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Delayed Impeachment Poses Legal Questions

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Senate Republican and Democratic leaders clashed sharply yesterday on whether a Senate impeachment trial of the President can go over to the next Congress if it isn't completed before the present 93d Congress expires in January.

Senate Minority Leader Hugh Scott (R-Pa.), GOP Whip Robert P. Griffin (R-Mich.) and GOP Policy Committee Chairman John Tower (R-Tex.) said that an attempt to carry over a trial in the Senate from the 93d Congress to the 94th would raise grave constitutional and legal questions as to the validity of the proceedings.

Scott said, "The issue would have to be decided by the Supreme Court."

Scott said on major problem is the possibility that a carryover could nullify the existing common law principle that an accused person is entitled to have the same judge and jury throughout his trial. Next year, some senators who are now in office will have left, and several new senators will have been elected.

Said Scott, "This means that some jurors will have left the jury box irrevocably and new jurors will be taking the oath who have not heard part of the evidence." He said this and similar questions would open a "can of worms" on the validity of the proceedings that could only be settled by the Supreme Court. To avoid such problems, he said, if the House votes a bill of impeachment it would be best for the Senate to finish the trial this year.

Disagreeing with Scott's analysis, Majority Leader Mike Mansfield (D-Mont.) and Whip Robert C. Byrd (D-

W.Va.) said the Senate, which carries over two-thirds of its members from one Congress to the next, is a "continuing body" and can validly carry over an impeachment trial from this Congress to the next.

They said this is so regardless of whether the Senate trial starts this year or is concluded next year, or is put over entirely until next year. Byrd predicted the Supreme Court would throw out a presidential suit seeking to establish otherwise.

The issue isn't a small one. If next year the whole procedure has to start over again in the House from the very beginning, there could be months and months of delay which could ultimately affect whether the President is removed from office or not.

Under existing rules, legislative bills and resolutions that aren't approved by the end of a Congress automatically die. However in two cases of impeachment—removal from office of Judge John Pickering in 1804 and sustaining in office of Judge Harold Lauderback in 1933—the Senate trial went over from one Congress to the next.

Byrd and Mansfield both cite the Lauderback precedent. But Scott said the legal situation is far from clear and it is entirely possible that Mr. Nixon's attorneys or some members of the House or Senate might bring suit to challenge a carryover. Griffin said he could envision a "grave constitutional question" arising if some member of the House who had voted on the House's bill of impeachment this year is elected to the Senate in November and thus is entitled to sit as a judge in a Senate trial next year.