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### Congressional Record S. 5346-8, Watergate

Mike Mansfield 1903-2001

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hearings and make its judgment known to the House at the earliest possible date.

I have noticed with some concern that polls of various kinds have been taken as to how the Judiciary Committee stands and even how individual Senators stand on this matter, before all the evidence is presented, either to the committee or to the Senate. There have also been editorials and commentaries on the issue of impeachment by the House and a trial by the Senate which, I think, anticipates the question. Some Members of Congress have advocated resignation by the President. None in the Senate that I know of have suggested impeachment. My position on the question of resignation is well known; it is a question which will be decided by the President and the President alone. All this is being bruited about before the issue is directly presented, either to the House or the Senate, in any constitutional form.

The questions we should ask ourselves are as follows:

Are we being impartial in fact and appearance?

Are we aware of our responsibilities, potential, and possibly real?

Are we shunting aside the basic principles of law which presumes the innocence of the accused until found guilty?

Is the media living up to its responsibilities in "telling it as it is," on the basis of corroboration, research and source material, or is it interpreting the news to support a point of view? Basically, I think the press, overall, is doing an excellent job.

Are we exercising restraint and patience? In my view, I think the Senate, by and large, is.

Are we—all of us—too emotionally involved? In my judgment, I think we are involved, because one cannot follow the media, the court proceedings, and the Watergate hearings without being concerned.

Are too many of us saying, "The votes are there in the House of Representatives"? In my opinion, no one really knows; certainly, I do not, and no one will know until and unless a vote is taken in the House on the issue involved.

If and when the issue reaches the Senate, and no one can answer the question at this time, what should the procedures in the Senate be? Should the hearings be televised? Should new rules to fit the issue be adopted? In my opinion, I think serious consideration should be given to the televising of any proceedings which might occur in the Senate. Extraordinary historical significance does not alone justify television. More important, the American people should see the totality of evidence when and if it is presented to the Senate so that when each Senator makes his final judgment of guilty or not guilty, the American people will be fully apprised of the basis of that judgment. I think this will be very important to assure the acceptance of the judgment by the Senate, if it should come to us, whatever it may be. However, this is a matter which will have to be decided, if and when the issue comes to the Senate, and the decision will be made by the Senate as a whole, after giving full consideration to the views of all persons involved.

#### WATERGATE

Mr. MANSFIELD. Mr. President, 1 year of Watergate is too much; 1 day of Watergate is too much, but the issue will have to run its course. It would be my hope that the Senate Select Committee on the Watergate and related matters would be able to complete its business by May 28 and, at that time, it would turn over the evidence accumulated and its recommendations to Special Prosecutor Leon Jaworski on the one hand, and the House Judiciary Committee on the other.

At the same time, I would hope it would make whatever legislative recommendations it feels necessary to the Senate for consideration. In my opinion, the Special Prosecutor and the courts are doing the job and doing it well. I note that Mr. Jaworski stated that it would take several years to clear the Watergate and related matters through the courts. The House Judiciary Committee is doing its job extremely well and the lack of leaks out of that committee is a most encouraging sign. I would hope that the White House and the committee would get together on the differences which are keeping them apart and arrive at a satisfactory accommodation so that the Judiciary Committee could get on with its

As far as procedures are concerned, it would be my intention to discuss this matter, if and when it comes before the Senate, with the Republican leader, the Senator from Pennsylvania (Mr. HUGH SCOTT), and to lay before him the proposition that there be a meeting of the full Senate in executive session to seek to make the proceedings as impartial and nonpartisan as possible.

As far as the Democratic leadership is concerned, it has at all times tried to work in accord with the President to the end that the responsibilities of the executive and legislative branches under the Constitution would be carried out. It is well to keep in mind that while we are all transients insofar as the Presidency, on the one hand, and the institution of the Senate and the Congress on the other, are concerned, it is the office of the Presidency and the Congress which are permanent, continuing, and enduring. As long as a Senator holds his office, he has all the responsibilities that go with that office, and the same applies to a President.

I ask unanimous consent that an editorial in the Wall Street Journal by someone who "paid a visit to Washington, D.C., in the last few days and came away wondering if the President of the United States could get a fair trial in our Nation's Capital," be printed in the RECORD at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. (See exhibit 1.)

