

Rep. Robert McClory v. Richard M. Nixon: Deliberation, Impeachment, and Resignation

by
Mike McClory

Why Did President Nixon Agree to Resign?

A Behind-the-Scenes Account of the Watergate Scandal in Washington, DC, 1974:
Congressman Robert McClory was the Author of the Third Article of Impeachment.
How Did His Interaction with the White House Lead Directly to Nixon's Resignation?
For all the details – including some surprising twists and turns – here is the full story.



“I shall resign . . .”

Most Americans who were watching television on the night August 8, 1974, don't recall what else President Richard Nixon said in his startling announcement,

just a few days after the House Judiciary Committee had voted to approve three articles of impeachment related to what is commonly called the Watergate scandal. A stunned populace slowly realized that for first time in our nation's history, an American president had resigned his office.

But a few members of Congress were not caught by surprise.

One of them, Rep. Robert McClory — who came from a small town in northern Illinois and who served as the committee's second-ranking Republican — played a pivotal, nonpartisan role in the impeachment process and in a series of behind-the-scenes events that led directly to Nixon's decision to resign.

Originally a supporter of the president, Bob McClory ultimately found himself acting as the coauthor of one article of impeachment, the principal author of another, and the liaison between Congress and the White House in working out the terms of Nixon's resignation.

In the notes he left as part of a Watergate memoir he was writing before his sudden death in 1988, McClory described many of the events leading up to the resignation, including the changes he experienced as he considered — and reconsidered — the legal issues involved in impeaching a president of the United States.

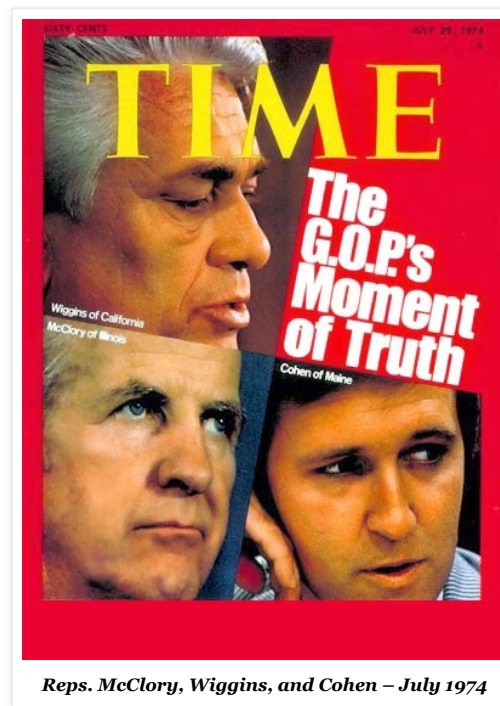
McClory's notes offer a unique perspective on the crimes that have made the name "Watergate" synonymous with shady political operations. Stated briefly, here are the facts:

On the night of June 17, 1972, less than four months before the presidential election, five men were arrested while attempting to tap the phones and photograph documents in the Democratic National Committee offices in Washington's prestigious Watergate Hotel.

One of the men arrested turned out to be an employee of the Committee to Re-elect the President, which was officially known as the CRP, but which McClory refers to by the more popular, and less flattering, acronym CREEP.

Nixon denied any knowledge of the break-in, and his press secretary dismissed it as a "third-rate burglary."

In his notes, McClory pointed out that there has never been any "direct or other credible evidence that the Watergate break-in was part of the campaign strategy" of Nixon or his close advisers. "None of them has ever been charged with planning or advocating the bugging or breaking-in of the DNC headquarters."



What, then, was Nixon's crime? "The Watergate story should have ended with the arrests and denunciations from the White House," McClory noted. But that's not what happened. For reasons that are difficult to understand, the President of the United States decided to enlist the powers of his office in a systematic cover-up, which — conclusive evidence later revealed — involved a secret slush fund, hush money, and the illegal use of government agencies, including the IRS, the CIA, and the FBI. (Unbeknownst to Nixon at the time, one of his trusted FBI sources, Associate Director Mark Felt, turned out to be the mysterious "Deep Throat," who secretly provided damaging information about the cover-up to reporters from the *Washington Post*.)

