

Voting 2 More Ayes, 2 Nays

"It is not the presidency that is in jeopardy from us. We would strive to strengthen and protect the presidency. But if there be no accountability, another President will feel free to do as he chooses. But the next time, there may be no watchman in the night."

Typified by the understated eloquence of South Carolina's gentle James Mann, the remarkable House Judiciary Committee last week completed its unwanted task of bringing Richard Nixon to public account for grave violations of his oath of office and injury to the U.S. Constitution. Through two more days of largely decorous televised debate on impeachment, the committee's fragile bipartisan coalition strongly approved a second article of impeachment and nar-

ticle, adding his name to the six other Republicans who had also turned against their party's President on the first article (Illinois' Tom Railsback, New York's Hamilton Fish Jr., Maryland's Lawrence Hogan, Virginia's M. Caldwell Butler, Maine's William Cohen and Wisconsin's Harold Froehlich). The vote on the abuse of powers article was thus 28 to 10.

McClory, an anguished former Nixon supporter who had wept when he learned about the Watergate-related criminal conviction of John Ehrlichman, then successfully sponsored a third article of impeachment of his own. It charged Nixon with deliberately disobeying lawful subpoenas from the Judiciary Committee for White House tape recordings and documents. Only two



Lawrence Hogan R. Md.

M. Caldwell Butler R. Va.

rowly approved a third. By large margins, the committee then rejected two other charges against the President.

Much of the painful pressure on Chairman Peter Rodino's committee had eased after it had irrevocably cast the die of impeachment on July 27 by approving Article I, which charged Nixon with obstruction of justice in the Watergate cover-up. Yet there were spirited exchanges last week as the committee's deliberations resumed. The bipartisanship reached its peak as seven Republicans joined all 21 Democrats to approve Article II, which accused Nixon of abusing the powers of his office and failing to take care that the laws be faithfully executed. Illinois Republican Robert McClory supported the ar-

Republicans (McClory and Hogan) supported this article and only two Democrats (Mann and Alabama's Walter Flowers) opposed it. Defeated by identical margins of 26 to 12 were proposed articles based on Nixon's secret orders to bomb Cambodia, and his "attempt to willfully evade" federal income taxes and use public funds for improvement of his private properties at Key Biscayne and San Clemente.

Throughout its six days of decision in July, spread over two weeks, the Rodino committee maintained a spirit of compromise. The reputedly hotheaded liberals, such as Michigan's John Conyers, California's Jerome Waldie and Massachusetts' Father Robert Drinan, spoke pointedly but with unexpected re-



straint. The Democratic majority allowed the language of the charges against Nixon to be softened or limited in order to appeal to impeachment-leaning Republicans. The articles on Cambodia and Nixon's finances gave defecting Republicans and Southern Democrats a chance to alleviate some of their home-district distress by casting a vote or two for the President.

Although thoroughly outnumbered, Nixon's all-out defenders on the committee were never squelched. Such astute debaters as California's Charles Wiggins, Indiana's David Dennis and Iowa's Wiley Mayne, in fact, presented a far more coherent and reasoned defense than had either the President or his various spokesmen throughout the two-year-old Watergate scandal.

Controlled Attack. Whether delivered with the sardonic light touch of Missouri's William Hungate, the biting thrusts of Ohio's John Seiberling or the measured coolness of Maryland's Paul Sarbanes, the attack on Nixon's actions was controlled, yet incisive. When such troubled Republicans as Maine's semi-lyrical Cohen, Maryland's hard-hitting Hogan and the earnest McClory joined the assault, the impact was powerful.

Introduced by Hungate, the abuse of powers article embraced five areas of presidential activity: 1) attempted abuse of IRS information and audits; 2) use of wiretaps for purposes other than national security; 3) creation of the White House squad of secret investigators, the "plumbers"; 4) failure to prevent subordinates from impeding such investigations as those into the Watergate and Ellsberg burglaries; 5) interfering with the FBI, CIA, Watergate special prosecution force and the Department of Jus-

tice. The article was assailed by Wiggins as citing no violation of law, while his position was challenged by California Democrat George Danielson.

WIGGINS: Just what is abusive conduct? What does it mean? I suggest that that is an empty phrase, having meaning in terms of what we pour into it . . . We have no right to impose our notions of morality and propriety upon others and make it their legal duty to comply therewith.

DANIELSON: The offenses charged against the President in this article are uniquely presidential offenses. No one else can commit them. You or I, the most lowly citizen can violate any of the statutes in our criminal code. But only the President can violate the oath of office of the President. Only the President can abuse the powers of the office of the President . . . They are crimes or offenses against the very structure of the state.

criminal law." It is meant to set a higher standard "in constitutional terms." Added McClory: "There is a clear violation of the President's responsibility when he permits multiple acts of wrongdoing by large numbers of those who surround him."

