

WXPost JUL 14 1974  
**Partisanship,  
Doubts Gnaw  
Rodino Unit**

By Lou Cannon  
Washington Post Staff Writer

The facade of unity within the House Judiciary Committee has crumbled under the pressures of partisanship and the growing conviction of Republican members that Mr. Nixon's accusers have failed to make a clear-cut case for impeachment.

"We've got to have a good case to sell the House," says Rep. Tom Railsback, a 42-year-old Illinois Republican who is regarded as a key swing vote on the committee. "A lot of Republicans don't feel that a very good case has been made."

"The Republicans would like to have a case where the President is caught in the bank vault in the middle of the night with a smoking gun," says Rep. Don Edwards (D-Calif.). "That would make it easy for them. But this is a criminal conspiracy case and conspiracy cases invariably are forged from circumstantial evidence."

To most of the 21 Democrats on the 38-member committee the nature of the circumstantial evidence, particularly as it relates to the payment of hush money to convicted Watergate conspirator E. Howard Hunt Jr., seems overwhelming.

But the committee Democrats are politicians as well as lawyers and they have a political appreciation of the formidable barriers a Republican congressman must cross to vote for impeachment. These barriers, in the view of two Democratic members who are sympathetic to the predicament of their Republican colleagues, are largely the

See JUDICIARY, A6, Col. 1

JUDICIARY, From A1

"It's tough to vote against the people you relate to—the people you drink with and who contribute to your campaigns and work your precincts," says one Democratic member. "It would be tough for me if the President were Democrat."

"Every time a Republican has come in their own party—particularly if Mr. briefings for Democrats by staff members and assess testimony within a clearly says there is "an implicit assumption" says it is customary for GOP congress-

It's tough to vote against the people you relate to—the people you drink with and who contribute to your campaigns and work your precincts," says one Democratic member. "It would be tough for me if the President were a Democrat."

Republican members have been steadily exposed to this pressure from "the people you relate to" in conversations with GOP congressmen outside the committee and most of all in their conversations with local politicians on their trips back home.

"Everytime a Republican has come out of that committee room and said anything even mildly critical of the President, the loyalist mail starts flowing," says one GOP committee member. "We're going to vote on the evidence, but you can't ignore the political facts of life."

These facts, such as they are, offer little comfort to the six or seven GOP members who are considered politically vulnerable in November. On the one hand, they know that a vote for impeachment may help them with Democratic and independent voters in November. On the other hand, they also know that they have virtually assured themselves of future primary opposition and pariah-like treatment in their own party—particularly if Mr. Nixon ultimately survives the impeachment process.

Democrats are also subject to pressure from their peers—and they might find it even more risky to oppose impeachment than Republicans would to support it. A Roper Poll two months ago showed that nationally only 5 per cent of Democratic voters say they would vote against a congressman who supported impeachment, while 31 per cent said they would vote against a congressman who opposed it.

The growing partisanship within the Judiciary Committee expressed itself in the periodic morning meetings held by the Republican members of the committee in the office of Rep. Robert McClory of Illinois and in the nightly briefings for Democrats by staff members of the committee.

These meetings give members an opportunity to discuss the evidence and assess testimony within a clearly partisan framework. One Democrat says there is "an implicit assumption"



REP. TOM RAILSBACK  
... "not a very clear-cut case"

at the Democratic briefings that the evidence exists to impeach Mr. Nixon; a Republican who attended one of the recent meetings in McClory's office says it is customary for GOP congressmen to remind each other that "the case has not been made."

All this does not mean that the members will ignore the evidence and simply vote their party labels when the time comes—probably in the last week of July. What it does mean is that the half-dozen Republicans and the three Southern Democrats who are considered swing votes on the committee must make their decisions in the full knowledge that they run the risk of being considered political outcasts.

"Hell, I know I could be a big hero within my own party just by voting against impeachment," says Railsback, who is considered the most crucial vote. Rep. William Cohen of Maine, considered the Republican most likely to vote for impeachment, recalls the "tidal wave of pressure" when he crossed party lines to support a letter from the committee informing Mr. Nixon that he had failed to comply with a subpoena for the tapes of 42 conversations.

