

Impeachment: Some of the Major

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WASHINGTON, March 14—What is an impeachable offense? Has President Nixon, for all the difficulties spawned by Watergate, committed any? What does the Constitution mean in setting "high crimes and misdemeanors" as a standard of misconduct for which a President should be removed from office?

The questions are not easy ones, yet they lie at the root of the impeachment inquiry being conducted by the House Judiciary Committee.

Impeachments have been rare in American history—only 12 before the current exercise, and only one of those involving a President—and the committee must try to resolve issues of constitutional law that have gone without clear definition for 187 years.

The Major Issues

The following questions and answers explore these issues and their importance in determining the outcome of the impeachment inquiry that is crawling inexorably toward a conclusion:

Q. What basically is at issue?

A. Before the Judiciary Committee can judge Mr. Nixon's conduct in office its members must, in effect, judge the meaning of the Constitution. The framers of that remarkable document defined impeachment as a method of removing Government officers who had committed "treason, bribery, or other high crimes and misdemeanors."

Nobody has difficulty understanding what treason and bribery are. But debate has raged throughout American history, and particularly amid each of a dozen prior impeachment proceedings, over the meaning of "high crimes and misdemeanors."

A study issued last month by the committee's lawyers concluded that a President could be impeached for acts "undermining the integrity of office, disregard of constitutional duties and oath of office, arrogation of power, abuse of the Governmental process"—even if such acts are not direct violations of criminal law.

But a legal analysis released this month by the President's Watergate lawyers contended the Constitution not only required evidence of "a criminal offense, but one of a very serious nature committed in one's Governmental capacity" as grounds for impeachment.

Q. What difference does it make?

A. A great deal. Using the committee staff's standard, Mr. Nixon might be subject to impeachment for such matters as failing to consult Congress before authorizing the secret bombing of Cambodia in 1969 or allegedly taking unjustified exemptions on his Federal income tax returns.

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Constitutional Issues

Under the position taken by the White House lawyers, the bombing of Cambodia would not be a violation of criminal law and the questionable income tax deductions would not relate to the President's "Governmental capacity," so neither would be proper grounds for impeachment.

Q. Is the committee supporting the view of its lawyers?

A. Not unanimously. The committee chairman, Representative Peter W. Rodino Jr., Democrat of New Jersey, just about all the other position. The ranking Republican, Representative Edward Hutchinson of Michigan, and a minority of the Republicans tend toward the White House position. The most unusual view is held by Representative Charles E. Wiggins, a California Republican. He says the House has the power to impeach for noncriminal offenses but should not use it against a President because the public might not understand the legal subtleties involved and could riot in the streets if Mr. Nixon was impeached for something other than a major crime.

Q. Some House members reportedly want to impeach the President for dismissing Archibald Cox, the first special Watergate prosecutor. Would the Cox dismissal be grounds for impeachment?

A. It's a good example of the issue. The committee lawyers seem to think the Cox ouster would be impeachable. They pointed out that James Madison, one of the architects of the Constitution, argued at the first session of Congress in 1789 that a President would be subject to impeachment for "the wanton removal of meritorious officers."

On the other hand, the White House lawyers noted that Andrew Johnson, the only President ever impeached by the

House of Representatives, was acquitted by the Senate on the charge that Johnson acted improperly when he discharged the Secretary of War in 1868. According to the White House brief, the lesson of the Johnson trial is that "impeachment of a President should be resorted to only for cases of the gravest kind": The commission of a crime named in the Constitution or a criminal offense against the laws of the United States.

Q. Well, then, what about all the criminal acts that allegedly were committed by men who formerly were President Nixon's closest associates? Isn't he responsible for their misdeeds?

A. The American Civil Liberties union, which has called for Mr. Nixon's impeachment, cited a 1946 Supreme Court ruling that upheld the conviction of a general for war crimes committed by his troops. According to the A.C.L.U., "under established legal rules, Mr. Nixon may not willfully close his eyes to evidence of misconduct among those he employs. If the facts put him 'on notice' of their wrongdoing, he must act to end it—or suffer the consequences. Newspaper articles and other publicity are clear evidence of 'notice' in the law."

But the White House lawyers have countered with the argument that the Constitution's framers specifically rejected such terms as, "maladministration" and "neglect of duty" as grounds for impeachment before settling on "high crimes and misdemeanors." Thus, they have said, the logical conclusion is that the framers drew a narrow scope for impeachment.

Q. Congress is ultimately going to decide what is impeachable. Why don't they just go ahead and do it?

A. It isn't that simple. The Judiciary Committee members say they are determined to avoid partisanship by obtaining all "relevant" evidence before deciding the merits of each of nearly 50 allegations against the President.

The committee staff has divided these allegations into six categories—the Watergate burglary and cover-up; allegedly illegal domestic surveillance activities; 1972 Presidential campaign espionage and sabotage; alleged improprieties in Mr. Nixon's personal finances; use of Government agencies for political purposes, and alleged misuse of Presidential power.

The President promised to give the committee "relevant" information for the inquiry. But under the White House definition of grounds for impeachment, several of those broad categories would not be considered "relevant," so it is uncertain if the committee can get all the evidence it wants, at least from the White House.

Q. Didn't Mr. Nixon say on television last week he would give the committee all the material it needed to finish the investigation?

A. Not exactly. He said he would supply the same 19 tape recordings and 700 pages of documents turned over earlier to the special Watergate prosecutor. Mr. Nixon and his chief lawyer, James D. St. Clair, contended that this material was, as Mr. St. Clair put it, "more than sufficient to afford the Judiciary Committee with the entire Watergate story."

The Watergate matter is only one of the committee's six areas of inquiry. Some of the material given to the special prosecutor covers other areas. But the prosecutor, Leon Jaworski, has been refused a number of other items of White House evidence he requested. The Judiciary Committee has already asked for six tapes that are not among the 19 Mr. Jaworski has. John Doar, the special counsel to the Judiciary Committee, said he had interpreted the White House position to be, "Mr. Doar, your case against the President is simply the Watergate cover-up."

Q. What about the President's offer to answer written questions or submit to private interviews by Representatives Rodino and Hutchinson, those "very good cross-examiners"?

A. The committee members say they would prefer hard evidence to written answers that they might not be able to weigh properly against documents or tapes. As for an oral interview, the White House has ruled out participation by the committee staff. Neither Mr. Rodino nor Mr. Hutchinson has had the sort of experience as a trial lawyer that would suit them to the role of a William Jennings Bryan or a Perry Mason.

Q. O.K., but can't the committee subpoena White House evidence?

A. Yes, but it is not clear if the committee can enforce its subpoenas. If the President disregards or defies a subpoena, the panel can ask the full House to vote a citation against Mr. Nixon for contempt of Congress. If the House does that, the committee could send the House Sergeant-at-Arms to the White House to arrest the President.

Q. With all the police and Secret Service agents at the White House? That's ludicrous.

A. Of course it is. That's why Representative Charles Rangle, a Manhattan Democrat, asked Mr. Doar last Thursday if he would have any problem deeming contempt of Congress as an impeachable offense."

Q. What did Mr. Doar say?

A. No, I have no problems with that. None whatsoever."

Q. There do seem to be many complicated issues involved in all of this. Can the committee meet its target date of April 30 for completing the inquiry?

A. Don't count on it. That depends a good deal on how cooperative the President, the courts and the committee are with one another. Don't forget that Chief Judge John J. Sirica of the United States District Court is still trying to decide whether to give the committee the evidence the Watergate grand jury apparently thought should go to the impeachment panel. As for the committee and the White House, they seem to be headed toward a confrontation.