Throughout 1973, as more and more details about the Watergate affair began to

surface — through newspaper articles, the investigation of a special prosecutor appointed by the attorney general, and the testimony of witnesses before a select committee appointed by the Senate (the Senate Watergate Committee) — the possibility of legal proceedings to impeach the president escalated from speculation to reality. Among the details that emerged was the revelation that Nixon had secretly taped telephone calls and other conversations. Some of the secret tapes, many observers believed, could have a direct bearing on Watergate.



Crowd protesting outside the White House

Under the Constitution, the House of Representatives has the responsibility for conducting impeachment proceedings. In early 1974, the House voted to give the Judiciary Committee authority to investigate the Watergate incident and determine whether there were grounds to impeach the president. One problem that hindered the investigation was that Nixon, who had promised full cooperation, refused to turn over many of the White House tapes and other relevant documents subpoenaed by the committee.

Article I ("obstruction of justice")

On July 27, 1974, by a 21-11 margin, the House Judiciary Committee voted to adopt Article I. Like the other Republicans on the Judiciary Committee, Bob McClory was receiving repeated assurances from the White House that President Nixon was not involved in any way with a cover-up of the Watergate break-in. Most of the evidence presented before the July 27 vote was circumstantial. Much of it was hearsay, and some of it was contradictory.

In his notes, McClory explained the issues related to Article I this way: “Many of my colleagues on the House Judiciary Committee were convinced of Nixon’s direct and personal involvement in the cover-up. Circumstantial evidence ... pointed to the Oval Office as the key to the cover-up. But I was unwilling to support an Article of Impeachment based on circumstantial evidence.

“My decision to vote ‘no’ when the roll was called on July 27, 1974, on Article I of the Articles of Impeachment was based on the absence of the direct evidence of Richard Nixon’s guilt — revealed a few days later when the President’s attorney ... furnished a transcript of the June 23 tape to the Committee.”

McClory was referring to a taped conversation (often referred to as the “smoking gun” tape) between President Nixon and his chief of staff, H. R. Haldeman, on June 23, 1972 — just six days after the Watergate break-in. Nixon had withheld this tape until the Supreme Court ordered him to turn it over to the House Committee, which he failed to do until a week after the members of the Judiciary Committee had committed themselves by their “yes” or “no” votes on all three Articles of Impeachment. The June 23 tape revealed that Nixon had not merely participated in the Watergate cover-up; he had orchestrated it.

According to McClory's notes: "Instead of demanding that the FBI investigate thoroughly the bugging and break-in, Nixon told Haldeman to call [CIA Deputy Director] Vernon Walters, who, in turn, was to call Pat Gray, head of the FBI, and tell him to 'stay the hell out of this ... we don't want you to go any further on it.' At the same time, Nixon directed that Richard Helms, Director of the CIA, should offer excuses of inaction on the pretext that highly sensitive intelligence subjects might be sacrificed if the investigation went too far.

"Richard Nixon's own words ... were a clear indictment of his own criminal misconduct. Nixon had fought tenaciously to withhold the June 23 tape, which contained a flat admission that he, as President, 'engaged personally ... in a course of conduct or plan designed to delay, impede, and obstruct the investigation of the Watergate break-in' ... [and] 'to cover up, conceal and protect those responsible...' just as Article I ... had declared.

"Many Republican members [were] misled by Nixon's constant and false reassurances.... [and] most of my Republican colleagues on the Committee and I opposed Article I in the impeachment resolution.... If the contents of the June 23 tapes were made known to me and the other Republican members of the committee, I'm convinced that the vote in support of Article I to charge Richard Nixon with 'obstruction of justice' for his management of the extensive cover-up would have been unanimous."



*Rep. McClory discussing issues
with Rep. Edward Hutchinson (R-Mich.)*

Article II (“take care that the laws be faithfully executed”)

In his notes, McClory described Article II as “a different story.” There was credible evidence, he concluded, of “numerous types of conduct initiated or condoned by those who surrounded President Nixon in the White House ... [including] the unauthorized bugging of telephone conversations, misuse of the Internal Revenue Service by demanding IRS audits of [Nixon’s] enemies, and improper use of the FBI.

