

An Impeachment Minuet

Elaborate Courtesy Marks Early Moves

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The matter of impeachment moves forward like a stately minuet, a dance of the lawyers in which every precious step and turn belies the general foreboding, a feeling that the music might suddenly stop in a discordant clash.

It is all very civilized and bland. Lawyer Doar writes a letter to lawyer St. Clair. Would Mr. St. Clair's client, the President, make available certain documents, materials and things to Mr. Doar's client, the House Judiciary Committee?

The President's lawyer does not answer. Attorney Doar writes a second letter, then a third. His boss, the committee chairman, receives a bread-and-butter note from the President, promising a prompt and cooperative response from his counsel.

Mr. St. Clair's response, when it arrives, is not satis-



JOHN DOAR
... seeks documents

factory to Mr. Doar. Mr. St. Clair promises to provide some evidence from the White House, but he also volunteers a great many suggestions on how Mr. Doar should proceed with his case. And he is silent on

crucial aspects of the original request for evidence. Is that a rejection? Or a misunderstanding?

John Doar, special counsel for the impeachment inquiry, addresses his client, the Judiciary Committee's 38 members, in a neutral voice. His face has a vacant expression, topped with slate-colored curly hair, the pursed lip of an Irish schoolboy, and eyes which seem unconcerned with the words he is choosing so carefully.

"As your lawyer," he declares slowly, "I say to you that that gives me some apprehension about the ability to get the information which Mr. Jenner and I feel is necessary."

Rep. Jerome Waldie, impatient with the dance, chimes in with a darker version of what is happening.

"This is a lawyer's way of playing games to delay the case," the California congressman snapped.

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Rep. Robert F. Drinan, the Jesuit priest from Massachusetts, the first congressman to introduce an impeachment resolution against Richard M. Nixon, demands action to force the issue, a committee subpoena to demand the President's compliance.

"Dilatory tactics, no question about it," the reverend declares. "Don't ask him for the material, just subpoena everything."

Not yet, not yet, the moderate voices say. The issue isn't ripe, warns lawyer Doar. The committee must proceed carefully, says Chairman Peter J. Rodino. Wait a bit, say the elder Republicans, and then, if necessity demands it, they, too, will support a subpoena directed at their party's leader.

The moderates prevailed at Thursday's meeting of the Judiciary Committee. Father Drinan withdrew his motion without a roll call, and the minuet will continue for another week or two weeks or perhaps longer. The possibility of a terrible confrontation approached, however, a few steps closer.

For the players, it is partly a test of wills, a game of institutional chicken. Does the House of Representatives really have the will to assert its constitutional supremacy in the matter of impeachment? It is also a game of perilous legal maneuvering in which a false move could throw the whole business of the impeachment inquiry into a historic legal tangle, as complicated as

the murky story of Watergate.

To appreciate the legal maneuvering, and where it might lead, you must look, not only at the substance of the dispute, but at the mutual suspicions behind it.

Bluntly stated, the Democrats on the committee (or most of them) suspect that the President is stalling—desperately trying to buy time in the hope that somehow, some way the whole ugly business will go away. While he publicly calls for a speedy resolution, the Democrats figure he is privately directing defensive delays.

"I rather suspect the White House is stalling," said Rep. Jack Brooks, the Texas congressman who is the No. 3 Democrat on the committee, "but I won't accuse them of that. If they continue to refuse, then we'll know for sure. If they're playing games with us, then we should have issued subpoenas today."

Why would the White House want to stall? What could he gain?

"They're in trouble right now, on the hard evidence," Brooks said, "and they figure that any alternative is preferable to facing the knife."

Drinan, who speaks for the leading edge of anti-Nixon opinion, put it more bluntly: "There's no alternative for him. If he reveals all now, he's gone-zo. That's the reasonable inference."

From the other end of Pennsylvania Avenue, the White House suspicions about Congress were stated quite directly the other night by the President. The pro-impeachment folks want

to muck around in the White House files—because they don't now have the evidence to impeach.

