

Cambodia Article Defeated

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The House Judiciary Committee approved a third article of impeachment against President Nixon yesterday, this one for defying its subpoenas, but by a reduced, 21-to-17 vote that virtually wiped out the bipartisan coalition that had voted the first two.

The article was provoked, as the committee had warned Mr. Nixon it might be, by the President's refusal to comply with eight subpoenas demanding 147 taped presidential conversations needed for the impeachment inquiry. The President's only response was to turn over and publicly release edited transcripts of fewer than 40.

Then the committee, nearing an end to its debate, rejected a proposed article that would have impeached Mr. Nixon for concealing the bombing of Cambodia. All 17 Republicans and nine Democrats voted against it.

Supporters of the article on impeachment dealing with Mr. Nixon's refusal to obey committee subpoenas argued that if presidential defiance

were not made an offense, impeachment would become an empty provision of the Constitution. They claimed that future Presidents could refuse to turn over any information to impeachment inquiries.

Opponents contended that the charge standing alone did not rise to the level of seriousness required of impeachable offenses, especially since the President had claimed what at the time he could have believed to be a constitutional right to refuse information and the committee had refused to go to court for a decision. Both sides drew on last week's Supreme Court decision in the tapes case, which held that executive privilege, on which the President relied, does exist but is not absolute.

Some on both sides argued that the defiance charge should more properly be made one count in the obstruction of justice or abuse of power articles previously adopted. An attempt to shift it into one of those substantive articles may be made when the House votes on impeachment next month.

Rep. Tom Railsback (R-Ill.), who had voted for the first two articles, vigor-

ously opposed the third as "political overkill." He warned Democratic supporters they could weaken their case in the House by trying to push through an article not solidly based. Railsback recalled that the committee had refused to seek a full House citation of contempt against the President or to go to court to seek enforcement of its subpoenas.

"Watch what happens to your fragile bipartisan coalition" of members who believed there were grounds for the two previously adopted articles on Watergate crimes and violation of citizens' rights, said Railsback. He added, however, that this did not lessen his support for the first two articles.

When the vote came, the 28-to-10 majority of all 21 Democrats and seven Republicans — which had adopted the second article Monday slipped to 21 to 17 as two Southern Democrats — Walter Flowers of Alabama and James R. Mann of South Carolina — voted against, and only two Republicans — Robert McClory of Illinois and Lawrence J. Hogan of Maryland — voted

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for it. Hogan was the only Republican member to vote for all three adopted articles.

McClory sponsored the defiance article. He noted that the Constitution vests "sole" power over impeachment in the House, but contended that if the President has the right to "determine the extent to which the inquiry is carried on, we don't have sole power." He quoted a rule of law that "a person cannot be the judge of his own cause."

Rep. Charles E. Wiggins (R-Calif.) opposed the amendment, contending that since the committee had found enough "clear and convincing" evidence to recommend impeachment in two articles, it could not now turn around and recommend impeachment for failure to provide evidence. "You can't have your cake and eat it, too," said Wiggins.

Rep. Wayne Owens (Utah) said the committee "must say to future Presidents that impeachment will be automatic if the President uses his unique power to stonewall. He is the only person in the United States who can refuse to honor a congressional subpoena because he is the commander in chief and the head of the executive branch and we haven't the physical ability to overcome his defiance."

Rep. Harold V. Froehlich (R-Wis.), who had voted for the first two articles but opposed the third, called the subpoenas issue a "classic confrontation" between two branches of government, which should be settled by the courts.

The committee had refused to seek court enforcement of its subpoenas on grounds that this would require delegating to the courts some of the impeachment power which the Constitution placed solely in the House.

Rep. Ray Thornton (D-Ark.) offered an amendment, adopted 24 to 14, designed to make clear that presidential defiance of a congressional subpoena would be an impeachable offense only in an impeachment inquiry, not in response to a committee drafting general legislation.

Rep. Robert W. Kastenmeier (D-Wis.) responded to Wiggins' contention that the committee appeared to have plenty of evidence by saying that other impeachment articles on the milk and International Telephone & Telegraph Corp. matters might have succeeded had Mr. Nixon turned over subpoenaed tapes.

