

Original text of  
Jordan speech before  
Judiciary Committee,  
July 25, 1974

1

"We, the people," the eloquent beginning of the preamble to the Constitution of the United States was quoted earlier today. When that document was completed on September 17, 1787, I (my forefathers) was not included in the "We, the people." I felt that Washington and Hamilton left me out by mistake.

Through the process of amendment, interpretation and court decision, I finally was included in the "We, the people."

Today, I am an inquisitor and hyperbole would not be fiction or overstate the solemnness I feel in the task now underway. My faith in the Constitution is complete and I cannot be an idle spectator to its diminution, subversion or destruction.

Who can so properly be the inquisitors for the nation as the representatives of the nation themselves?

The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.

It is wrong and a misreading of the Constitution to assert that any Member of this Committee who votes for an Article of Impeachment must be convinced that the President should be removed from office.

...The powers relating to impeachment are...an essential check in the hands of that body upon the encroachments of the executive. The division of them between the two branches of the legislature, assigning to one the right of accusing, to the other, the right of judging, avoids the inconvenience of making the same persons both accusers and judges; and guards against the danger of persecution, from the prevalency of a factious spirit in either of those branches.

I. <sup>W. K. ...</sup> Nature of Impeachment

- A. <sup>Jr 13</sup> Chiefly designed for the President and his high ministers as a "bridle" on the Executive. (Hamilton, Federalist, No. 65 at 426)
- B. Designed as a method of national inquest into the conduct of public men. (Hamilton, Federalist No. 65 at 426)
- C. Framers confided to Congress the power, if need be, to remove the President, in order to strike a delicate balance between a President swollen with power and grown tyrannical; and preservation of the independence of the Executive.  
(Burger - 5) -
- D. A Narrowly channeled exception to the separation of powers.  
(Max Farrand, The Records of [the Federal Convention of 1787,] Chapters II & IV)
- E. Limited to "high crimes and misdemeanors" as opposed to the general term "maladministration." (Burger, 86 and 2 Farrand 550)
- F. To be used only for "great misdemeanors against the public."  
(Governor Johnston in the North Carolina Ratification Convention)
- G. ~~"The power of impeachment ought to be, like Goliath's sword, kept in the temple, and not used but on great occasions."  
(Lord Chancellor Somers in Parliament, 1691)~~
- H. "We do not trust out liberty to a particular branch: one branch is a check on the other" (George Nicholas in the Virginia Ratification Convention)

I. No one "need be afraid that officers who commit oppression will pass with immunity" (Governor Johnston in the North Carolina Ratification Convention)

II. Impeachment and the People

A. Infusion of Politics

1. Prosecutions of impeachments "will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. (Hamilton, Federalist no. 65 at 424)
2. The drawing of political lines goes to the motivation behind the given impeachment ... but impeachment must proceed within the confines of high crimes and misdemeanors. (Burger, 97)
3. [of the impeachment process] <sup>Woodrow Wilson said</sup> ~~it requires something like passion to get them going, and~~ nothing short of the grossest offenses against the plain law of the land will suffice to give them speed and effectiveness. Indignation so great as to overgrow party interest may secure a conviction; nothing else can." ~~(Woodrow Wilson, Congressional Government, 275-276)~~

~~B. Attending to the People's Affairs~~

- ~~1. Impeachment trials have averaged from 16 to 17 days and the case for Judge Archbald (1912) ran for 6 weeks.~~
1. Common sense may be revolted by entering into the impeachment for petty reasons; for Congress has more pressing and important tasks, which it alone can and must perform (Burger, 137)

Examples: Appropriations, Tax Reform, Health Insurance, Campaign Finance Reform, Housing, Environmental Protection, Energy Sufficiency, and Mass Transportation. (Perry - we can't afford it.) <sup>Must NOT be</sup>

3. "... the nature of the process is such that, as evidenced in the recent proceedings, it seriously interrupts for long periods the necessary transaction of important legislative business, places an almost intolerable burden on hearing and weighing testimony upon Senators already charged heavily with other responsibilities, and for this reason alone is always resorted to with extreme reluctance, even in cases of flagrant misconduct." (Senator McAdoo, 1936)

647

4. During impeachment debate in the House and more especially during a trial in the Senate the accused cannot attend to his normal official duties; but must attend to his own defense. (Examples: Inflation, shortages of raw materials, faithful administration of the laws enacted by the Congress, superintending his subordinates foreign affairs, and the development of national policies in the areas of health, housing, transportation and protection of civil liberties.)