And Rep. Charles Wiggins of California, the most articulate defender of Mr. Nixon on the committee, believes that Republicans will feel a "grass roots retaliation" if they vote for impeachment.

"The only way to have a bipartisan impeachment vote is to nail Richard Nixon with something directly wrong on his part," says Wiggins. "But the evidence isn't there so the case has become partisan and political."

Another Californian, Democrat Jerome Waldie, believes that people who placed their trust in bipartisanship may have been fooling themselves all along.

"It's always been divided on party



lines," says Waldie, an early advocate of impeachment. "It's nonsense to believe that we've become neuters instead of Democrats and Republicans because we serve on the Judiciary Committee."

Waldie believes that the partisanship was concealed in the early stages of the inquiry because Chairman Peter W. Rodino Jr., (D-N.J.) made numerous concessions—too many, in Waldie's view—to Republicans on such important procedural items as allowing White House lawyer James D. St. Clair to cross-examine witnesses and to object to questions by members. When the concessions stopped the partisanship on both sides became apparent.

The partisan nature of the combat has been deepened by the long and wearisome ordeal of the inquiry. The committee starts early and finishes late. Congressmen spend their evenings in briefings or readings of the evidence and their weekends politicking back home. Behind the closed doors of the committee room, tempers have shortened and frustration grown over the plodding style of chief counsel John Doar.

"He travels at the pace of the slowest member, talks in a monotone and treats us all like a bunch of retarded law students," complains one Democratic member. "Some of us would prefer if he both focused and summarized a bit more."

But Doar's problems are far fewer than those faced by the chief Republican counsel Albert E. Jenner, who has never won the trust of the GOP minority on the committee.

Jenner got off to a bad start when he said after his appointment last January that "within some areas the President should be responsible for the actions of aides..." When it was disclosed subsequently that Jenner had helped raise funds for Democratic Sen. Adlai E. Stevenson III of Illinois, most Republicans on the committee simply stopped regarding him as their counsel. Many of the GOP members now mutter among themselves and groan audibly when Jenner asks a question during the proceedings.

Into this apparent vacuum has stepped St. Clair, who has become for all practical purposes the Republican advocate to those GOP members openly fighting impeachment. Even the Democrats admire him for his legal style and tough cross-examination, if not for his positions.

"He is one hell of an advocate," says a GOP admirer on the committee. "Before the court he argues that impeachment is really a political matter and not the business of the court. Before the committee, he discounts the political nature of impeachment and says that Congress must use the standard of a crime. He has the best of both worlds."

But St. Clair's legal skill has not proved sufficient to turn the tide against impeachment within the committee.

Most opponents of impeachment concede privately that an impeachment recommendation is likely to be issued from the Judiciary Committee, but they are hopeful of keeping the vote close enough that impeachment can be beaten in the House.

House Minority Leader John J. Rhodes of Arizona, who recently used expletive-deleted language in turning down a White House request to take an impeachment head count of the House, believes that both the margin and composition of the committee vote will have an effect in the House as a whole.

Rhodes believes that there is "a growing feeling among Republicans that there isn't any case" and he does not concede that any GOP members on the committee necessarily will vote for impeachment.

On the committee itself, however, the independent-minded Cohen, a 33-year-old freshman, is regarded as a nearly certain vote for impeachment. Cohen, who usually has declined to comment on the evidence, describes himself as "unlikely to be influenced by any partisan considerations."

Almost as likely to vote for impeachment, some committee members believe, is Hamilton Fish Jr., the third Republican from his family to represent a New York congressional district. The other conceivable Republican votes for impeachment come from a list that includes Railsback, McClory, M. Caldwell Butler of Virginia, Lawrence J. Hogan of Maryland, Harold V. Froehlich of Wisconsin and Henry P. Smith III of New York.

Of this group, neither McClory nor Froehlich are considered highly likely to wind up voting for impeachment. Hogan usually is a defender of Mr. Nixon but he is running for governor and has political reasons, particularly in Montgomery County, to support impeachment. Smith, 63, is retiring this year and has said that he would be interested in a United Nations appointment. Butler, a thoughtful freshman, is respected for his legal ability and considered likely to vote the evidence regardless of political consequences.

