

House Inquiry Criticizes White House For Approach to Ellsberg Trial Judge

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WASHINGTON, June 12— Democrats and Republicans on the House Judiciary Committee concluded today that it was highly improper for the White House to approach the judge in Dr. Daniel Ellsberg's trial last year about the possibility of the judge's becoming director of the Federal Bureau of Investigation.

But the committee was reportedly given no evidences that the judge had been expressly asked to take any action in return for the appointment.

The approach was made with President Nixon's approval by John D. Ehrlichman, one of the President's top assistants, to Judge William Matthew Byrne Jr. in April, 1973.

At the time, Judge Byrne was presiding over the trial of Dr. Ellsberg on charges of conspiracy, theft and espionage.

Meantime, the committee released a report by its staff on the question of whether the President's impoundment of Congressionally appropriated funds was ground for impeachment.

Other Remedies Suggested

The staff concluded that the President might have overstepped his bounds in failing to spend billions of dollars that Congress had ordered spent, but that Congress should consider remedies other than impeachment to deal with the problem.

The committee also began its exploration of whether the White House had attempted to use the Internal Revenue Service for President Nixon's political benefit.

Officials said that the first matter discussed was the disclosure in the form of a news leak of the fact that Gerald Wallace, brother of Gov. George C. Wallace of Alabama, was having his tax returns audited. The disclosure came while Governor Wallace was an active Presidential candidate in 1972, and there was no reason to believe that the disclosure had been made by a member of the White House staff.

The committee was also said to have taken up the circum-

stances surrounding creation of a list of Administration enemies against whom retribution was planned after the President's reelection.

At the committee's meeting and afterward, at a caucus of Democratic members, Representatives Peter W. Rodino Jr., the chairman, was reported to have remonstrated with members about disclosing confidential information.

Mr. Rodino, a New Jersey Democrat, told the other Democratic members that he expected that much of the information collected by the committee could be made public within a few weeks, and that the committee would then begin open sessions.

On the question of the approach to Judge Byrne, the consensus of committee members appeared to be that the offense was not so serious as to justify its standing alone as an article of impeachment.

Nomination Withdrawn

There was some sentiment, however, especially among Democrats, for considering the overture along with several other matters in an over-all charge of Presidential failure to execute the nation's laws.

On April 5, 1973, President Nixon withdrew the nomination of L. Patrick Gray 3d to be director of the F.B.I. The White House transcripts show that the President and his top assistants decided on this action weeks before it was taken.

The same day, Mr. Ehrlichman invited Judge Byrne to the President's home in San Clemente, Calif., and asked him if he would be interested in the F.B.I. position. While he was there, Judge Byrne had a brief meeting with Mr. Nixon, and, by all accounts, the discussion between the two men consisted of nothing more than small talk.

Mr. Ehrlichman told the Senate Watergate committee last summer that Judge Byrne had expressed some interest in the job at the meeting but turned it down two days later at another meeting in a park in Santa Monica.

Judge Byrne, however, reportedly told Judiciary Com-

mittee lawyers in a staff interview that he had stated clearly at his first meeting with Mr. Ehrlichman that he could not consider the job while the trial was under way, and that he could not understand why Mr. Ehrlichman had requested the second meeting.

'Best Man' for Job

President Nixon acknowledged at a news conference last August that he had been aware of the approach of Judge Byrne. He said that the judge had been sought out because he had law enforcement experience and was the "best man" for the job.

Judiciary Committee members agreed that even though the judge had not been explicitly asked for anything in return, the approach was improper.

"It's just knee-jerk," said Representative George E. Danielson, Democrat of California, an experienced criminal lawyer. "You don't approach a judge about anything—about anything—during a trial in which you have an interest. Figuratively speaking, you cross to the other side of the street to keep from passing him."

Another Democrat, Representative Charles B. Rangel of Manhattan, agreed. "There's no direct evidence of a bribe, saying that if you get a conviction you get the position, but it seems to me to be a very, very serious matter," he said.

Representative Hamilton Fish Jr., Republican of upstate New York, said that, while the conversation with the judge might have been innocuous, the overture itself was "highly unusual" and "of questionable propriety."

When a senior committee Democrat, Jack Brooks of Texas, was asked about the matter, he said sarcastically, "Maybe they just wanted to offer him that job as F.B.I. director. Maybe they just thought he was one of those judges who had the background and temperament."

The 91-page staff study on impoundment said that the issue went "to the heart" of



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Peter W. Rodino Jr., right, chairman of the House Judiciary Committee, and Delbert L. Latta, a Republican member from Ohio, leaving a meeting yesterday.

the constitutional separation of powers, under which Congress has power to allocate Federal funds.

The memo said that "an unjustified, sustained and deliberate refusal by or failure of the executive branch to carry out spending statutes enacted by Congress may be said to represent grounds for impeachment."

But the study noted, in recounting White House arguments justifying the withholding of appropriated funds, that the Nixon Administration had obeyed "final" court orders holding several specific impoundments illegal.

In addition to these judicial remedies, the memo said, "there appear to be alternative legislative remedies" for Congress to

assure that its spending priorities are followed.

Among the legislative remedies cited were the enactment of a pending bill that would establish new budgetary procedures in Congress and the possible use of mandatory language in money bills to bar the withholding of funds.

The staff report said that, as a practical matter, each of the three separate branches of Government would occasionally "attempt to exercise its constitutional power to its fullest extent, and in doing so may temporarily abrade the powers or prerogatives of another branch."

If history is a guide, the report added, not every abrasion "need lead to the impeachment of a President."