Mr. MANSFIELD. While this editorial accurately expresses a headline in the local press of a few days ago, and inaccurately what was reported in the body of the same story as it applies to me, I think there is considerable food for thought in the writer's comment. I would also point out, however, that there are dangers in equating a court trial with an impeachment proceeding. If the Founding Fathers thought that they were the same thing, they would have made the place of venue the Supreme Court, not the Senate.

EXHIBIT 1  
A CHANGE OF VENUE

We paid a visit to Washington, D.C., in the last few days and came away wondering if the President of the United States could get a fair trial in our nation's capital. The city seems so totally in the grip of Watergate fever that those elected representatives who will soon be sitting in solemn judgment of the President appear to have lost control of events, and are in danger of being swept along by an impeachment machine that could turn the proceedings into a lurid Roman circus.

What seems to be happening is that Congress is demonstrating how difficult it is to suspend judgment, to presume the innocence of the accused before the taking of evidence, testimony and cross-examination. By its example it reveals why the law courts of the Western democracies for centuries have deemed the formalities and rituals of a criminal proceeding to be of such paramount importance. There is now no one in Congress, Democrat or Republican, urging even minimal rules of conduct for the jurists and the judge, and the system of justice that the people provide the lowest and the highest is being suspended because Richard M. Nixon is in the dock.

We see members of Congress routinely predicting the President will quit sooner than face the music. We see them openly announcing their intention to impeach, even before they know what the charges will be, if indeed there are charges. Senate Majority Leader Mansfield and Wilbur Mills of the House blithely predict there are enough votes in the House to impeach, which can only be described as bandwagon politics. Jimmy the Greek, the Las Vegas oddsmaker, conducts a private poll to detect which way members are leaning and, incredibly, gets responses. The franking privilege is being used to promote grass-roots impeachment petitions. And all over Capitol Hill there are lists being drawn up of Senators "likely" to convict and "likely" to acquit.

It's as if, during the trial of the "Chicago Seven," the jurors were permitted to pop up periodically to excoriate the defendants, Jimmy the Greek allowed in the jury box to conduct a running poll of sentiment that he could flash back to Vegas, and Judge Julius Hoffman allowed to collect petitions for conviction that he could lay before the court.

In a criminal proceeding, there is good reason why the defense is allowed to participate in jury selection, challenging prospective jurors it believes would be prejudiced. There's good reason, in a sensational case involving a heinous crime, for the judge to order a change of venue when his court is overwhelmed by passion. And there's good reason, when an untarnished jury can be found in such a case, to sequester it from outside influence during the trial.

Of course, all these precautions are impossible in an impeachment proceeding. The President can't help pick his jury. Congress can't be sequestered from the influences of the press. And Capitol Hill can't be moved to Cedar Rapids or Salt Lake City. Nor should any of these things be done even if it were possible.

But this makes it all the more important that Congress get a grip on itself and agree on formalities and rituals appropriate to a Grand Inquest, to require rules of conduct that will have the effect of changing venue from a court ruled by passion to one composed.

The Mansfields, Scotts and Alberts cannot simply wash their hands of responsibility, arguing they have no authority to impede the free speech or activities of freely elected Congressmen. If Congress would agree to rules of conduct, its leaders would per force have the power to at least verbally censure transgressors. The mere existence of a code, where there is none now, would provide a sobering frame of reference for the great majority in Congress who would otherwise say or do anything because of the provocative climate that prevails.

And if the leaders of Congress can't bring themselves to regain a semblance of control over these events, at least individual members of the House and Senate can make personal commitments to contribute nothing to the carnival that encroaches. Those who have already allowed themselves to slide can begin straining mightily to suspend judgment, elbowing aside the oddsmakers and pollsters and asking their staffs to do the same. They can begin too by resisting the outrage or resentment they might feel over the way the accused insists on his rights and loudly proclaims his innocence.

If this be done, it will be possible for the President of the United States to get a fair trial in Washington, D.C., and however he is ultimately judged the American people will be able to say that justice was done.

