



The Judiciary Committee in debate: 'You made me proud to be a member'

The Committee Takes Its Bows

On Wednesday the chairman slept late. In fact, it was almost 10 o'clock on the morning after the House Judiciary Committee ended its impeachment hearings when chairman Peter Rodino finally wandered bemused into his office. "I feel like I don't know what the devil to do," he said. Counsel John Doar, haggard after months of late-night labors, also lingered abed, as did many committee members. "I feel guilty," confessed California Democrat George Danielson, "as though I'm shirking my duties." Panel members were just plain representatives again, but heroes, too—winners and losers alike—for the generally responsible way they carried out their historic assignment. Colleagues stopped to praise them in the corridors and on the House floor. Said one admirer to Republican William Cohen of Maine: "You made me proud to be a member of this body."

The compliments were deserved, despite the air of anticlimax that surrounded last week's final rounds of debate. For while the committee had taken its biggest step on the preceding weekend—with the first dramatic vote to impeach Richard Nixon in connection with the Watergate cover-up—the final sessions focused more sharply on the constitutional underpinning of the impeachment process itself. Tired, testy and in the end more cautious than they had been at the start, the panel's bipartisan majority nevertheless produced two more articles of impeachment that charged Mr. Nixon with abuses of power and contempt of Congress in ignoring a string of subpoenas issued in the course of the committee's inquiry (text, page 29).

As if frightened by its own bravado, however, the committee's "fragile coalition" of impeachment-minded Democrats and Republicans gradually came un-

stuck. And in a final day of nationally televised debate, a shrinking band of Democratic members was left to argue futilely for two further charges against Mr. Nixon—involving the secret bombing of Cambodia, the massive irregularities in his personal income taxes and the profusion of government-financed improvements to his properties at San Clemente and Key Biscayne. Doomed to defeat as "political overkill"—in the words of Illinois Republican Tom Railsback, an influential supporter of the first two articles—these last proposals sparked some of the bitterest exchanges of the debate and thus proved almost as embarrassing to the committee as to the President.

'COURAGE ... DIGNITY ... GRACE'

But for all its flashes of partisanship, the committee wound up its deliberations with favorable editorial notices around the country—for "courage," "dignity" and "grace under pressure." Even loyal Midwest Republicans were impressed. "I think they were far more political than most people might imagine," said a GOP state official in Indiana. "But over-all I can't quarrel with them."

The seriousness of last week's debate was underscored by Democrat Danielson in his defense of the second proposed article of impeachment, listing five distinct forms of Presidential abuse. "You or I, the most lowly citizen, can obstruct justice," he said, or "violate any of the statutes in our criminal code. But only the President ... can abuse the powers of the office of the President." These were truly high crimes and misdemeanors, Danielson maintained, "meaning that they are crimes or offenses against the very structure of the state." Specifically, the article accused the President of misusing Federal agencies

including the IRS, CIA and FBI, and violating citizens' rights through wiretaps and the plots of the White House "plumbers." Moreover, it found Mr. Nixon derelict in his sworn duty to "take care that the laws were faithfully executed" by his closest subordinates.

Leading the President's defense, as he had the week before, was California Republican Charles Wiggins. In good lawyerly fashion, Wiggins tried to rule out consideration of any act that the President had not personally ordered or of which he had no specific knowledge. "This is just a matter of ... fairness," agreed Indiana Republican David Dennis. "Everyone of us has had enough experience to know that people on your staff can get you into some very, very embarrassing situations." But Railsback and Cohen argued persuasively that the principle of "ratification" also made Mr. Nixon responsible for those offenses that he had approved after the fact.

The first substantive battle came over the White House wiretaps, which began as early as 1969. In trying vainly to strike that subsection of the article, Wiggins used the President's own argument that the tapping was prompted in the main by genuine concern over news leaks in the area of "national security"—the bombing of Cambodia, Vietnam strategy and strategic arms talks. But California Democrat Don Edwards took the steam out of this defense by stressing the all but total absence of national-security information in the wiretap summaries. Rather, he recalled, they contained reports on how certain senators were expected to vote, on the activities of Administration critics and on the campaign plans of Sen. Edmund Muskie. That Mr. Nixon understood the political nature of the taps, Edwards argued, was clear in his later

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remark to John Dean: "Incidentally, didn't Muskie do anything bad on these?"

While two of the taps' targets—newsmen Joseph Kraft and Henry Brandon—sat in the audience, Pennsylvania Democrat Joshua Eilberg charged that the Nixon men "made the secret police a reality in the United States." But it was former FBI man Lawrence J. Hogan, a Maryland Republican and gubernatorial candidate, who made the greatest impact. Hogan stressed the lack of authorization in the Kraft case—"pure and simple an effort to get information on a so-called White House enemy"—and in the tap on Mr. Nixon's brother Donald, "obviously at the direction of the President."

National security was invoked again to explain the creation of the White House plumbers in the days following publication of the Pentagon papers. Iowa Republican Wiley Mayne conceded a lack of wisdom in setting up a special White House unit with no experience in the legal limits of investigation, but asked: "Is the President of the United States to be impeached because he made an error in judgment?" And Wiggins argued that subsequent criminal actions by the plumbers—primarily a break-in at the office of Daniel Ellsberg's psychiatrist—were not automatically attributable to Mr. Nixon.

'LEAK STUFF OUT'

But the pro-impeachment forces were quick to cite evidence suggesting the President's political and public-relations motives in unleashing the plumbers on Ellsberg in the first place: his request for a game plan from Charles Colson and his conversations with domestic counselor John Ehrlichman ("Leak stuff out," Ehrlichman noted. "This is the way we win"). "What was done [in the Ellsberg case]," said Representative Cohen, "reminded me of what Commodore Vanderbilt said to adversaries: 'I won't sue you, I'll ruin you.'"

