

4 Law Professors See

By John Saar

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Four of the country's leading law professors believe there are adequate grounds for commencing impeachment proceedings against President Nixon in the House of Representatives.

Three of the four believe that impeachment—a medieval practice written into the Constitution to prevent a President from becoming a king—is now needed to clear or convict the President. The fourth, Yale law prof. Alexander Bickel, stopped short of calling for impeach-

ment, but called for an immediate House investigation, a step that is an essential part of impeachment preliminaries. All were interviewed by a Post reporter by telephone.

In a resolution addressed to Congress yesterday, a group of deans of 15 major law schools took a similar position by urging the creation of a special committee "to consider the necessity of presidential impeachment."

Prof. Raoul Berger of Harvard University Law School, said, "I have hesitated to say it before, but after the events of the past few days he must be impeached."

Berger, who wrote the definitive work on the impeachment process earlier this year, said that by offering only a summary of the Watergate tapes and by firing Special Watergate Prosecutor Archibald Cox, the President is in defiance of a court order. "Disobedience of the law is a subversion of the Constitution which is an impeachable offense," he said.

Describing himself as taking a conservative view of constitutional law, Prof. William Van Alstyne, of Duke University Law School, said



ALEXANDER BICKEL

... urges House probe

he also now favored impeachment. "It's a last resort," he said in a telephone interview yesterday, "but from events of the last five days the President appears to have blocked the conventional means of ascertaining whether there has been criminal wrongdoing. I don't see what else is left to do."

Preble Stolz, professor of law at the University of California, Berkeley, believes President Nixon is "arguably impeachable on a number of actions . . . the most impeachable offense is the breach of the terms of (former Attorney General Elliot) Richardson's Senate confirmation."

Stolz predicts an eventual impeachment could take months. "It's a horrifying thing," he said. "But I can't believe the President would put the country through that."

While urging that impeachment should be instituted only where there is clear evidence of serious wrongdoing by a chief executive, Prof. Bickel said the House Judiciary Committee

should proceed with an initial investigation. "There are grounds to suspect he may have been involved in high crimes or misdemeanors," he said. The evidence was "inconclusive" and since investigative attempts by Cox and the Senate Watergate committee had failed, "a select committee of the House should issue subpoenas for the tapes and papers and see if there are grounds for impeachment."

Impeachment of a president is the rarest of all criminal proceedings. It requires a motion calling for impeachment to be introduced in the House of Representatives and then referred to the House Judiciary Committee for study.

That initial motion would broadly accuse a president of one or all the impeachable crimes—"treason, bribery, or other high crimes or misdemeanors." The Judiciary Committee would then, after study, submit Articles of Impeachment, a list of specific charges comparable to an indictment, to the full House.

If that passes by a simple majority vote, the stage is set for a full-scale trial in the senate. The 100 senators would act as jury, a group of congressmen known as managers would conduct the prosecution, and the Chief Justice of the United States would preside.

The defense is allowed considerable freedom. The defendant does not have to attend, may testify if he wishes, or leave his defense entirely to lawyers. If President Nixon were indeed to be impeached a titanic legal battle between some of the best legal brains in the country would be certain.

Impeachment is defined by the dictionary as "a calling to account for some high crime or offense before a competent tribunal." It

Impeachment Grounds

evolved in England in the 14th century as the means by which a public "clamor" or outcry could hold lawless officials and aristocrats to account.

The first official to be impeached was an archbishop of Canterbury tried by the English Parliament in 1341. A revolutionary parliament in 17th-century England used impeachment to unseat a whole succession of unpopular ministers and the process was hailed as "the chief constitution for the preservation of the government."

Ironically, impeachment was falling into disuse in Europe when the framers of the American Constitution picked it up. The procedure grew so unwieldy that it took Parliament seven years to try Warren Hastings, a crown officer.

Newly freed from the tyranny of a distant king, the founding fathers wrote in the impeachment clause as a threat to any overambitious President. They saw it as one of the vital checks and balances to keep the machinery of justice, legislature and executive in harmony. The wording: "The President, Vice President and all Civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

The precise meaning of those words has sparked see-saw legal battles over the separation of powers throughout our history. As a final balance between the assertion of too-sweeping power by the chief executive and frivolous impeachments for partisan political motives, the framers of the Constitution decreed two-thirds of the Senate must vote "guilty" for an impeachment to succeed.

The only impeachment of a President occurred more than 100 years ago when President Andrew Johnson was charged with attempting to illegally remove the Secretary of War from office.

The prosecution in 1868—regarded now by Prof. Berger as being of dubious legal stature—ended with Johnson's acquittal by a single vote in the Senate. There have been 10 other Senate impeachments—eight judges, one senator and a former Secretary of War charged with war profiteering. There were six acquittals and four convictions.

The wording of the statute from the heights of "treason" to the relative triviality of "misdemeanors," is deliberately vague. One of the most pragmatic definitions—and one that some observers say may return to haunt him—was delivered by Republican House Leader and vice presidential nominee Gerald Ford who spear-

headed an unsuccessful attempt to impeach Supreme Court Justice William O. Douglas in 1970.

Ford said, "The only honest answer is that an impeachable offense is whatever a majority of the House of Representatives considers (it) to be at a given moment in history (and) . . . conviction results from whatever offense or offenses the other body (the Senate) considers to be sufficiently serious to require removal of the accused from office."

The four constitutional law experts vary in their estimation of the damage a presidential impeachment proceeding might inflict on the country, but they agree the alternative of President Nixon leading the country for another three years while under a cloud of suspicion is worse. Bickel said the impact would be "terrible if it is necessary, but not as bad as continuing for three years under a President believed guilty of crimes, if that's the case."

Impeachment, in the view of Berger, is now as necessary an evil as a cancer operation: "Obviously more serious than the Middle East war is the attempt of the President to set himself above the law. We just cannot permit that. It's the road to tyranny, dictatorship and Hitlerism. Democracy cannot survive if a president is allowed to take the law into his own hands."