Rep. Don Edwards (D-Calif.) argued that if the committee failed to approve the article on presidential defiance, "we will diminish if not destroy the only safety valve in the Constitution to protect ourselves against a President who so misbehaves that he poses a threat to the country." In a parliamentary system, new elections can be called when the government loses a vote of confidence, but in the United States a President serves at least four years unless impeached.

But Rep. David W. Dennis (R-Ind.) argued that the committee was in effect saying to the President: If you don't agree with our view of the Constitution we are going to impeach you. "The President believed he had a constitutional right of executive privilege to withhold" the material, said Dennis.

Rep. M. Caldwell Butler (R-Va.), who supported the first two articles, opposed the third. "Would this article standing alone constitute impeachable conduct?" asked Butler. "I think not."

"We don't need this article," said Butler. "It serves no useful purpose." He added that it offended his sense of fair play because the committee had

not exhausted other means, through the courts or a House contempt citation, to enforce its subpoenas.

Flowers, who had agonized his way to supporting the first two articles, joined Butler for the same reasons.

The committee's subpoenas had been approved by wide margins, up to 37 to 1. The only member to vote against all of them was Rep. Edward Hutchinson (R-Mich.), the committee's senior Republican, who felt they were a futile gesture because they could not be enforced.

"Just as the President cannot order the House to do anything," said Hutchinson yesterday, "so I also think the House cannot order the President to do anything."

But sponsors of the article contended that the President cannot rely on the separation of powers doctrine to justify his non-compliance and that the impeachment provision is an exception to this doctrine.

Hutchinson also said he had abandoned a position taken early in the impeachment inquiry when he said that "the doctrine of executive privilege must fall" in an impeachment inquiry. Hutchinson said he had changed his mind after the Supreme Court last week recognized that some privilege does exist.

The proposed article on the Cambodia bombing was doomed from the start, but its authors insisted on making a record that in their view the President had violated the Constitution by concealing the B-52 raids from Congress and the American public.

The impeachment inquiry staff had published an inch-thick memorandum on the bombing but had not made any judgment on Mr. Nixon's role. Some senior Democrats who voted for im-

peachment on other articles had hoped to keep it from coming up for debate.

Rep. John Conyers (D-Mich.), sponsor of the article, said it would serve notice to other Presidents that Congress has the right to declare war. "Many people have forgotten who has the power to declare war in 1974 in the United States," he said.

The bombing of Cambodia was ordered by President Nixon in early 1969 and was not formally reported to Congress until 1973.

The Conyers article specified that Mr. Nixon had violated his constitutional oath by concealing the raids, not by ordering them in the first place, and by giving Congress false information on the nature and scope of the bombing.

Rep. Elizabeth Holtzman (D-N.Y.) asserted that the President had not only concealed the bombing but misled the public by insisting in public statements that the neutrality of Cambodia was not being violated.

But opponents insisted that Congress had to share blame for not acting early to end the bombing. They provided statements from military leaders that key officials of both the House and Senate had been privately informed of the bombing.

Republicans also observed that President Johnson had acted secretly in beginning escalation of the war in Vietnam before Mr. Nixon came to office. "How many articles of impeachment were filed against President Johnson for his part?" asked Flowers. "This is a bad rap on President Nixon." He acidly told proponents, "You don't have any corner on conscience on this matter and my conscience requires that I vote against it."

One Republican, Rep. Harry P. Smith (N.Y.), had indicated last week that he might be prepared to vote for an impeachment article dealing with Cambodia on grounds that the public and Congress had been deceived.

But yesterday, Smith voted against Conyers' resolution, contending that "too many aspects are not clear" and complaining that the committee had not gone into the issue deeply enough.

The final vote opposing the article was 26 to 12.



By James K. W. Atherton—The Washington Post

Rep. Elizabeth Holtzman talks with reporters outside hearings.



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Rep. M. Caldwell Butler (R-Va.) leans over to talk to Rep. James R. Mann (D-S.C.) at impeachment hearing.



Judiciary Committee votes on a point in Article III. Front row, from left: Wayne Owens, Lawrence Hogan, M. Caldwell



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Butler and William Cohen. Back row: Robert McClory, Henry P. Smith, Charles W. Sandman and Thomas Railsback.