

Impeachment Proceedings: Notes on Developments in

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Washington as the Complex Tug-of-War

WASHINGTON, March 24 — "The Imperial Presidency," a thick book with a bright red, white and blue jacket, occupies a prominent spot on the coffee table in the office of Representative Peter W. Rodino Jr., Democrat of New Jersey.

In the book, Arthur M. Schlesinger Jr., the historian, traces the growth of an autocratic Presidency, discusses the Watergate scandal and its potential impact on the Nixon White House, and concludes that "neither impeachment nor repentance would make much difference if the people themselves had come to an unconscious acceptance of the imperial Presidency."

What makes the copy on Mr. Rodino's coffee table special is this inscription on the flyleaf:

"To Chairman Peter Rodino,

"A belated valentine. This book doesn't provide answers, but it does lay out some of our history and it raises some important questions about the Presidency.

Mr. Rodino is the chairman of the House Judiciary Committee. John M. Doar is the committee's special counsel on impeachment. And public consciousness of the nature of the Presidency and the meaning of impeachment may be central to what Congress ultimately does about President Nixon.

Impeachment has been used so rarely in American history that its nuances are not easily understood by the public, and even by some in Congress. Representative Thomas F. Railsback, Republican of Illinois, went through a period some weeks ago when he would waken in the middle of the night and wonder fitfully how to define properly the grounds for impeachment.

The White House and the Judiciary Committee are both trying to educate the public about impeachment. But their views clearly and understandably conflict. The President's lawyers, declared that Mr. Nixon could be impeached only for a serious violation of criminal law; the committee's lawyers contended that Mr. Nixon could be impeached for a severe breach of public trust or misuse of power, whether criminal or not.

This public relations competition is basic to a proceeding that is, by constitutional design, both legal and political. History will eventually judge the outcome of the inquiry, but the American people will decide in 1974 whether it was just. Mr. Nixon's

continuance in office is at stake. But so in a sense are the jobs of his jurors—grand jurors in the House and trial jurors in the Senate—at issue.

Congressmen are acutely aware that public tolerance of a vote one way or another on impeachment could be decisive in the Congressman's next political campaign.

Thus it was not surprising how Representative Robert McClory, Republican of Illinois, reacted last Wednesday when asked how it felt to get 72 per cent of the votes in the first Republican primary contest he faced in years.

"It's a relief," he said.

President Nixon and the committee members recognize with clarity that the panel's impeachment recommendation will be decisive on the House floor, and in the nation at large, only if it is perceived to be fair and bipartisan.

Until last week, Mr. Rodino had managed surprisingly well in fashioning unity among the committee's 21 Democrats and 17 Republicans. Only a handful differed with the staff's view on grounds for impeachment. Virtually all agreed that Mr. Nixon was wrong in declining, so far, to give the committee tape recordings of some 42 Watergate-related conversations involving the President.

Bitter critics of Mr. Nixon, such as Representative Robert F. Drinan, a Massachusetts Democrat who is a Jesuit priest, remained largely mute. Senior committee Republicans, such as Edward Hutchinson of Michigan, took the lead in challenging the White House on the tapes issue.

One television correspondent was so surprised that he suggested beatification for Mr. Rodino for having turned lions into lambs, lambs into lions and "Ed Hutchinson into Father Drinan." Sainthood may have been premature.

Last week the committee's fragile harmony cracked, seemingly irrevocably, and two partisan camps formed around a White House request to play an active, adversary role in the committee inquiry.

James D. St. Clair, the President's special Watergate counsel, asked the committee for the "imperative" right to suggest witnesses, introduce documents and cross-examine witnesses giving testi-

mony detrimental to the President. Democrats, outraged at what they professed was a White House attempt to control a Congressional inquiry, opposed the request. Republicans, citing precedent in some, but not most, of

earlier impeachment proceedings, united behind the request.

And one of the committee's seasoned trial lawyers expressed private, grudging admiration for what he described as a classic defense gambit by the President's lawyer. If Mr. St. Clair's intention was to get inside the inquiry and take every advantage of opportunities to delay it or obstruct it, as Representative Edward Mezvinsky, Democrat of Iowa, in fact charged, the committee could hardly approve. But if Mr. St. Clair was denied the role he sought,

the White House would likely charge, as Representative Wiley Mayne, Republican of Iowa, did last week, that the Democratic majority intended to "surprise the President with hidden evidence unfavorable to him."

At issue, in effect, is public perception of the nature of an impeachment inquiry.

Since the inquiry began last October, all sides have referred to it loosely as the equivalent of a grand jury investigation. The analogy is hardly precise. Impeachment is unique, a political proceeding in judicial trappings. But

the analogy seems close.

The Judiciary Committee role is to assemble and evaluate evidence, if any of Presidential wrongdoing, much as a prosecutor would in an ordinary case. The full House, based on a committee recommendation, decides by majority vote whether to impeach, much like a criminal indictment by a grand jury. Should the President be impeached, Judiciary Committee members serve as managers of impeachment in a Senate trial, much like prosecutors. If the two-thirds of Senate vote to convict, the President is removed from

office.

The important point, if the analogy is relevant, is that a defendant in a normal criminal proceeding is not entitled to representation by a lawyer before a grand jury because, technically, the individual is not a defendant until accused by the jury.

President Nixon appeared to adopt the analogy himself at a White House news conference on March 6. Asked about the propriety of the Government paying for the defense team headed by Mr. St. Clair, the President replied, in part:

"If the Attorney General

should rule that I should pay for my own defense, I shall, of course, do so. I should point out, however, that I am not a defendant until the House passes a bill of impeachment."

The distinction is a subtle one, and neither Mr. Rodino nor other Democrats who oppose Mr. St. Clair's request are confident it would be accepted by the public in the face of suggestions that the committee unfairly denied the President the right to defense counsel during the investigation.

At least two of the 21 Democrats are reportedly urging Mr. Rodino to seek some compromise, but no one has yet come up with a compromise solution.

The Republicans are also not as uniformly in favor of Mr. St. Clair's request as their public statements have suggested. But those Republicans who agree privately with the Democratic position say they are under what one described as "great pressure in the [Republican] caucus to take a more partisan approach as advocates for the President."

Mr. St. Clair has at least indirect input into the com-

mittee's Republican caucus. He has met twice on Capitol Hill with House Republican leaders who in turn have met with the Republican members of the committee. The influence is discreet but apparently effective.

For instance, the Republicans were victimized by the rules the committee adopted unanimously to limit access to inquiry evidence to Mr. Rodino, the Democratic chairman, and Mr. Hutchinson, the ranking Republican, and the two senior staff lawyers until the evidence is weighed against a potential article of impeachment.

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