Wiggins and Dennis protested that the President must have personal knowledge of such wrongdoing by his aides if he is to be held accountable for them. But Danielson scoffed at the idea that Nixon would be advised in advance of every improper act. Citing the dirty campaign tricks of Donald Segretti, Danielson asked: "Do you suppose that he . . . called the President and said, 'Mr. President, I am now about to order 400 pizzas for Mr. Muskie's fund-raiser'? That is unrealistic." It is enough, Danielson contended, to show that an act was set in motion by general presidential direction or policy.

Massachusetts Democrat Drinan



Rep. Charles Sandman R-N.J.
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erable crime" when they sought files from Daniel Ellsberg's psychiatrist. But in both instances, the loyalists insisted, there was no evidence that Nixon had approved the acts. Moreover, since the political audits never were carried out, New Jersey's Charles Sandman declared that to impeach Nixon for that would be to be punish him "for a

Missouri's Hungate stressed that the article was based on a pattern of presidential misconduct rather than on isolated acts. Conceding that "men are human; humans are frail," he said that "a consistent disregard of the law" was involved. Typically, Hungate gave a homespun example of the difference: "If a man is driving in his car and he crosses the center line, that is not grounds for a whole lot of punishment . . . but if he crosses the center line 15 times every mile he drives or if he insists on straddling the center line all the time, then I think . . . action has to be taken."

Republican McClory, too, rejected the argument that an abuse of power must also violate a law before it is impeachable. "I think we can agree that the President should not commit crimes," he argued. But the impeachment process is not akin to "a district courthouse to hold the President accountable for statutory violations of the

cited, for example, such a "blanket authorization" as Nixon's orders to the plumbers: "I want these leaks to be stopped. I don't want to be told why it cannot be done . . . I want results." To Republican Cohen, any act later "ratified" by the President, if only by failing to reprimand his aides, also made him responsible. Alabama's Flowers stressed that the Constitution's "take care" clause carries an "affirmative duty" to see that laws are enforced and charged that Nixon had "failed to resist even the transgressions of these laws before his eyes and ears." Republican Fish noted that this clause also implies "policing your lieutenants."

Even Wiggins conceded that attempts by John Dean to get the IRS to audit 575 supporters of Presidential Candidate George McGovern in 1972 were "absolutely indefensible." Nixon Defender Mayne similarly admitted that the plumbers had been "caught in a mis-

thought, not a deed."

Others took a far less benign view of such Nixonian negligence. "I ask every doctor and lawyer and every insurance agent and accountant in the country, what kind of a land would you be living in if a group of hired hands have the power to come into your office in the dead of night in order to get one of your files?" protested Democrat Sarbanes. "Why was not the FBI brought into this matter if it was a legitimate matter for governmental actions? Because the plumbers were doing illegal things that the FBI refused to do."

Rattle of Chains. Argued Republican Cohen: "When the Chief Executive of the country starts to investigate private citizens who criticize his policies or authorizes his subordinates to do such things, then I think the rattle of the chains that would bind up our constitutional freedoms can be heard and it is against this rattle that we should awake and say no."

Painting a broader perspective, Conservative Republican Hogan recalled the days of antiwar protest when bombs were erupting on college campuses and draft-board offices were burglarized. Most of those protesters, he said, "felt that because their cause was just . . . they were above the law. They had long hair and beards and dressed as nonconformists and desecrated the flag. Inside the White House at the same time, there was another group of men who wore

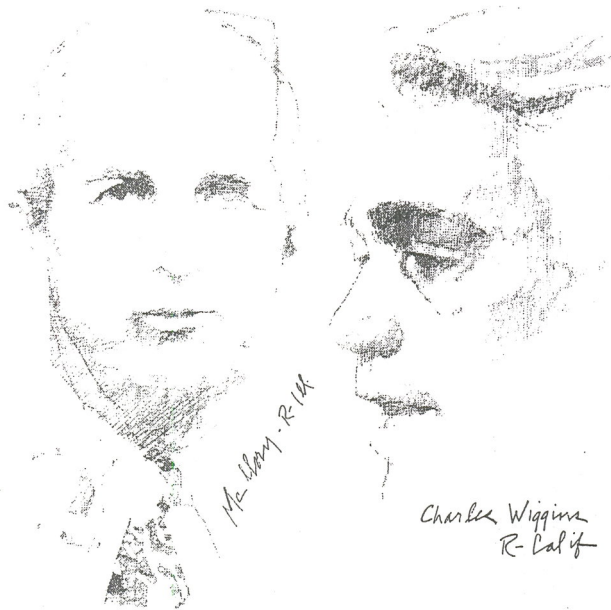
well-tailored business suits, close-cropped hair, no beards and wore flag pins in their lapels . . . They believed that the Viet Nam War was justified . . . They felt that because their cause was just they, too, were above the law . . . Now, obviously, both of those groups of people were wrong. Both should be held accountable for the violations of the law."

In closing general debate on the article, Utah Democrat Wayne Owens warned that "the history of liberty in the world is very short, the history of tyranny is very long, and the principal source of oppression has always been the unrestrained power of the state." When South Carolina's Mann observed that the U.S. political system looks out for "the underdog" and protects the "individual from the power of his government," Mississippi Republican Trent Lott had a question.

