

Washington Report

By Arlie Schardt

"Sovereignty remains at all times with the people and they do not forfeit through elections the right to have the law construed against and applied to every citizen," said the U.S. court of appeals in *Nixon v. Sirica*.

"We elected him president and he has the right to decide whose office he'll break into," said a woman who came to Washington to oppose the impeachment of Richard Nixon.

It was the ACLU's contention that if we did not do everything in our power to educate the country on the former position—that no man can be above the law—then the latter position, exemplified by the performance of the Nixon Administration, would soon be the law.

It was also the ACLU's contention, as outlined one full year ago in the first ACLU booklet on why Richard Nixon must be impeached, that once the American people understood the process of impeachment and exactly what it means, they would call for impeachment.

The notion was treated by many as bizarre, yet even then 24 percent of the people, with no leadership to prod them, were calling for impeachment.

And the notion took precisely one year to fulfill itself, unfolding almost like the script in a play, when an early August Louis Harris survey (taken soon after the House Judiciary Committee's impeachment hearings) showed that last year's 24 percent had leaped to this year's 66 percent calling for impeachment, with only 27 percent opposed. Not only that, but a surprisingly quick 56-31 percent majority said "the Senate should vote to convict President Nixon."

The steadily growing impeachment majority underscored another theme on which the ACLU based its campaign: that once the American people made their feelings clear, Congress would respond. As the first booklet put it last fall, "The American people must thrust upon the members of the House of Representatives, their public servants, the depth of our feeling in this connection."

The whole process has shown once again how absolutely vital it is, for the proper functioning of our system of government, that the American people be given the full truth about what their government is doing.

It took a long time for people to perceive the truth. After months of investigations, trials and hearings, full understanding came as the facts were finally laid out in a neat, concise form.

That neat, concise form turned out to be the articles of impeachment ultimately drafted, debated and voted on by the House Judiciary Committee. They had

stunning national impact because they were reported by a media army and were televised live.

Yet how ironic the proceedings must have seemed to those thousands of ACLU members who had worked so hard for the last year trying to bring almost exactly the same information to the American people. For the language of the Judiciary Committee articles, the facts presented during debate and the principles enunciated all had an uncanny similarity to the points stressed since last fall by the ACLU impeachment campaign.

The reason, of course, was that the basic facts were unchanged. The ACLU based its bill of particulars on administration actions which were already on the public record, put there mostly by Mr. Nixon himself in his speeches and statements. The ensuing year of investigations and revelations instructed Americans in more of the details of how Nixon aides did what they did, but the added facts really served only to flesh out the basic structure of what was already known.

The House Judiciary Committee, thanks to the painstaking work of staff counsels John Doar and Albert Jenner, received all that detail in complete, orderly form. The facts spoke for themselves. What needed to be done next was unmistakable. The only question was how to go about it.

Perhaps the most important breakthrough came when the committee finally reached bipartisan agreement on just what was an impeachable offense. It was, they concluded, an extremely serious offense, one against the political process or the constitutional system, and one that would be recognized by the broad majority of American citizens.

Once that standard was established, the committee had a vehicle for dealing with the facts. This meant the end for one of the Nixon team's primary obstructionist tactics, namely the effort to limit impeachment only to actions which are felonies. (Since the administration also claimed a sitting president cannot be indicted, no president could ever be, by this definition, impeached; and all presidents would henceforth be free of the restraints of both the law and the other two co-equal branches of government.)

In the end, the Judiciary Committee sent three articles of impeachment to the full House. The first, by a vote of 27-11, charged Mr. Nixon with obstruction of justice, alleging a "course of conduct or plan" to obstruct investigations of the Watergate burglary and coverup facts of the case.

The second, passed 28-10, charged Mr. Nixon with abuse of power, alleging misuse of the great powers of his office and violation of his oath to take care that the laws be faithfully executed by improperly interfering with such agencies as the IRS, CIA, FBI and the Justice Department, by creating the "plumbers" unit and by authorizing illegal surveillance and wiretapping.

The third, by a margin of 21-17, charged Mr. Nixon with refusal to provide lawfully subpoenaed materials and evidence to the congressional impeachment inquiry.

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Mr. Nixon's claims of executive privilege and national security, if allowed to go unchallenged, would have destroyed the impeachment powers for all time and meant that presidents could operate unchecked forevermore, since they would have established that a president can thwart any impeachment investigation simply by refusing to provide material to the Congress.

It was for this reason that, in the face of Mr. Nixon's open defiance of Congress's unchallenged authority as the sole agent of impeachment—and in light of the uninterrupted history of past presidents' acknowledgment that, in an impeachment inquiry, all claims of executive privilege must fall—it was extremely disturbing to find the House Judiciary Committee voting for impeachment by only a 21-17 margin. One would have hoped that on such a count, where the facts were undisputed, the vote might have been unanimous.

Because Mr. Nixon had not yet reached the point of defying congressional subpoenas last September, the Judiciary Committee's third article—an important civil liberties matter—was not part of the original bill of particulars drafted by the ACLU. But in the first two articles, nearly all the supporting points were the same as those in last year's ACLU bill of particulars.

Besides passing three articles of impeachment, however, the Judiciary Committee also rejected two others. One, dealing with possible tax fraud, was not part of the ACLU campaign because it did not raise a civil liberties question.

The other, however, was a major part of the ACLU campaign. The proposal, rejected by a vote of 26-12, sought to impeach Mr. Nixon for the secret bombing of Cambodia. As the ACLU saw it, the bombing and its concealment from Congress and the American people was an usurpation of the war-making power reserved solely to the Congress.

But the committee saw it otherwise. Perhaps some members hoped to show impartiality by refusing to vote for every article. Perhaps others felt Congress itself shared complicity for the bombing by its long failure to take control of the Indo-China war.

The danger, of course, is that failure to impeach on this count might be cited by some future president to justify another secret war. Some committee members realized how serious it was not to vote to impeach. "We are not really seeking anything here involving Richard Nixon," said Rep. Jerome Waldie, who supported the article on the secret bombing of Cambodia. "The importance of impeachment is that in the future we will have a different performance by other presidents because we will have given a new definition to their powers."

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