On the Democratic side three Southerners—James R. Mann of South Carolina, Ray Thornton of Arkansas and Walter Flowers of Alabama—are considered to be potential votes against impeachment. All say they could vote either way and politically survive in their districts, and Mann has been perhaps the most taciturn member of the committee in discussing the evidence.

However, Democratic colleagues of this trio believe that Mann is virtually certain to wind up supporting an impeachment resolution and that Thorn-





**REP. WALTER FLOWERS**  
... "it could go either way"

ton also probably will wind up on the impeachment side.

The key votes, in the estimate of many committee members are Flowers on the Democratic side and Railsback on the Republican, both of whom say they are genuinely undecided about how they will vote.

More than most Democrats, Flowers would like to wait and see if the committee is able to obtain the 64 tape recordings that Watergate special prosecutors are seeking to obtain from the White House for the Watergate cover-up conspiracy trial. The case is before the Supreme Court and would have no direct bearing on the committee's thus-far-unsuccessful efforts to obtain the same tapes, but Flowers believes it is worth seeing if the committee could also obtain them.

"I was a member of the hurry-up crowd six weeks ago," said Flowers, "but I've changed by mind. It's not sufficient to impeach on a bare minimum case. If there is more there, we ought to go out and get it."

Flowers does not share the view that the committee should be satisfied with the finding of "probable cause" that would be sufficient for a grand jury to indict a defendant.

"I'm most reluctant to say we should impeach a President on probable cause," says Flowers, a Tuscaloosa lawyer and Phi Beta Kappa at the University of Alabama. He is, in fact, reluctant to say if the President should be impeached at all.

"My honest judgment is at this point that it could go either way," says Flowers. "There are a couple of Democrats who could vote against it, and I'm one of them. I have concentrated on refusing to form decisions until I have all the material . . . It's a close judgmental decision."

It is also a close decision for Railsback, a 42-year-old middle-of-the-road

Republican whose northwestern Illinois district embraces both rural and manufacturing areas. He ran unopposed in 1972 with United Autoworkers endorsement but faces a strong Democratic challenge this year.

Railsback has spent most of his spare time reviewing and re-reviewing the evidence.

"Some times I go back and forth in my mind from one side to the other," he says. "It's not a very clear-cut case."

Railsback believes that the case against the President boils down to three essential charges—the hush-money conspiracy, the alleged misuse of such agencies as the CIA and the FBI and the burglary of Daniel Ellsberg's psychiatrist's office.

To help him decide the question of Mr. Nixon's alleged involvement in the hush-money conspiracy Railsback has prepared his own black-bound book of excerpts from White House transcripts on the March 21 and March 22, 1973, presidential conversations. He assigns a plus mark to each remark of Mr. Nixon's that seems exculpatory and a minus to each remark that implicates him. The book has more minuses than pluses.

Railsback has also become the acknowledged unofficial leader of the Republican undecided-vote ranks. He has organized a study group that initially will include himself, Cohen, Fish and Butler and perhaps one or two others.

These Republicans will review the evidence and undoubtedly, as the impeachment vote nears, form some idea of what their colleagues plan to do. Conceivably, their discussion could become an antidote to the partisan mentality now growing on both sides within the committee.

While each of the Republican undecideds will reach his own decision on the impeachment question, Railsback's vote is likely to be viewed as particularly important by other young, moderate Republicans since he is known to have carefully reviewed the evidence.

In doing so, he has rejected the St. Clair theory that the case against Mr. Nixon stands or falls on a narrow construction of the events of March 21. Instead, he accepts a view more popular on the Democratic side that the committee is entitled to base its decision on the President's "pattern of conduct," if one is established.

But Railsback claims another, more private yardstick. It is based on the personal feeling that any outcome will be subject to dispute and that in the last analysis a member must satisfy himself that he is making the wisest possible judgment.

"I want to cast the vote that will make me feel good inside," Railsback says.

He doesn't know, he says, what that vote will be.