“These actions, it seemed to me — whether ordered by the President personally or by his close associates — constituted a violation of the President’s constitutional obligation ‘to take care that the laws be faithfully executed.’ ”

In *Washington Journal: The Events of 1973-74*, a hard-hitting account of the Watergate scandal based on a series of articles originally published in the *New Yorker*, Elizabeth Drew presented the following assessment of McClory’s views on Article II:

"Robert McClory, defending Article II, says ... 'there is clear violation of the President's responsibility when he permits multiple acts of wrongdoing by large numbers of people who surround him...' The purpose of impeachment, he says, is 'to set a Constitutional standard for persons occupying the office of the President... We must phrase our charges in Constitutional terms so that the Presidents to come may know what is meant by our action. If we are to establish our proceedings as a guide for future Presidents, we should speak in terms of the Constitution and specifically in terms of the President's oath and his obligation under the Constitution... It will aid future Presidents to know that this Congress and this House Judiciary Committee will hold them to an oath of office to see that the laws are faithfully executed.' It is hard to imagine that the words of Robert McClory, from Lake Bluff, Illinois ... will be as carefully attended to in the future as those of James Madison have been. But they may well be, because today McClory is making Constitutional history."

On July 26, by a vote of 28 to 10, the House Judiciary Committee voted to adopt Article II.

Article III (“contempt of Congress”)

In his notes, McClory explained the reasoning behind Article III:

“I developed the theory and text of Article III, which declares simply that the refusal by the President to furnish ... the information deemed necessary to [conduct] an impeachment inquiry constitutes an ‘impeachable offense.’

“Article III — i.e., to impeach the President for his refusal to comply with the Committee's subpoenas — had its genesis in the frustration which some other Members and I experienced as we searched for direct proof of Richard Nixon's

guilt or innocence. As it turned out, the President's arbitrary and determined refusal to turn over the June 23, 1972, taped conversation and other highly relevant evidence amounted to a deception of his most earnest supporters on the Committee.

"There were various suggestions that subjects relating to our national security were discussed in conversations recorded on other tapes. The White House charged that the [Senate Watergate] Committee and our House Judiciary Committee were engaged in a 'witch hunt' which could jeopardize national security interests.

"When all such fears were dispelled, the President fell back on the doctrine of 'executive privilege' as an excuse for denying Committee access to any and every item of evidence which the President might choose to withhold. Those who opposed [Article III] ... declared that such subpoenas could be enforced only by applying to a court, which would subject the impeachment authority to the superior control of the judicial branch of the federal government — and virtually nullify the constitutional authority of the U.S. House to impeach.

"The Constitution imposes no such limitation. In my additional views that were attached to the Committee Report, I recalled James Madison's perception of the doctrine of 'Separation of Powers.' Madison declared that [because] 'it is not possible to give each department an equal power of self-defense ... the legislative authority necessarily predominates.'

"The principle involved in Article III was simply that the authority of the House of Representatives to demand information in an impeachment proceeding against the President is not counterbalanced by an equal power in the President to refuse. The constitutional authority to impeach would make no sense — if the

House of Representatives could be effectively frustrated by such arbitrary actions of the President... As I stated in the Committee Report: ‘For posterity, it [Article III] is the most important article. It preserves for future generations the power to hold their public servants accountable.’ ”

On July 30, the Committee adopted Article III by a vote of 21 to 17. As evidence of how far McClory’s thinking had changed during the course of the impeachment inquiry, the Article was supported by 19 Democrats and — besides McClory — only one Republican.

Nixon’s Resignation — Up Close and Personal

In a press release that went out on the morning of August 6, the day after reviewing the “smoking gun” tape, Rep. McClory “called for the immediate resignation of President Nixon,” citing Nixon’s admission that the “transcripts of [the June 23, 1972] tapes ... are ‘at variance’ with earlier public statements” from the White House. If Nixon were to resign, McClory continued, it would also “spare the entire nation the agony that a long debate in the House and the Senate would no doubt produce. The American people have been torn by the aftermath of Watergate ... long enough.”



Rep. McClory conferring with Chairman Peter Rodino (D-N.J.)

The call for Nixon's resignation from the second-ranking Republican on the Judiciary Committee elicited a quick — and positive — response from Chairman Peter Rodino. At a meeting later that day, attended only by Rodino, McClory, and another member of the Judiciary Committee, Rep. Don Edwards of California, Rodino broached the subject of resignation. In an article published in the *National Review* several years later (October 14, 1983), McClory recounted the details of that meeting:

Rodino began: "Say, Bob, got your press release urging the president to resign.... I'm all for it. See what you can do. It would save us all a lot of trouble. The damage to the country will be terrible if this all goes on TV. Think what it would do around the world. If he resigns, we can drop all of this, the impeachment, the threat of criminal proceedings. If he quits, that's the end, that's it."