Providing unlimited access to White House materials "would not lead to a speedy conclusion," Mr. Nixon said. "It would delay it in my opinion because if all that is really involved in this instance is to cart everything that is in the White House down to a committee and to have them paw through it on a fishing expedition, it will take them not a matter of months . . . but it would take them months and perhaps even as long as a year."

Obviously, one version or the other is wrong, though in the present situation both might be sincere apprehensions. On the House end, the Republicans on Judiciary were heartened by last week's cooperation from the White House and are hopeful that the President will recognize "the handwriting on the wall," as one of them called it.

Some Republicans privately fear that the Democrats' suspicions are valid, others are merely suspending judgment until the White House drops the other shoe.

"Anyway, the President said he wanted this completed by May 1," said Rep. Robert McClory of Illinois, the second-ranking Republican. "I hope that's what he means."

From their end of the avenue, the President's position seems substantially weakened by recent events, political and legal. The Watergate indictments—and the sealed suitcase of evidence the grand jury wants

the impeachment inquiry to receive—draw a tighter circle around the President's own behavior in the so-called cover-up.

Meanwhile, the Republican losses in the Grand Rapids and Cincinnati congressional races have demonstrated that Watergate is a heavier stone hanging on the necks of Republican candidates than either party imagined six or eight months ago.

One conservative Republican congressman, whose Southern constituents generally vote 70 to 75 per cent for the GOP, was stunned last week by responses to his own voter survey. It was one of those innocuous questionnaires which congressmen send to their home districts. It didn't even mention Watergate or Mr. Nixon, yet a startling number of replies denounced the President and urged his impeachment.

"I sat and read them for three days and I had to quit," the congressman said, "It was so depressing." Not a member of Judiciary, he does not feel his own political survival is threatened. But he is beginning to calculate how a vote for impeachment might be safely explained to his Republican constituency.

This changing climate may have been reflected also in White House behavior. After the Watergate indictments, Mr. Nixon held a second televised press conference in nine days, an extraordinary frequency for him and a chance for another rebuttal of the grand jury's inferences.

Meanwhile, lawyer James D. St. Clair, who normally spurns queries from reporters, abruptly turned talkative. After a hearing Wednesday in U.S. District Court, he entertained questions for half an hour, sparring good naturedly with the press. Someone asked him why the sudden change.

"That's a fair question," St. Clair said. "There's a change in circumstances. The grand jury has spoken. The House committee has forwarded to us requests for materials. The whole focus has changed from a secret investigation by the grand jury to impeachment proceedings conducted by the House."

The problem of time becomes clearer when you consider what might happen in the weeks ahead — if the music stops and confrontation is joined. The House investigators are already confronted with one potential obstacle — the fate of that brown suitcase the grand jury wants it to get.

Even if Judge John J. Sirica rules that the grand jury's sealed report should properly go to the House, that decision is likely to be appealed. John J. Wilson, lawyer for Mr. Nixon's two closest pre-Watergate aides, H. R. (Bob) Haldeman and John D. Ehrlichman, has promised as much. Skeptics figure that Wilson's appeal will give the White House more time—without its being blamed for the delay.

Would the House go ahead with impeachment without first seeing what the Watergate grand jury has to say on the matter? "It really is unthinkable, unthinkable," said Congressman Brooks, "that this committee should consider the involvement of the President without every bit of relevant material." Lawyer Doar agrees.

Beyond that, the committee members fear that the White House strategy could lead to a direct confrontation between the two parties. Suppose, for instance, that after examining the first batch of material, the House inquiry staff decides it really does need more evidence—the other six tapes on Watergate it has asked for, another two dozen or so tapes the White House refused to give to the Watergate grand jury, additional tapes and documents on other scandals. Suppose the White House said, firmly, no.

In that situation, if John Doar and minority counsel Albert Jenner could lay out a persuasive case, the reasons why they need the materials, then it seems clear from Thursday's meeting

that most committee members would go along with a subpoena. A number of conservative Republicans said as much.

