowingly overheard on the tapes should have the right to move for suppression of their contents.

September 30, 1973—The ACLU national board of directors, after seven hours of discussion, votes to call for the impeachment of Richard Nixon. The grounds detailed in the resolution include specific proved and acknowledged violations of the rights of political dissent; establishment of a personal secret police which committed crimes; attempted interference in the trial of Daniel Ellsberg; distortion of the system of justice; and perversion of such federal agencies as the Department of Justice, the National Security Council, the Secret Service, the State Department, the Internal Revenue Service and the Central Intelligence Agency; and usurpation of congressional war-making powers including, particularly, the secret bombing of Cambodia.

In adopting the resolution, the ACLU becomes the first major national organization to call for the impeachment of Richard Nixon.

(Continued on next page)

ACLU Chronology

- October 4, 1973**—Edward J. Ennis, ACLU chairman, and Aryeh Neier, ACLU executive director, announce the call for impeachment at a press conference in New York. Simultaneous press conferences are held by ACLU affiliates across the country to launch the impeachment campaigns in their communities.
- October 14, 1973**—First of a series of full-page ACLU advertisements calling for impeachment appears in the *New York Times*. Ad is headed, "Why it is necessary to impeach President Nixon. And how it can be done." Ad is repeated in the *New York Times* on October 19. In the next 3 weeks, it appears in about a hundred daily newspapers from Maine to Hawaii. The ads are paid for by contributions arriving in ACLU offices by the thousands from people responding to the ads. The ads also stimulate tens of thousands of letters and telegrams to members of Congress calling for impeachment.
- October 22, 1973**—ACLU issues detailed report on Richard Nixon's offenses warranting impeachment and on the history and procedures of impeachment. Later, this report is independently distributed under the title "Why President Nixon Should Be Impeached."
- October 24, 1973**—ACLU congressional-district organizing meetings for impeachment get underway. More members participate in these meetings than in any previous activity ever undertaken by the ACLU. Thousands of ACLU members meet with their representatives in Congress to press for impeachment.
- October 28, 1973**—A second series of ACLU full-page newspaper advertisements starts appearing. The ads are headed, "There is only one thing that can stop impeachment now. Your silence."
- November 18, 1973**—Third series of ACLU full-page newspaper advertisements starts appearing. The ads are headed, "Congress is responding to your demand for impeachment. Slowly."
- January 5, 1974**—ACLU releases Roper poll to press showing that 79 percent of those polled in depth believe one or more of the most serious charges against the president are justified. The poll shows a bare majority against impeachment, 45 percent to 44 percent. Opposition to impeachment is largely based on fears of its destructive effects.
- February 11, 1974**—ACLU publishes historical study, "High Crimes and Misdemeanors: What They Are, What They Aren't."
- April 1, 1974**—Federal Judge John Lewis Smith orders the government to turn over to Morton Halperin and his ACLU lawyers "all memoranda, records, correspondence, communications, documents, tapes, logs or other tangible things or writings" relating to the electronic surveillance of Halperin.
- April 18, 1974**—ACLU files suit on behalf of "White House enemy" Allard Lowenstein against Charles W. Colson, John W. Dean III, John D. Ehrlichman, H.R. Haldeman, Lawrence M. Higby, John J. Caulfield and Internal Revenue Service Director Donald Alexander. Suit alleges that information from a secret investigation of Lowenstein was turned over to a political campaign opponent, U.S. Representative John J. Rooney. ACLU also files simultaneous suit on behalf of another Rooney campaign opponent, Peter T. Eikenberry, on similar grounds.
- April 24, 1974**—ACLU presents testimony to House Judiciary Committee on "national security" wiretaps.
- April 29, 1974**—ACLU files *amicus* brief in *United States v. John N. Mitchell* asking Judge Sirica to hold an evidentiary hearing in which the defendants could attempt to prove that Sirica is not impartial and should disqualify himself.
- April 29, 1974**—Richard Nixon releases edited version of the White House transcripts. ACLU criticizes failure to protect the privacy of persons unwillingly overheard on the tapes.
- May 3, 1974**—Judge Sirica denies ACLU motion in *United States v. John N. Mitchell*.
- June 3, 1974**—ACLU submits report to the House and Senate Judiciary Committees demonstrating the efforts by the Nixon Administration to employ the Justice Department in the cover-up of the Watergate burglary.
- June 21, 1974**—ACLU files *amicus* brief in U.S. Supreme Court in *United States v. Richard M. Nixon*. Brief contends the office of the presidency is no shield from judicial process.
- June 21, 1974**—ACLU sends letters to all Senators disputing Henry Kissinger's Salzberg statement that "the wiretaps of Morton Halperin and others were legal."
- June 26, 1974**—ACLU calls on House Judiciary Committee to release evidence compiled in the impeachment inquiry while protecting the rights of innocent third parties. Maintaining the secrecy of information on the bombing of Cambodia, the ACLU says, gives "at least tacit approval to the notion that 'national security' can be invoked to preserve the secrecy of past conduct on fundamental issues which might embarrass the government." On the other hand, the statement calls on the committee not to release information "on the purely private behavior of persons inside and outside of the government."
- August 2, 1974**—ACLU recommends trial procedures to the Senate Rules Committee. They include televising the trial and convicting, if at all, only upon a standard of clear and convincing proof. Also supported are the president's rights to know the charges against him, to appear in person and/or by counsel, to present witnesses and evidence, to make use of compulsory process, to cross-examine witnesses, to testify in his own behalf, and to obtain a written record of the proceedings.