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Court Role In Removal Discussed

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If President Nixon were impeached by the House and convicted by the Senate, could his lawyers go to court and get an order keeping him in the White House?

The question, which has lurked in the background of the House impeachment proceedings, surfaced yesterday in the U.S. Court of Appeals and was immediately emphasized by defense attorney John J. Wilson.

It arose during debate over whether the Federal Rules of Criminal Procedure, which permit turning over grand jury data to a "judicial" proceeding, prevented the turnover to the House Judiciary Committee of evidence gathered by the Watergate grand jury.

Philip S. Lacovara, counsel to the Watergate special prosecutor, said that in some ways impeachment proceedings were "judicial" in nature. He noted that the Constitution speaks of a Senate "trial" presided over by the Chief Justice of the United States from which a "conviction" could result.

Wilson, appearing on behalf of former White House chief of staff H. R. (Bob) Haldeman, told the court he thought the prosecutor had "committed himself today" to the doctrine that courts can sit in review of imeachments.

"He may have to live one day with judicial review," Wilson said.

And on the NBC "Today" show, presidential lawyer James D. St. Clair said when asked whether impeachment disputes with the House Judiciary Committee would be taken to court, replied, "I've given a lot of thought to this problem."

St. Clair said at the moment he was "inclined to agree" with congressmen who consider the impeachment "a nonjusticiable matter, that is, it's not something appropriate for the courts."

But St. Clair added, "I can foresee circumstances where it might have some reference to a court, but insofar as things are now concerned, I would not anticipate that."

Like many other unanswered questions about impeachment, the question of an appeal to the courts has long been left to the scholars, and they disagree.

To some, impeachment is the ultimate political process and the way Congress removes a President or a judge is immune from judicial second-guessing.

To others it is unthinkable that the President should be denied what every citizen has come to claim as a birthright—the right to a day in court to contest rank injustice. This view finds strange bedfellows—supporters of President Nixon and supporters of judicial activism, "Warren Court" style, so often decried by those who share Mr. Nixon's philosophy.

The only precedent in federal court annals, a 1936 decision by the U.S. Court of Claims, held that judicial review is not available to anyone removed from office by impeachment.

That decision, which the Supreme Court refused to review, involved an attempt by impeached federal judge Halstead L. Ritter of Florida to get the courts to rule that Congress had exceeded its power by convicting him of a nonimpeachable offense. His suit took the form of a demand for the salary he lost when stripped of his judgeship.

Raoul Berger, the Harvard legal historian whose broad definition of an impeachable offense is sharply at odds with the White House view, probably will be cited with great approval by Nixon attorneys should they ever resort to the courts.

Berger's 345-page book, "Impeachment," contains only a footnote reference to the Ritter case but devotes an entire chapter to why a contemporary Supreme Court might well decide that courts can and should entertain attacks on impeachment verdicts.

The Justice Department labels Berger's view the "minority position" among scholars. The department's lengthy working papers on the impeachment issue question whether the Constitution's framers ever contemplated that the courts could ever be involved.

The study warns, "It would be perilous to have the President's title to office in suspension, and the Vice President's status in doubt, in the period after an impeachment conviction and prior to completion of judicial review."