Then an epic conflict would be joined. The White House, for instance, could go to federal court and ask for an order quashing the subpoena. St. Clair has already laid the legal groundwork to support such an argument. In his letter to Doar and in his earlier brief defining impeachment, the President's lawyer spelled it out. Sure, he said in so many words, the House has the sole power of impeachment, nobody argues with that. But what is impeachment? What are the subjects the House can legitimately investigate as im-

peachable offenses? St. Clair's brief draws a narrow definition—only serious crimes—and therefore he might resist requests for evidence on other issues. The House committee, on the other hand, is investigating a broad range of several dozen charges, from Mr. Nixon's income taxes to the dismantling of OEO, which might fall outside St. Clair's definition.

But the House committee might well refuse to play in the President's lawsuit. A popular legal theory among House members holds that the judgment and power of the House are supreme on such impeachment matters. Therefore, the House could merely decide for itself whether Mr. Nixon's refusal to comply with the House subpoena placed him in contempt of Congress.

"There are a substantial number of people on this committee," said Rep. George E. Danielson, a California Democrat, "who believe refusal to honor a subpoena is an impeachable offense in itself."

Rep. Charles B. Rangel, Mississippi Republican lawyer Doar about that. "Do you have any problem with contempt as an impeachable offense?" Rangel asked.

"No, I have no problem with that," Doar said. "None whatsoever."

Even Rep. Trent Lott, the Manhattan Democrat, asked whose district voted 87 per cent for Mr. Nixon in 1972, believes that the issue should not be submitted to a federal judge. "Republican members and the committee as a whole don't want to become involved in the courts," he said. "This is a constitutional procedure."

So, as that theory goes, the President could seal his own fate if he dares to defy the House of Representatives or tries to draw it into a lengthy court fight which might stall impeachment until the 93d Congress expires.

That route, however, is perilous for the House committee, too. For one thing, whether the legal theory is right or wrong, Americans generally are used to seeing epic legal disputes settled in

the courts. Unilateral action by the House would rub against that sentiment.

Contempt of Congress, likewise, might strike a lot of voters as flimsy grounds for impeachment, since a lot of voters hold Congress in contempt.

In any case, the House committee will have to steer the question very delicately to get there. "We've got to keep this bipartisan, and that means bringing along every Republican," said one Democratic member. "We've got to frame the subpoena carefully so that it becomes very clear to everyone that the committee is not fishing."

If events proceed in that direction, the committee may first have to abandon some of the looser accusations made against Mr. Nixon, the broad policy charges which do not involve hard crimes, in order to keep reluctant conservatives on the team.

"I would like to get rid of charges like these, which are basically garbage," said Rep. David W. Dennis, an Indiana Republican. "But if we needed something about the break-in or the cover-up or other criminal aspects, I would be willing to vote for a subpoena."

Committee members of all persuasions are also going to insist that Doar and his staff loosen security precautions enough so that they can get a better understanding of what's at stake. "It's kind of embarrassing," said Rep. Tom Railsback, Illinois Republican, "to talk about a letter we sent to the White House without being able to see it."

If it comes to that, a subpoena and a contempt citation would ultimately have to be sold, not just to a bipartisan majority of the Judiciary Committee, but to the House. That means the impeachment lawyers would have to choose issues of evidence strong enough to persuade a comfortable majority in the House—or else the whole business will likely collapse in partisan wrangling.

When you add up all those imponderables, it explains why the Judiciary Committee members and their lawyers are intent on proceeding cautiously. They do not want to start a fight they might avoid. But they hope Thursday's meeting will persuade the President that it is not a fight he can win by bluff.

"We're proceeding in a quiet, steady way," said Rep. Paul Sarbanes, the Baltimore Democrat. "Whether it happens March 15 or March 30 or April 1 isn't going to amount to a hill of beans. The question they will ask is: was it done right?"