

By William V. Shannon

WASHINGTON—Although the House Judiciary Committee has performed an historic public service, there are some disturbing implications in its debates and in its failures to act.

If it is profoundly encouraging that sizable bipartisan majorities recommended the first two articles of impeachment to the House of Representatives, it is astonishing that the third was approved so narrowly. Mr. Nixon has violated the Constitution in refusing to obey the Judiciary Committee's subpoenas in this impeachment inquiry. Instead of squeezing through by a vote of 21 to 17, this article should have been approved unanimously.

The Constitution reserves the impeachment power solely to the House. Without the power to compel the President and his subordinates to produce any and all evidence, the impeachment power is meaningless. Representative Robert McClory, Republican of Illinois, deserves great credit for recognizing this essential principle and insisting upon it.

It was readily apparent why the article on the secret Cambodian bombing failed. In pure constitutional terms, there could hardly be a more clear-cut offense than Mr. Nixon's usurpation of Congress's power to declare war by his bombing of a neutral country and

his lying to the people and the Congress about it.

But the House had failed to resist Mr. Nixon and his predecessors through the whole of the Vietnam war. Representative William Cohen, Republican of Maine, spoke of Congress's "sloth and default."

Representative Jerome Waldie, Democrat of California, countered that the ultimate purpose of impeachment is to draw lines to show future Presidents where legitimate power ends and abuse of power begins. What message is this Congress giving future Presidents if it passes over in silence Mr. Nixon's abuse of his powers as Commander-in-Chief and his "deception and concealment" to cover up that abuse?

It is an important question. But most of his colleagues felt they could not give the answer that the question deserves. The Cambodian bombing was a part of the Vietnam misadventure in which they and perhaps many of us were accessories after the fact.

The tax-fraud and emoluments-office article was also defeated for a reason having little to do with the facts or the Constitution. Representative Jack Brooks, Democrat of Texas, as a subcommittee chairman of the Government Operations Committee, conducted a thorough inquiry into the misuse of Federal funds to beautify and improve Mr. Nixon's estates at San Clemente and Key Biscayne. The Internal Revenue Service in its re-audit of Mr. Nixon's taxes estimated

this diversion of public funds to his private benefit very conservatively at \$67,000. Representative Brooks's findings suggest the figure was well over \$1 million.

Using either figure, Representative Brooks could show a violation of the constitutional language forbidding a President from receiving any other "emoluments." It could conceivably be argued that this chiseling is too petty to be the subject of an impeachment. But the opponents of this article did not make that argument. Neither did they contest Representative Brooks's facts; they just ignored them.

Similarly, Representative Edward Mezvinsky, Democrat of Iowa, outlined a compelling case of tax fraud on the part of Mr. Nixon based on the faking of a deed to justify a wholly illegal deduction of \$576,000 for his papers. He reminded his colleagues that the head of the tax fraud division of the Justice Department had testified that on these known facts, any other taxpayer would have had his case submitted to a grand jury for criminal prosecution.

Unable to refute these facts, Mr. Nixon's defenders blandly misstated them. The committee ought not to cite Mr. Nixon, they argued, because the Joint Committee on Internal Revenue Taxation and the I.R.S. had both refused to cite him for fraud. But, in fact, the I.R.S. had referred the fraud issue to the special prosecutor, and the joint committee had referred it to the Judiciary Committee.

Tax fraud and diversion of public funds are on the same level of seriousness as bribery, the financial crime specifically mentioned in the Constitution as a ground for impeachment. Why then did a majority of members run away from the facts?

The proposed article gave them something to vote against. Those conservatives who had offended pro-Nixon constituents by supporting the first two articles and those liberals eager to show that they are open-minded could use a "no" vote to prove that they are not pursuing an implacable vendetta against Mr. Nixon.

Reasonableness and open-mindedness — or even the comely appearance thereof — are worthy values for public men to espouse. But historians of this great event will have to bear in mind that in rejecting the tax-fraud and emolument article, most members were trying to conciliate people who still believe in Mr. Nixon. They regarded this conciliatory effort as more important than responding to the facts of the matter or the plain words of the Constitution.