LOTT: I would ask my colleague from South Carolina, who is the underdog now?

MANN: I am fully aware that many American people consider that the President is being attacked by sinister forces in this country, by the left-wing press or by the Democrats, and I can assure this gentleman that it matters not to me his party or his position. He is subject to the rule of law and to justice, and in my role under my oath, he will get it, be he President or be he pauper.

On the roll-call vote on the abuse of powers article, only ten Republicans stood with the President—their loneliest position throughout the committee's days of voting. When Article III, citing Nixon for his failure to comply with eight subpoenas covering 147 taped conversations, was voted on, five Republicans rejoined the solid ten in opposing it. Originally proposed as one of the abuses of power under the second article, this charge was separated by committee Democrats largely in deference



to Republican McClory, who felt strongly about it and whose vote the Democrats wanted on Article II.

To McClory, Nixon's defiance of the subpoenas was an outright infringement of the Constitution, which accords the House of Representatives the sole power of impeachment. "Now, if you ever saw an example of stonewalling," said McClory, "the prime example is right there." Democrat Seiberling declared that "without the power to investigate, the impeachment power is meaningless." Several other Democrats noted that since the Supreme Court had struck down Nixon's claim of absolute Executive privilege to withhold tapes from Special Prosecutor Leon Jaworski, he

had no valid claim to keep them from the Judiciary Committee.

Opponents of the article, however, countered that the committee had failed to contest Nixon's claim in court, as Jaworski had, and had also failed to seek a contempt citation from the full House against him. "We have not elevated this to the level of an impeachable offense by either going to the House floor or going to the courts," contended Democrat Flowers. Insisted Dennis: "The right to impeach . . . does not make us the sole arbitrator of the Constitution." The article carried by the narrow and largely partisan margin of 21 to 17.

Although doomed to failure, the articles on the bombing of Cambodia and the President's personal finances were debated sharply and at length. On the Cambodia article, the basic facts were not challenged. The U.S. made more than 3,600 B-52 sorties and dropped 100,000 tons of bombs on that nation at a time when Nixon was publicly proclaiming that its neutrality was being respected. The Administration later contended that the secrecy was necessary to maintain Cambodian Prince Sihanouk's tacit approval of the action, which was aimed at Communist troops in border mountains, not at civilians. The arguments were carried most effectively by New York Democrat Elizabeth Holtzman and Alabama's Flowers.

HOLTZMAN: But Prince Sihanouk was deposed on March 18, 1970, and there are three years thereafter that this Administration, including the President, lied to the Congress and lied to the American people without any justification . . . Congress may very well have approved it. But . . . it was the right of Congress to have known . . . Deceit and deception over issues as grave as . . . waging war cannot be tolerated in a constitutional democracy.

FLOWERS: This is a bad rap for President Nixon. We might as well resurrect President Johnson and impeach

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him posthumously for Viet Nam and Laos as impeach President Nixon for Cambodia. We might as well resurrect the memory of John Kennedy for the Bay of Pigs. President Truman in Korea.

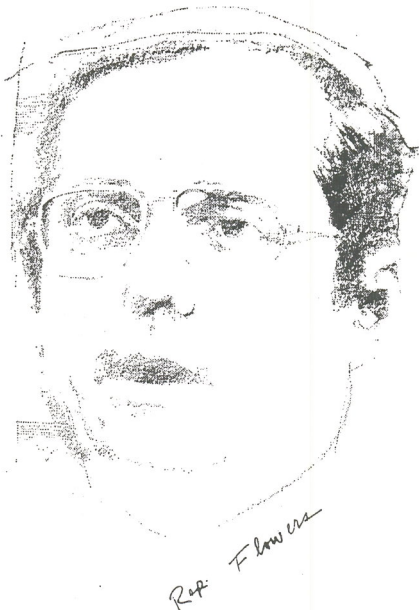
The debate revealed that at least eight hawkish members of Congress had been advised confidentially of the bombing. "How foolish we would be to impeach this President for that particular incident when the whole South Vietnamese involvement was one series of mistakes, one right after the other," declared Republican Railsback.

The President was especially raked in the argument over his failure to pay \$420,000 in income taxes until public revelations forced an investigation. No one defended Nixon's tax deduction for his vice-presidential papers valued at \$576,000—especially since that deduction was found to be based on a backdated deed. Even all-out Defender Delbert Latta said that Nixon had been guilty of "bad judgment and gross neg-

Democrats lashed out more biting. Scoffing at the notion that Nixon might have made "an honest mistake" in not checking to see if his gift of papers had really been in order, Iowa Democrat Edward Mezvinsky, who introduced the article, asked whether the committee could really believe that Nixon "did not know the truth about a gift of over one-half of a million dollars—the largest gift he has ever given in his life?"

Yet the dominant feeling apparently was that no proof of Nixon's culpability could be offered. Special Prosecutor Jaworski's office is still pursuing its investigation of how Nixon's tax returns were prepared, however, and several opponents of the article said that they would consider an added impeachment charge if new evidence becomes available.

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ligence." Mayne called it "a very sorry example . . . of American citizenship."