

NYTimes JUL 29 1974
**DEMOCRATS DRAFT
A SECOND ARTICLE
OF IMPEACHMENT**

**Members of Judiciary Panel
Work on Combined Version
Alleging Abuse of Power**

SUNDAY CAUCUS IS HELD

**Byrd, Senate Majority Whip,
Finds Chances Rising That
Nixon Will Be Removed**

By **RICHARD D. LYONS**

Special to The New York Times

WASHINGTON, July 28 — Democrats on the House Judiciary Committee caucused today to refine the wording of a second article of impeachment of President Nixon. Meanwhile, a key Senate leader said the chances were mounting that the President would be removed from office.

Dressed in casual attire, 18 of the 21 Democratic members of the Judiciary Committee met in the Rayburn House Office Building this afternoon to work out the precise language of the second article, which charges Mr. Nixon with abusing his constitutional authority.

The members were working from a draft of the second arti-

Text of second impeachment article is on Page 10.

cle that was prepared earlier today by the committee's staff. The new version incorporated and refined two previous drafts offered by Representatives Harold D. Donohue, Democrat of Massachusetts, and Robert McClory, Republican of Illinois.

'A Question of Words'

At a break in the caucus, Representative Peter W. Rodino, Democrat of New Jersey, the committee's chairman, said there was "no disagreement on what should be in" the article.

"It's just a question of words," he added.

Three Republican members of the committee said, meanwhile, that they expected renewed appeals by Republicans for President Nixon to resign after the panel completes work on a bill of impeachment later

this week. [Page 10.]

Mr. McClory, the committee's second ranking Republican, voted yesterday against the first article of impeachment, which charged Mr. Nixon with obstruction of justice, but has indicated that he favors an article alleging abuse of power.

Even if Mr. McClory were to vote against the President on the second article, however, the total vote might not be changed from the 27-to-11 tally of yesterday because other votes could also change.

Debate on the second article will open when the committee

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reconvenes its televised meeting on the impeachment question at 10:30 A.M. tomorrow.

As the Democrats caucused, Senator Robert C. Byrd, the majority whip, who is generally acknowledged to be one of the upper house's shrewdest vote-counters, said that he believed impeachment was almost a foregone conclusion.

"There is not an absolute certitude, but I would have to think that" the House would vote to impeach, "Based on recent developments," the West Virginia Democrat said.

Interviewed on the ABC television program "Issues and Answers," the Senator then added, "If the vote were to occur tomorrow in the Senate, the Senate would not convict."

"However, the possibilities for conviction, I think, are growing daily," he went on.

While stating that he had not taken his own vote count of the Senate, Mr. Byrd said he based his assessment on such developments as the following:

¶The conviction of John D. Ehrlichman, who was one of the top aides of the President.

¶The Supreme Court decision ordering Mr. Nixon to give the Watergate prosecutor tape recordings of White House conversations.

¶"Continued 'stonewalling' of the President through his counsel in refusing to give evidence to the House Committee."

Warning to President

¶"The vote of the House committee yesterday on which conservatives and Republicans joined with Democrats to vote for an article of impeachment."

Senator Byrd continued, "I am saying that the possibilities of ultimate conviction in the Senate are growing."

The West Virginian then offered a warning to the President concerning potential White House lobbying with Senators to win votes against conviction in a Senate trial of the President.

"It would have to be a very subtle lobbying and even then it would be counterproductive," Mr. Byrd said, adding, "He [the

President] ought not make the effort."

The Senate majority leader, Mike Mansfield, Democrat of Montana and the minority floor leader, Hugh Scott, Republican of Pennsylvania, are to meet tomorrow for a preliminary discussion of the Senate's trial procedures in the event that the House should vote to impeach the President.

Newsweek magazine, in an issue that appeared today, said it had learned that one of the President's Congressional specialists now counted 36 of the 100 Senators as siding with Mr. Nixon. If it comes to a trial, the President would need 34 votes to remain in office, assuming all Senators voted.

But the Newsweek article added that the unidentified source had said that six of those 36 would have to be con-

sidered "soft" in their backing for Mr. Nixon.

