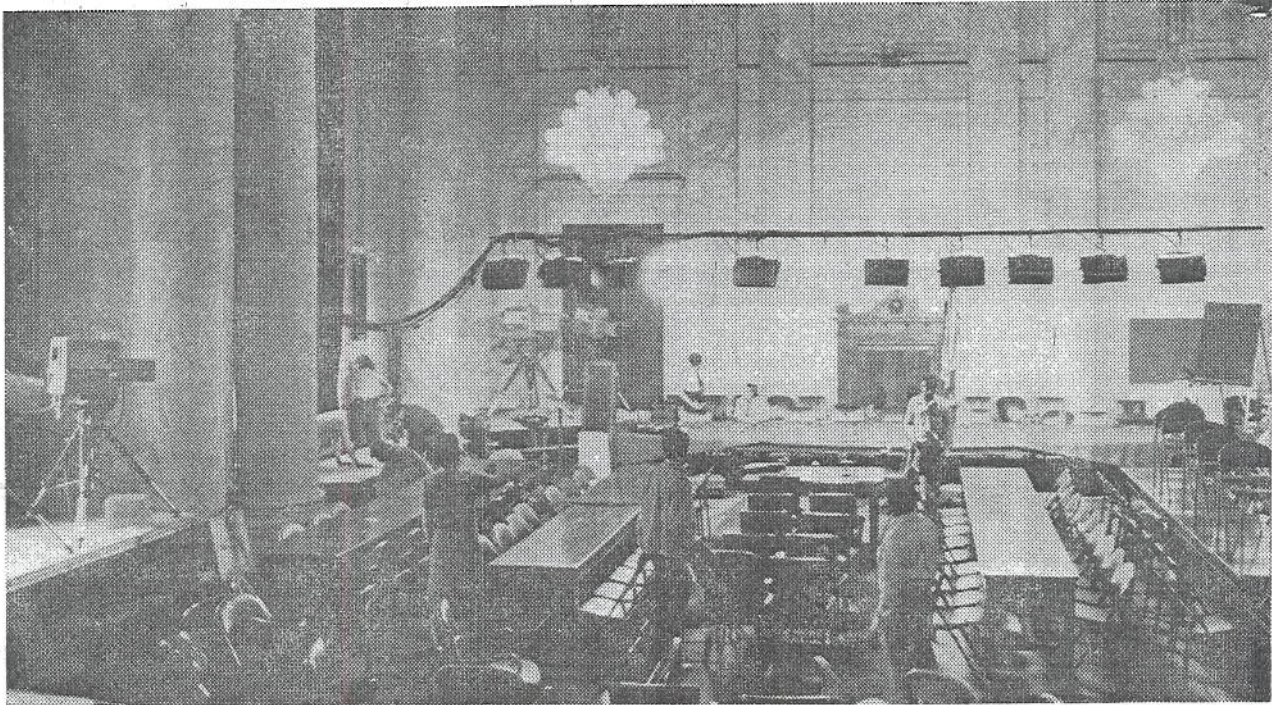


TV and Impeachment



Should impeachment proceedings be televised? Last Monday, *The Post* presented the viewpoints of Jerome Barron, a professor at Washington University, and George Reedy, former press secretary to President Johnson. Today, two more opinions.

Paul A. Porter

Impeding The Process Of Justice

Mr. Porter, a Washington attorney, was formerly chairman of the Federal Communications Commission.

I respectfully dissent from the position of the Post that the impeachment trial of the President in the Senate, if the House votes a bill, should be televised. I agree with Professor Barron's conclusion that "televising the national torment of a President's impeachment would be unwise." This in spite of Dean George Reedy's contention that "the presidency belongs to the people . . . and they have the right to be present at least as spectators.

This writer was present at the creation of national television and Chairman of the F.C.C. when the initial allocation of frequencies was made. Through the succeeding years, I have watched the fantastic development of this media with admiration for its growth and an awe bordering on terror for its impact. As a lawyer interested in the basic elements of due process and the right to a fair trial, it is submitted that televising the Senate proceedings could raise serious impediments to the process whether intended or not. I will not particularize the obvious.

A trial before the Senate presided over by the Chief Justice will indeed be a historic and momentous proceeding as George Reedy described. With the Chief Justice presiding, the managers for the House will have the burden of presenting their case presumably in accordance with evidentiary standards as if in court and counsel for the respondent will hopefully have the right to test that case by cross-examination and then produce probative evidence on the President's behalf as in the tra-

ditional adversary proceeding. The hundred members of the Senate will be sitting as jurors in the conventional sense. Hopefully this will be a carefully constructed, orderly procedure devoid of histrionics and sensationalism. The issues are too grave and fundamental to be exposed to such televised techniques of a Perry Mason or a Mr. District Attorney which give a superficial image of our processes of justice. In short, it could indeed be a dull event for a national television audience.

This is not a new phenomenon. In the early days of television, the famous Kefauver hearings were covered on live television. This prompted the late Judge Thurman Arnold to write a penetrating and provocative essay in the June, 1951, issue of the *Atlantic Monthly* entitled "Mob Justice and Television." Some of Judge Arnold's points seem appropriate today. A few of these are summarized:

"Trials in our courts of justice are public but the audience is so limited that the ordinary housewife can't see the show because, as we go to press, cameras are banned. I suggest that if this rule can't be changed, all the judge had to do is to hold a trial like that of Alger Hiss in the Yankee Stadium. . . .

" . . . This kind of presentation [television] makes the problems of government simple enough to be understood by readers of comic strips. It eliminates the bores who are unable to discuss a public issue as a matter of black and white. When ex-Mayor O'Dwyer was testifying about the problem of crime from his vast experience as a prosecutor and a mayor, I am informed the stations were flooded with calls to get him off and put Virginia Hill back on. . . .

"The thing which I believe is overlooked by those who argue that television is a legitimate extension of our traditional public hearing is this. The reason that a criminal trial is public is not to obtain the maximum publicity for judges or prosecutors. It was not intended to make a *cause celebre*

out of criminal prosecutions. It is for the protection of the accused against star-chamber methods, and for the protection of the public against secret deals and alliances.

Finally, Judge Arnold reached this conclusion which seems relevant to the current discussion as to whether the Senate impeachment hearings, if convened, should be televised:

"The vice of this television proceeding is not in the way this particular committee conducted it, but in the proceeding itself. Any tribunal which takes on the trappings and aspects of a judicial hearing, particularly where there

is compulsory examination of witnesses, must conform to our judicial traditions, or sooner or later it will develop into a monstrosity that demands reform. Those traditions are:—

1. It must be public and at the same time not a device for publicity.

2. It must protect the innocent even at the cost of letting the guilty escape.

Television has no place in such a picture. For witnesses it is an ordeal not unlike the third degree. On those who sit as judges it imposes the demoralizing necessity of also being actors. For the accused it offers no protection whatever. Former Federal Judge Rifkind recently said that our judicial procedure, 'forged through the generations to the single end that issues shall be impartially determined and skill with which you manage on relevant evidence alone, works fairly well in all cases but one — the celebrated cause. As soon as the *cause celebre* comes in, the judges and lawyers no longer enjoy a monopoly. They have a partner in the enterprise, and that partner is the press.' I would add that when television is utilized in investigations or trials, *causes celebres* will increase like guinea pigs and still another partner will be added — to wit, the mob."