SFChronicle MAY 8 1973

**Royce Brier**

# *Impeachment Talk High in Hot Air*

REGARDLESS OF his other assets and liabilities, dour John Mitchell, former Attorney General, came up with some sense when he branded the suggestion of his wife, Martha, that President Nixon resign, as too "ridiculous" to be taken seriously.

Mrs. Mitchell has been seeing to it for some time that she is not to be taken too seriously. Her candor, though somewhat refreshing in a Washington dedicated to hide-and-seek is largely cancelled by her bizarre telephone technique and manner of advancing her views. Indeed, the candor tends largely to cancel itself, because it is so manifestly prompted by sheer impulse.

By Mr. Mitchell's own yardstick, talk going about of impeaching the President for the Watergate mess verges on absurdity.

★ ★ ★

THE FOUNDING FATHERS wisely did not intend to make impeachment, and any subsequent forfeiture of office, easy. The basic Constitutional provision is in Art. II, Sec. 4: "The President and Vice President and all civil officers of the United States, shall be removed from office for and conviction of treason, bribery or other high crimes or misdemeanors."

Two other enabling clauses define the procedure: the House of Representatives "shall have the sole power of impeachment" (by a majority vote) and "the Senate shall have the sole power to try all impeachments" (conviction only by two-thirds vote of members present).

The last provision requires that when a President is tried, the Chief Justice of the United States "shall preside."

★ ★ ★

IT IS THUS FAIRLY CLEAR that the process tends to be clumsy, time-consuming, and subject to partisan politics, rather than impartially judicial.

Any member of the House can introduce a bill to impeach a President or other civil officer. A few federal judges and cabinet officers have been impeached, some tried, and some acquitted. Some resigned under fire, and traditionally this closed the congressional case. But dropping an impeachment does not immunize the defendant officer from trial in a court under ordinary law.

The impeachment trial of President Andrew Johnson 95 years ago is our foremost case. He was acquitted in the Senate 35-19, one vote short of two thirds necessary.

But to compare Andrew Johnson's position with Richard Nixon's is also an absurdity. Johnson was in trouble with a hard core of radicals in Congress, who were for a tough Reconstruction of the South. Johnson thought Secretary of War Stanton was conniving with them, and fired him. The President was tried for violation of the Tenure of Office Act.

It is doubtful if the charge as constructed fell within the constitutional phrase "treason, bribery or other high crimes or misdeameanors." But to understand the effort to destroy Johnson, one would have had to experience the dark postwar fury of his day, and none of us can qualify.

May 8, 1973