Another view that the President's support may be eroding came from Representative M. Caldwell Butler of Virginia, one of the six Republicans of the Judiciary Committee who voted against the President yesterday.

Interviewed on the CBS television program "Face the Nation," Mr. Butler said that he believed "the division that we have on the committee is at least what the division will be among the Republicans in the House, but I have no expertise in this regard."

If Mr. Butler's assessment is correct, it would mean that, since slightly more than one-third of the committee Republicans backed the first impeachment article, 60 or more Republicans in the House would vote against the President on the full articles of impeachment.

The content of the first article of impeachment was found wanting, in some ways, by one impeachment expert, Prof. Charles L. Black Jr. of the Yale Law School, who is the author of "Impeachment: A Handbook."

Discussing the issue on the NBC television program "Meet the Press," Professor Black said: "The article as it stands is to me unsatisfactory in many ways, in several strategic ways."

Professor Black said the wording of the first article "seems to me rather to straddle the question of Mr. Nixon's personal participation, or express authorization of any of the particular acts named."

He added, "There is very little in the way of real specificity in the counts." Professor Black said that in his view these points would have to be made clear, but that if they were "then I think an impeachable offense will clearly have been proven."

The discussions today by Democrats on the House Judiciary Committee involved wording more than substance. Originally, the version of the second article of impeachment as offered by Mr. Donohue last

Wednesday and that proposed by Mr. McClory differed because the Donohue included a section accusing the President of contempt of Congress for defying the committee's subpoenas for tape recordings and other evidence.

The draft discussed today dropped that item. Mr. McClory wants it considered separately, and the Democrats apparently agreed.

Last night Mr. McClory indicated his intention to offer his version of Article II in the formal session of the full committee tomorrow. But today he indicated that the compromise drafting session would satisfy him and that he would not offer his own version independently tomorrow.

Mr. McClory has said that he considered the President's refusal to honor the committee's subpoenas the strongest charge against him and wanted it made into a separate article.

Representative James R. Mann, Democrat of South Carolina, said after the caucus today that it was "99 per cent" certain that the committee would consider a separate article on contempt of Congress. He added that he personally "would not like to see the President impeached on a procedural matter alone."

Mr. Mann also predicted that such an article would lose two or three votes from members who advocate impeachment.

The second article, which was under discussion by the Democrats today, accuses the President of the following:

¶Authorizing or permitting the "unlawful electronic surveillance" of 17 Government officials and newsmen for purposes "unrelated to national security, the enforcement of the laws, or any other function of his office."

¶Creating a "secret investigative unit," the so-called White House "plumbers," and permitting them to use Presidential campaign funds to engage in "covert and unlawful activities" including the 1971 burglary of the office of a psychiatrist who had treated Dr. Daniel Ellsberg, the key figure in the Pentagon papers case.

¶Attempting to "corrupt and unlawfully use" the Internal Revenue Service, the Federal Bureau of Investigation and the Central Intelligence Agency.

¶Failing to heed a constitutional obligation to "take care

that the laws be faithfully executed."

¶Endeavoring to "impede and frustrate lawful inquiries" into the break-in of Democratic National Committee headquarters here.

¶Employing his office to obtain information from, and "to make false representations" to, the Justice Department to assist those being investigated for possible criminal prosecution.

"In all this," the draft article states, "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."

Mr. Rodino characterized the draft as an "amalgam of all the ideas" from committee members of both parties who intended to vote for an article of impeachment charging the President with abuse of power.

"The only question is the correct language," he said.

The chairman predicted extensive debate on the second article at tomorrow's televised hearing, especially from conservative members.

One of these, Representative Walter Flowers, Democrat of Alabama, said today that he did not want to cite the President for the break-in of the psychiatrist's office because he felt that there had been a legitimate concern for national security.

Representative Edward Mezvinsky, Democrat of Iowa, said he intended to introduce another article of impeachment, possibly on Tuesday, that would charge the President with violating the emoluments clause of the Constitution, involving what money the President may receive, and the Federal income tax laws.