I replied: "Pete, I'm glad you feel as you do, and the way you're talking to me, it sounds as though you want me to communicate your views to the people on my side."

Rodino answered, "Of course. You tell your guys that if he quits, we'll drop the impeachment, and there should be no criminal proceedings."

Congressman Edwards volunteered, "Bob, I feel the same way. If Nixon resigns, he's through. No impeachment. No criminal prosecution. That's my position."

I felt Edwards's support of the resignation movement reflected the prevailing attitude of the Democrats on the committee. But did it reflect the position of the Democratic leadership?

Rodino told me that he had already talked with the Speaker [Carl Albert], and that “he feels the same way.”

My [subsequent] conversation with Speaker Albert was brief, but it confirmed what Congressmen Rodino and Edwards had told me: If Richard Nixon would resign, the impeachment would be dropped and the Speaker would argue against any criminal prosecution.

I puzzled on how best to communicate this advice to the White House.

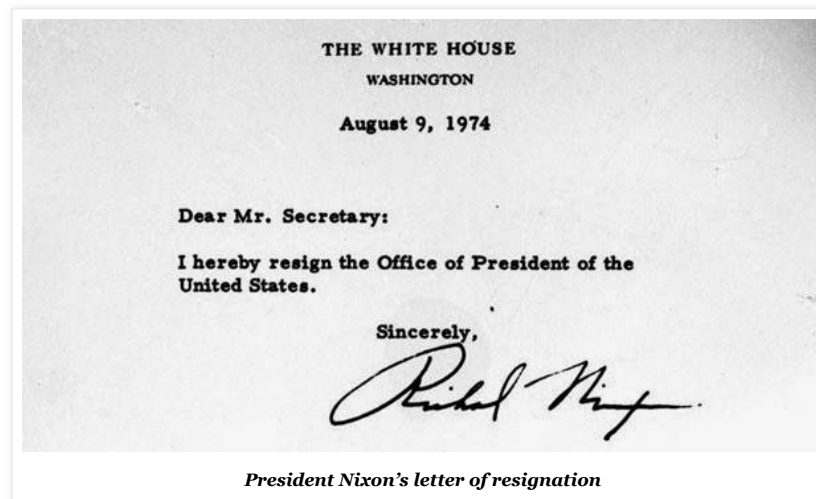
The hours that followed were marked by phone calls back and forth by McClory to the White House and to the office of Vice President Gerald Ford. (Contrary to popular rumors and some published articles, “Ford wanted nothing whatever to do with any possible Nixon resignation.”) Finally, McClory spoke with Nixon’s Congressional Liaison, Bill Timmons, and relayed the message from Congressman Rodino and House Speaker Albert — that resignation would mean no further impeachment proceedings and no Congressional action to pursue criminal prosecution.

According to McClory’s *National Review* article, Timmons was receptive to the Congressional overtures, and said, “I know the President is not interested in any plea bargaining, but I feel that he would be interested in what you are telling me.... I will report what you have told me directly to the President.”

The following day, Nixon announced his decision to resign.

In his resignation speech, Nixon acknowledged that “it has become evident to me that I no longer have a strong enough political base in the Congress.” Although other prominent members of the president’s party — Ronald Reagan and Henry Kissinger among them — had suggested to Nixon that he should

resign, none could offer the promise that he would not have to go through prolonged impeachment proceedings in the House of Representatives or face criminal charges, a lengthy trial, and the possibility of incarceration.



As it turned out, Speaker Albert was not able to control the passions of all of the Democratic members of the House. A few favored ignoring the assurances that had been offered and to press on with criminal charges. As a result, just 30 days after the resignation, the newly inaugurated President Ford, by this time aware that the olive branch extended by the House leadership had greatly influenced Nixon's decision to resign, granted him a pardon for "all offenses ... he has committed or may have committed ..." Echoing the sentiments expressed by Rodino, Ford said that "the tranquility to which this nation has been restored by the events of recent weeks could be irreparably lost by the prospects of bringing to trial a former President of the United States."

In his notes, Bob McClory reflected on his transformative Watergate experience:
“I must confess that ... I harbored a secret hope that a triumphant Richard Nixon would suddenly emerge in clear and unmistakable words ... [but] as I drifted away from being a hard line supporter of Richard Nixon, I seemed to yield to a higher sense of duty — to fulfill a constitutional responsibility.”

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