

SAXBE COULD PICK NIXON DEFENDER

Staff Study Indicates Role
if President Is Impeached

The Washington Star-News

WASHINGTON, Jan. 10 —

If President Nixon is impeached by the House and brought to trial in the Senate, Attorney General William B. Saxbe might name a "special defender" to help defend him.

The "special defender" concept has emerged from a study by his Senate staff ordered by Mr. Saxbe, a former Republican Senator from Ohio, before he took office last Friday.

Even before that time, the Justice Department's Office of Legal Counsel had begun its own study of the role the department might play if the President is impeached.

Mr. Saxbe, who discussed the possibility of impeachment briefly in an interview shortly before assuming office, said he wanted to keep himself and the department as remote as possible from the impeachment process in the House and the trial that would follow in the Senate if impeachment should be voted.

The only penalty a President faces in an impeachment and trial before the Senate is removal from office.

Independent Role

If the Justice Department should be called upon to help defend the President for an action taken in his official role, a special defender with almost total independence from the rest of the department—almost a mirror image of the Watergate special prosecutor—would reduce the direct involvement of both Mr. Saxbe and the department.

The fact that impeachment studies are under way does not mean the department has concluded that impeachment is likely, but, as one official put it, "We don't want to be caught by surprise, no matter what happens."

The studies apparently have not yet gone far enough to determine how a legal defense of Mr. Nixon might be divided between any Justice Department lawyers, including a special defender, and personal lawyers working directly for Mr. Nixon, either from his staff or from outside government.

There is no indication that the White House has been consulted on the possible role of the Justice Department.

The role the department might play in any trial of the President would depend heavily on why he was impeached.

Basis of Appointment

The question of whether a

special defender should be appointed to help defend the President would arise, in the view of Justice Department sources, if Mr. Nixon should be accused of doing something wrong in the course of his Presidential duties after consulting with his constitutional advisers.

This would be somewhat similar to the situation involving President Andrew Johnson, the nation's only impeached President, who ignored a law that he and his legal advisers said was unconstitutional. Although he narrowly escaped conviction in the Senate, the law was, in fact, declared unconstitutional by the Supreme Court in a case involving a postmaster nearly 60 years later.

If Mr. Nixon should be impeached for an offense involving the conduct of his office, the Justice Department probably would decide it would not be obliged to aid in his defense and might even be called upon to help in the prosecution.

The nightmare for department lawyers, of course, would be a bill of impeachment containing both kinds of charges—facing the department with the possibility of defending the President on certain counts and helping to prosecute him on others.

In the Johnson case, in 1868, the House refused to impeach him on several charges relating to his personal behavior and accused him only in connection with the ousting of Edwin Stanton, his Secretary of War.