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Impeachment Traps

The President's strategy for fighting against impeachment has now emerged. The basic idea is to make the Congress go after the capillaries—not the jugular.

Mr. Nixon wants to tie the House and its Judiciary Committee in procedural knots. Unfortunately, given the character of the Congress and of the men handling the impeachment, that tactic might just work.

The telltale sign of the White House strategy was the refusal of Mr. Nixon's Watergate counsel, James St. Clair, to turn over the documents now being sought by Special Prosecutor Leon Jaworski. That stand foreshadows a similar refusal to make available material which the Judiciary Committee is seeking in the impeachment inquiry.

Mr. Jaworski apparently has enough evidence to move on criminal incidents—especially since he is only going after lesser figures. But the Judiciary Committee and its counsel, John Doar, have to deal with the President himself. They have only begun to gather evidence.

The path toward further evidence traverses a zone marked by legal quicksands. Already the White House and its allies have set out lures designed to pull the Judiciary Committee and its lawyers into a miasmatic swamp of insoluble procedural problems.

One procedural issue already in view involves defining an impeachable offense. The Republicans on the Judiciary Committee have been insisting that impeachment would only be warranted if there was hard evidence that the President had committed a crime.

That argument has no standing in the Constitution (which leaves the ground for impeachment deliberately

vague) nor in common sense (which tells us that a President would be impeached if he simply didn't do his job). Still Mr. Doar has felt obliged to come up with a general statement (due to be presented Wednesday) on grounds for impeachment. If that is not enough, if there is an effort to reach committee agreement on defining an impeachable offense, months would go by in haggling.

The second procedural trap is the issue of national security. Mr. Nixon has repeatedly refused to give evidence of his past actions on the grounds that national security was involved. Now the national security issue is being built up again through a number of mysterious stories, apparently circulated by the former White House aide Charles Colson, about some missing CIA tapes and a supposed "Pentagon spy ring."

It appears that the White House will resist the Judiciary Committee's drive for further evidence on the grounds that national security is involved. And of course, if the committee makes elaborate efforts to define national security, it will choke to death in confusion.

A third procedural trap is confidentiality of grand jury material and the danger of advance publicity compromising the trials of Watergate defendants less important than Mr. Nixon. Mr. St. Clair has already used that issue to block access of the Senate Watergate Committee to the White House tapes.

He will probably make the same argument against a similar subpoena by the Judiciary Committee. And if the Judiciary Committee takes the argu-

ment step by step through the courts, years would go by before a decision was reached.

Obvious as these tactics are, the Judiciary Committee is particularly vulnerable to them. The Congress in general is made up of litigious lawyers who, as the many fights over cloture suggest, are always delighted to duck responsibility by arguing over procedure.

Moreover, the committee counsel, Mr. Doar, is a lawyer who made his way by fighting civil rights cases in the early 1960s. His experience was the experience of winning over hostile juries and judges by being such a stickler for procedure that nobody could complain.

To be sure, the procedural issues have to be faced. Reasonable efforts can, and should, be made to define grounds for impeachment, to restrict material associated with national security and to protect the rights of defendants in other trials. But there are higher considerations.

The impeachment proceeding which the House is now beginning is the ultimate safety valve of American democracy—the grand inquest of the nation. In the final analysis, the requirements of an impeachment proceeding override other legal considerations, and that fact needs to be kept centrally in mind by the members of the Judiciary Committee and the rest of the Congress. As Edmund Burke said during the impeachment proceedings of Warren Hastings, the tribunal must decide not by "a narrow jurisprudence, but upon the enlarged and solid principle of state morality."