

Royce Brier

'Implied Immunity' Of a President

CHESTERFIELD SMITH, president of the American Bar Association, told a State Bar meeting in Anaheim he saw no way a President or Vice President can be indicted or tried for crime while in office. He doesn't believe they can be harassed or intimidated by the court in any way.

The dispatch does not reveal his reasoning, but so much careless talk on the subject going about invites examination. Yesterday Pennsylvania politicians were reported to be saying Vice President Agnew would be indicted within a fortnight on the Baltimore charges.



There are two separate passages in the Constitution bearing on what may be informally called imposing discipline on a President for alleged misdoing. The best-known is Section 4 of Article II: "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."

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NOTE THE VICE PRESIDENT is on the same level as the President here; who "all civil officers" may be is not defined. It is an ambiguity and possibly an oversight of that master of Republican theory, James Madison, who drafted much of the Constitution.

The other passage is in Article I, Section 7: "Judgment in case of impeachment shall not extend further than removal from office" (and future disqualification) "but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

Taken together these passages appear to constitute an implied immunity, akin to implied powers which are not expressed, but have often in our history been upheld by the courts.

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THIS MAY BE ANOTHER slip of Mr. Madison, who made a few which have long triggered controversy between the executive and legislative departments. But in a showdown the implied immunity would be subject to adjudication by the Supreme Court.

As it rests, the presumed exemption from criminal prosecution of a President or Vice President continues until conviction in the impeachment process, whereupon the convicted is on the same footing as any private citizen.

There remains a question: what did the Founding Fathers intend in the Constitutional Convention, 1787? One can only guess, but Mr. Smith's words "harassment" and "intimidation" may be keys. Clearly the Founders in their expressed powers intended a President should be free from undue coercion by the legislative and judicial branches. Such coercion, they saw, could be solely political in character, and many Congresses have tried political coercion, but without notable success.

Altogether, unless the Supreme Court voids the implied immunity of the foregoing passages, a President or Vice President must be impeached and convicted before they can be taken to court for any offense against the law.

It is truly a big national enigma, and a newspaper piece can only endeavor to bring it to light.

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