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Post 8/8/74

Precedents for Future Impeachments

Chairman Peter Rodino and special counsel John Doar have deservedly won high praise for organizing the bipartisan majority which voted to impeach President Nixon in the House Judiciary Committee. But the bitch-goddess of success is not exactly a good guide to the eternal verities.

From the standpoint of historical perspective, the work of Mr. Doar and Mr. Rodino is less impressive. Indeed, they have grievously weakened the impeachment instrument for future use.

The main weakness of the impeachment inquiry by the Judiciary Committee is that the staff did absolutely no original investigation. Mr. Doar and the hundred or so persons working under him merely pulled together material dug up by other searchers.

Thus Article I in the bill of impeachment deals with the attempted cover-up of the Watergate burglary by President Nixon and others in the White House. There the case against the President had already been made by the Watergate Special Prosecutor working with the White House tapes.

Article II involves abuse of power by the President, notably in manipulating the Internal Revenue Service, the FBI, the CIA and the Justice Department for personal political ends. There the case had long since been made by the work of the Senate Watergate Committee and the Special Prosecutor working with the White House tapes.

The precedent arising out of these two articles is that the hardest documentary evidence—the “smoking gun”—is required for impeachment. In-

deed, it is hard to see, on the basis of the first two articles, how a Congress could impeach a President who did not have White House tapes which had been forced into the public domain by a Special Prosecutor and a Senate committee long before the impeachment inquiry got under way.

In two signal instances where such evidence was unavailable, however, the impeachment inquiry fell down. One, of course, was the matter of tax fraud by President Nixon.

Nobody would deny that tax fraud by a President would involve perversion of the central institution of American government. It is, in other words, an impeachable offense par excellence. Moreover, abundant circumstantial evidence—including a postdated deed—suggested the presence of fraud in the case of President Nixon.

But Mr. Doar and Mr. Rodino refused to make an original investigation of the President's taxes. They relied on the material thrown up in an inquiry by the joint House-Senate Internal

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Revenue Committee. That investigation was explicitly limited to the question of whether the President had paid enough taxes.

As a result the proposed article failed because the evidence showed nonpayment of taxes but not fraud. The precedent for the future is that an impeachment inquiry does not have authority to go after a President's tax returns.

A second index of trouble arises from Article III of the bill of impeachment which urges removal of the President for failure to comply with Judiciary Committee subpoenas demanding White House tapes and other material. The vote in the full committee was narrow—21-17—with two Southern Democrats joining the Republican minority in opposition and only two Republicans crossing party lines to vote with the majority. As a result Article III may not survive the debate in the full House.

The main reason Article III is so weak is that during the committee

hearings Mr. Rodino and Mr. Doar refused to take the hard step—the step of a vote holding the President in contempt—which would have solidified the committee's right to have its subpoenas honored. In one of the final Democratic caucuses, Mr. Doar actually spoke against Article III. As things now stand, the precedent will be that the House does not have authority, even in an impeachment inquiry, to subpoena material from the President.

The outcome of the present impeachment, in other words, is a weakening of the Congress as a bulwark against an all-powerful President. The ultimate check—impeachment—is more unlikely than ever. The experience of the Judiciary Committee with the Doar staff further shows that one suggestion for building up the Congress—Ralph Nader's idea of developing a strong congressional bureaucracy—doesn't work. On the contrary, the big staff built up for the Judiciary Committee ended up by helping the executive branch.

So serious people on Capitol Hill are going to be thinking harder than ever about how the Congress can get information out of the executive branch. It is perhaps the ultimate lesson of the impeachment that the President's staunchest defender on the Judiciary Committee, Charles Wiggins of California, was deceived by the White House and had no independent means of finding it out.