6

In a discussion of the evidence, we are told that the evidence which purports to support the allegations of misuse of the CIA by the President is thin.

What that recital of the evidence did not include is what the President did know as of June 23, 1972.

The President did know that it was Republican money that is, money from the Committee to Re-Elect the President, which was found in the possession of one of the burglars. The President did know of prior activities of E. Howard Hunt, which included his participation in the break-in of the office of Dr. Louis Fielding, Psychiatrist to Daniel Ellsberg and his role in the Dita Beard-ITT matter.

*Attribution of discredit to the Administration*

We have further been cautioned to delay the proceedings because materials sought by this Committee will in all probability be furnished.

There has not even been an obfuscated indication that the President would supply additional information to this Committee. This Committee's subpoena is still outstanding.

The fact is on yesterday, the people of the United States waited <sup>with great anxiety</sup> eight hours to learn whether the President would obey an order issued by the Supreme Court of the United States, ~~with great anxiety~~.

## IMPEACHMENT CRITERIA

"If the President be connected in any suspicious manner with any person, and there be grounds to believe that he will shelter him" he may be impeached.

--- James Madison in the Virginia  
Ratification Convention

*Repeat*

## Nixon Action

Beginning on the morning after the break-in at the Watergate headquarters of the Democratic National Committee and continuing at least until March 21, 1973, funds were paid to the defendants for their support and attorney's fees. Some of the funds were paid with the President's knowledge out of funds ostensibly collected for the President's 1972 campaign.

Between April 15, 1973 and April 30, 1973, the President and Henry Peterson, chief government prosecutor for the Watergate case, discussed the substance of developments before a federal grand jury no less than on 27 separate occasions. Peterson advised the President both Haldeman and Ehrlichman had been implicated in the case. After some of these discussions, the President counseled Haldeman, Ehrlichman and their attorney to buttress their legal defense and the President's own political defense.

## IMPEACHMENT CRITERIA

[Impeachment is] "intended for occasional and extraordinary cases, where a superior power, acting for the whole people, is put into operation to protect their rights and to rescue their liberties from violation."

--- Justice Joseph Story

*Repeat*

## Nixon Action

In July, 1970, President Nixon approved the so-called "Huston Plan", knowing it to be illegal, which called for government agencies to relax restraints on electronic surveillances and penetrations, mail covers and surreptitious entries. When FBI Director Hoover objected to the plan, the President recinded his decision.

In August, 1971, the President instructed Ehrlichman to "do whatever is necessary" to gather information which could be politically damaging to Daniel Elsborg. On September 3rd, a surreptitious entry was made into Dr. Fielding's office with the specific approval of Ehrlichman. On September 8th Ehrlichman met with Krogh and Young and later met with the President. On September 10th Ehrlichman went directly from a meeting with the President to a meeting with Krogh and Young.

## IMPEACHMENT CRITERIA

Those are impeachable "who behave amiss, or betray their public trust."

--- General C. C. Pickney in the South Carolina Ratification Convention

## Nixon Action

Beginning shortly after the Watergate break-in and continuing to the present time, the President has engaged in a series of public statements and actions designed to thwart the lawful investigation by government prosecutors and the United States House of Representatives. Moreover, the President has made public announcements and assertions bearing on the Watergate case which he knew to be false. He asserted that no White House personnel were involved when he knew otherwise. He told the American people Dean had developed a report on the matter when he knew no such report existed.

## IMPEACHMENT CRITERIA

A President is impeachable if he "attempts to subvert the Constitution."

--- James Madison in the Constitutional Convention

## Nixon Action

The Constitution charges the President with the task of taking care that the laws are faithfully executed. And yet the President has counseled his aides to commit perjury, willfully disregard the secrecy of federal grand jury proceedings, conceal surreptitious entry, attempt to compromise a federal judge, and, while publicly displaying his cooperation, he has privately placed every road-block in the path of lawful investigations of alleged criminal acts.

If the impeachment provisions in the Constitution will not reach the offenses here charged, perhaps, the 18th Century Constitution should be abandoned to the 20th Century paper shredder.

Has this President committed offenses and planned, directed and acquiesced in a course of conduct which the Constitution will not tolerate?

That is the question. We should, now, forthwith proceed to answer it.

Reason, not passion must guide our deliberation, our debate and our decision.

###