

Court of public opinion

A NUMBER OF DEMOCRATS have criticized President Nixon for his active defense against impeachment.

On the other side of the battlefield, Republican spokesmen have attacked the President's critics for unfairly influencing the jury; that is, in the context, putting pressure on the House and Senate. Actually, both sets of complaints are off the mark.

Impeachment and conviction constitute political punishment for political sins. What is developing is in no sense a criminal process.

Conviction by the Senate can only result in deprivation of office and the right to hold office. The Constitution explicitly states (Art. 1, Sec. 3) that conviction does not bar separate legal action: impeachment does not constitute jeopardy.

What this adds up to is a contest for public opinion.

Once you eliminate the fiction that impeachment is a state trial conducted with the full protection the Constitution requires in a criminal action, you realize that both sides are free to influence the House, the Senate and, ultimately, the American people. If, for instance, Mr. Nixon uses half an hour on television defending himself, equal time should be granted to the prosecution.

Moreover, the whole affair should be televised so the real jurors, the people, can make up their minds and notify their elected representatives and senators.

In reply to this view, some will argue that such a spectacle undermines the stand-

ing of some mysterious entity called the "Presidency." This, I submit, is part of the problem.

The "Presidency," in short, rises or falls with the behavior of its occupant. The fact that Calvin Coolidge did virtually nothing (except sleep) for five years did not destroy the "Presidency."

The fact that Franklin D. Roosevelt successfully seized various industries was no help to Harry Truman when, in 1952, he took over steel. And the decision against Truman in the Youngstown case established no firm precedent for the future.

What the Constitution did was establish a Legislature, an Executive and a Supreme Court, and then turn them loose to carve out their jurisdictions. The battle has now been raging for almost two centuries.

We do not, in other words, live in a political universe populated by platonic forms or essences; we live in one where nine judges, 100 senators, 435 representatives and one President — all human beings — compete for political power, which is defined as the support of a majority of the American people.

Thus when Congress invokes its ultimate political weapon against the Chief Executive, it is launching a campaign for the support of the population.

The President has the right to fight back with every legitimate technique at his disposal. All in all, it's going to be a noisy summer, but noise is essential background music for the exercise of democratic government.