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Impeachment: Toward a Decision on the Merits

"The House Judiciary Committee has been extremely slow to take offense against the President's lawyer."

A current White House conceit is that if Mr. Nixon walked across the Red Sea on his coming visit to the Middle East, the press would cite the miracle as proof he couldn't swim. Discount the paranoia about the press and that story asserts a measure of truth.

The truth is that foreign policy is not playing a big role in the impeachment proceedings. Despite the diversionary tactics of the President and his lawyers, the House Judiciary Committee is finally beginning to show determination to make a judgment on the merits.

Abundant evidence shows how little foreign policy now weighs in the impeachment process. The disengagement arranged between Israel and Syria last week, for example, was a tremendous achievement. Everybody acknowledged it—and gave all the credit to Henry Kissinger.

Even the coming visit to the Soviet Union is being discounted within the administration as a "no-win summit." The reasoning is that the best Mr. Nixon can get is an agreement advancing arms control.

Such an accord would, of course, evoke widespread praise. But Mr. Nixon's chief hope in beating the impeachment rap lies with the conservative Southern Democrats and Western Republicans in the Senate. That is the group in the Congress most apt to be turned off by an arms control agreement with Russia.

Foreign policy, to be sure, is not the only card the President has to play against impeachment. There is also the fight being waged by his special Watergate counsel, James St. Clair, in the courts and the Congress. Like any good defense lawyer, Mr. St. Clair is trying to tie up the case against his client in procedural conflicts. Last week it became apparent that abundant difficulties hedged the matter of the Watergate tapes which are now being sought by both the Watergate special prosecutor and the House Judiciary Committee.

Without exactly saying so, Mr. St. Clair has linked the two requests. A case testing the right of the special Watergate prosecutor to subpoena the tapes was accepted for early judgment Friday by the Supreme Court. Though Mr. St. Clair lost his petition to have the case first considered by an appeals court, he is well-placed to make the argument that, as an employee of the executive branch, the special prosecutor cannot go against the orders of the President.

If he wins that case in the courts, Mr. St. Clair will be in good position to say that the ruling applies to the subpoenas issued by the Judiciary Committee. Thus he may cast a shadow over the Judiciary Committee with an argument which applies only to the special prosecutor.

The committee has been extremely slow to take the offensive against St. Clair. Chairman Peter Rodino and chief counsel John Doar have tended to give the President the benefit of all procedural doubts.

At a meeting last week, for example, Jerome Waldie—a California Democrat who has sought to force the pace—tried to get an opinion from the committee counsel on whether Mr. Nixon's refusal to turn over the tapes was not in contempt of Congress. Chairman Rodino gavelled him down.

When Mr. Waldie moved that the committee vote on the contempt issue, his motion was put down by a vote of 27-11, with all 17 Republicans and 10 Democrats, including Chairman Rodino, voting against him.

But the 11 members who in effect voted to hold Mr. Nixon in contempt should be compared against the five on the last similar vote. One who went along with the majority, the Missouri Democrat William Hungate, literally held his nose as he voted.

Moreover, the committee did vote, 20-10, to warn the President that continued refusal to produce the tapes could be considered grounds for impeachment. The letter to the President expressing that view was a tough, nonsense note written by the committee in open session after a more obsequious staff version had been rejected.

Finally, various members are beginning to assert themselves. For example, Ray Thornton, a Democrat from Pine Bluff, Ark., delivered a truly eloquent statement on the supremacy of the House in impeachment matters, which helped beat back an effort to refer the demand for the tapes to the courts.

To be sure, the committee seems to have reacted with excessive caution to the evidence of the Watergate coverage. But the punctilious forbearance fostered by Mr. Rodino and Mr. Doar is being worn down by Mr. Nixon's continued defiance. More and more there is emerging the question: How many times does the President have to streak before the Congress says he has no clothes?