

The Thorny Issue of Court Review

By John P. MacKenzie
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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 impeachment proceedings, surfaced yesterday in the U.S. Court of Appeals and was instantly flagged 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 special prosecutor, said that in some ways im-

peachment proceedings were "judicial" in nature. He noted that the constitution speaks of a Senate "trial" presided over by the Chief Justice from which a "conviction" could result.

Wilson, appearing on behalf of former White House chief of staff H. R. Haldeman and not Richard M. Nixon, told the court he thought the prosecutor had "committed himself today" to the doctrine that courts can sit in review of impeachments.

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

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 non-justiciable 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 the scholars disagree.

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

To others, however, it's unthinkable that the President should be denied what every citizen has come to claim as his birthright — the right to a day in court to



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JOHN J. WILSON
He raised the issue

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