

3610 Sheridan Road  
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October 10, 1973

Senator Adlai Stevenson  
Senate Office Building  
Washington, D.C. 20510

Dear Senator Stevenson:

Our correspondence, which started out about the advisability of impeachment of Appeals Court Judge Kerner following his conviction of a number of felony charges, has been overwhelmed by subsequent developments.

The current question, according to the arguments of Vice-President Agnew and Judge Kerner, is that they -- and by extension the President -- are not subject to criminal prosecution while in office. This preposterous contention and its corollary -- that they are subject only to impeachment proceedings -- is all the more incredible because of apparent public acceptance on mere proclamation.

So we watch erosion of the ruling put forth by Chief Justice Marshall in the Aaron Burr case in 1807, "no man is above the law," as a parade of surrogates reinforces the contrary view...then we have assertion of the executive privilege doctrine of dubious constitutionality which its proponents claim would justify possible disobedience to an order of the Supreme Court...and, finally, emerges the "indispensability" concept which makes the presidency truly supernal -- all of which, sadly, recalls the statement attributed to former Sen. Paul Douglas: "Men tinged with sovereignty can easily feel that the king can do no wrong."

Has the nation's conscience been so pummeled by revelations of political immorality and chicanery that we have lost the ability to refute further assaults on basic safeguards to the system?

Some people complained a few years ago that law and order was a code phrase for repression. Now, it seems, immunity from prosecution has become a codeine for orderly remission of law.

wiretaps were extolled as an important and necessary adjunct to the battle against organized crime. Yet cases developed by the Justice Department under Attorney General Mitchell through wiretaps are now jeopardized by "innocent" administrative foulups while clearly illegal wiretaps handled by Mitchell's political agents at CREEP failed only through ineptness and inadvertent Watergate-associated disclosures.

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senator stevensen - 10/10/73 - page two

Congress, the long-suffering victim of diminished power in the three-way theoretical equilibrium among the branches, asserts itself and tries to put limits on the President's war-making ability. And, at the same time Congress struggles to regain an inch, the President, with the absurd indispensability argument and his threat to flout the Supreme Court, gallops roughshod seven leagues.

Those in Congress sensitive to this situation<sup>2</sup> have a lot of work to do and not much time in which to do it.

The proposal I suggested for legislation to provide automatic termination of office upon federal conviction of a felony (even if an amendment of the Impeachment Clause is required) is only one step in this direction. But it would be a start.

Very sincerely,

Ed DeMar

<sup>2</sup>Not all federal legislators are in a position to act on reform measures with initiative. See The Washington Pay-off (Lyle Stuart, Inc., N.J., 1972) by Robert W. Winter-Barger.