That same search for the jugular also seemed to characterize White House efforts to promote IRS action against political "enemies"—the charge that seemed most dismaying even to Presidential defenders. The chief evidence cited for Mr. Nixon's personal involvement was his March 13, 1973, conversation with White House counsel John Dean ("Do you need any IRS stuff?" he asked), and a Sept. 15, 1972, discussion that is still incomplete in the committee's version while the White House appeals a court order to make public seventeen more minutes.

Some Nixon loyalists argued that IRS officials, after all, never followed through on the improper White House requests. But Cohen borrowed a pet exclamation from one of their number—New Jersey

Republican Charles Sandman—and declared it was "amazing" that experienced lawyers had "somehow overlooked the concept of an attempted wrong act." Simply by ordering Dean to obtain confidential tax information, Cohen pointed out, Mr. Nixon had violated statutes governing the IRS. When the full article finally came to a vote, it passed by a resounding 28 to 10. The addition of Illinois Republican Robert McClory to the impeachment majority pushed it one notch higher than on the first article, which had passed by 27 to 11.

To get McClory, the panel's second-ranking Republican, to support the abuse count, the impeachment coalition agreed to have him introduce a separate article

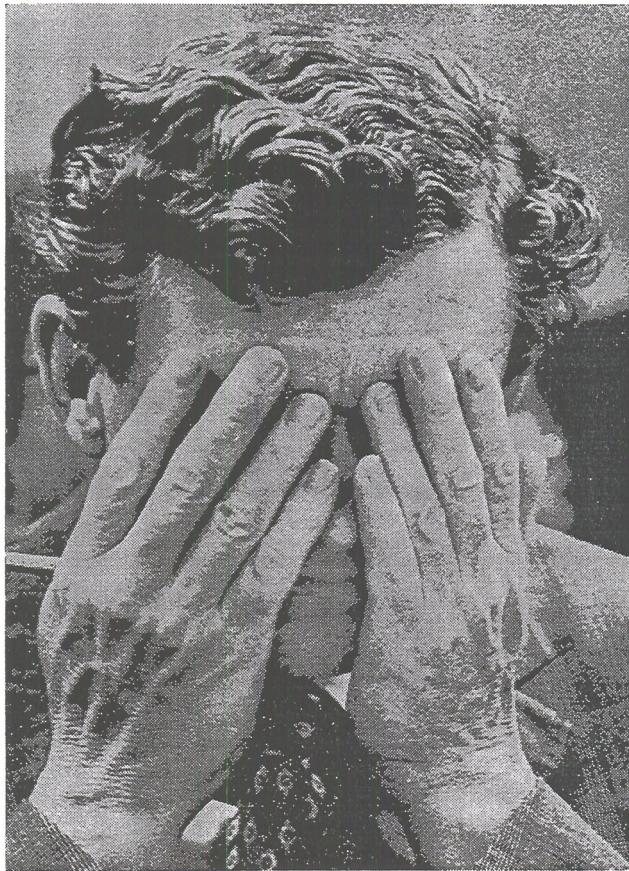
it unfair "to impeach a President for failure to cooperate with his own impeachment." But in the end, the article passed by a bare 21 to 17, with McClory and Hogan the only Republicans voting "aye" and two Southern Democrats—James Mann of South Carolina and Alabama's Walter Flowers—joining the anti-impeachment forces for the first time. Afterward, McClory's clout was gone and he was rudely excluded from the committee's Republican caucus. "Some of them really hate me," he griped to a reporter.

Edgy swing men—Republicans and Democrats alike—seemed even happier to vote against proposed articles on the Cambodia bombing and Mr. Nixon's finances, although each might have been compelling in a different political atmosphere. In the bombing case, the facts were uncontested; Democrats John Conyers of Michigan, Robert Drinan of Massachusetts and Elizabeth Holtzman of New York argued passionately against the President's concealment of the massive B-52 raids from most of Congress and the general public, calling it an infringement on Congressional war powers. But the new majority countered with reminders that key leaders on Capitol Hill had been kept informed and that Congress itself had a long history of relinquishing its constitutional war-making powers to strong Chief Executives. In the end, the vote against Article IV was 26 to 12.

END OF THE FIRST PHASE

The same fate was suffered by the article on Mr. Nixon's finances, although there was solid documentary evidence of irregularities on his income-tax returns and improper government expenditures on his properties. But panel members who had drawn strong inferences of the President's responsibility in connection with the first two articles now found the evidence insufficient; the majority argued that the committee had done too little work on its own to tie Mr. Nixon directly to the obvious improprieties. That settled, chairman Rodino wrapped up some procedural questions, then brought his gavel down on the first—and perhaps most critical—phase of impeachment.

Despite the low-key ending, the committee had clearly buttressed its case against Mr. Nixon. And it had also issued some stern warnings to those who follow him in the Oval Office. "Indeed," said California Democrat Jerome Waldie, "we tell any future President that the Constitution is a limiting document, and that it particularly must limit power where it is concentrated most heavily—in the executive branch, the Presidency."



Doar: After the crunch, 'what the devil to do'?

on contempt—a charge some felt would weaken article II if it were included there as another subsection. The issue went to the heart of the impeachment process itself, McClory noted. If the President could select the evidence, he said, "then how in the world could we conduct a thorough and complete . . . investigation?" But many of those who had supported Articles I and II seemed to fold on this key question, and the privilege of submitting it proved more a problem than a prize for McClory.

Some of the defectors argued that the committee had never taken its case for White House tapes and documents to the courts or even to the floor of the House. And some, like Virginia Republican M. Caldwell Butler, simply found