Mr. HUGH SCOTT. Mr. President, I will have more to say at a later time, because this suggestion has just been ad-

vanced by the distinguished majority leader. I will be glad, of course, to confer with him at any time on any matter that pertains to the Senate business, if, as, and when there appears to be reason to believe that it will become Senate business.

I very much fear that the statement of the distinguished majority leader may not be brought to the attention of the American people with the full force of what he has said, because perhaps the news value, at first blush, is that he has suggested that the proceedings be televised. At this point, I am not prepared to make any statement on that. But he has said a great many more important things than that, if we can get them noted—brought to public notice.

For example, he has said that editorials and commentaries on the issue of impeachment by the House and also by the Senate anticipate the question. He has said something that both he and I have continually said, and I get the impression that we are simply talking into a high wind each time we say it. But he has said it again, and I repeat it:

Are we shunting aside the basic principle of law which presumes the innocence of the accused until found guilty?

He has also cautioned against Members of this body saying that the votes are there in the House of Representatives, and he has pointed out that he does not know—and he questions whether others know, unless and until a vote is taken in the House. I agree with that. Any estimate that I have heard from over there is subjectively expressed by the person who tells me. Some people say the votes are not there; some people say they are.

I think that when the Senate intervenes in the affairs of the House by prognostication and projection of something it really does not know anything about, because it must get into the minds of 435 people and come out at the other end with an answer, this is a disservice to the process.

The distinguished majority leader also says that the American people should see the totality of the evidence, when and if it is presented to the Senate.

I stress again, "when and if" so that this statement of the majority leader will not be treated as an assumption that the proceedings will occur before the Senate, but he has been most careful in his fairness, as he is always so fair, to stress the "when and if."

He said so far as the proceedings are concerned, if and when, he will discuss these matters with me and, of course, an executive session would seem to be in order for that purpose. I would be inclined to agree personally. I think it is a matter for my party and the majority leader's party to determine whether or not an executive session is desired. I would say in this first instance it would seem to me that would be the best way to consider a situation rather than to try it in the newspapers or make statements on the floor which do not represent considered judgments.

Now, we can head in one of two directions, or pursue, as the Senate has tried

to do generally, a middle course. The middle course, it seems to me, ought to steer us very much closer to one of the polarities than the other, and the one polarity would be a total and complete impartiality, an absence of any partisan fervor, and a full and dispassionate, as well as compassionate approach to any problem that comes to us, if and when it does.

The other polarity would be an excess of party fervor, as in the Johnson matter, leading to the allegation that the election of 1972 was stolen in 1974. That was what we must avoid at all cost. We must avoid the partisanship which might arise if the parties divide in the consideration of this matter in such fashion as to lend credence to a public assumption of that awful and intolerable conclusion.

On the other hand, it is impossible for humanity and human nature to be totally and completely dispassionate and impartial. I suggest that this is the time for us to consider that that is where our duty lies.

I will have more to say later.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. HUGH SCOTT. I am glad to yield to the distinguished majority leader.

Mr. MANSFIELD. Speaking as the majority leader, I want to assure you that if and when the issue comes to the Senate there will be as little partisanship as possible, and as far as I am concerned, I would hope there would be none.

Furthermore, if and when the issue comes to the Senate, and we will never know until the House decides one way or the other—negatively it will not; affirmatively it will—then, I would point out, the Senate itself will also be on trial. I would point out further that while this Senate, if and when the issue comes to this body, renders a verdict, the final jury and the final judge will be out there among the people who elect us, because, after all, when we speak of the Government of the United States, we speak of the people of this Republic, and they are the final arbiters. They will watch us carefully as they should.

May I say in passing that when an issue of this nature comes to the Senate and is to be televised, that would be subject to the approval of the Senate as a whole. I am expressing a personal opinion that there will be no circus, that there will be nothing in the way of hanky-panky, because I would expect and anticipate without question that every Senator would act with the greatest dignity and circumspection, and that there would be no hamming on the part of any Member of this body, if it happens to turn out that way, that the proceedings, if and when the question comes to this body, are televised.

Mr. HUGH SCOTT. Therefore, justice must not only be done; justice must seem to have been done. Fiat Justitia must be the guideline if and when this happens, and finally woe unto those who seek to act on other than the facts and evidence.