

Impeachment Evidence

When Assistant Attorney General Henry Petersen testified before the Senate Watergate Committee last summer he described a telephone conversation he had had the previous April with President Nixon. "If I reach the point where I think you are involved (in the Watergate affair)," Petersen said he told the President, "I have got to resign. If I come up with evidence of (sic) you, I am just going to waltz it over to the House of Representatives." At the time he talked of "waltzing" evidence over to the House, where under the Constitution impeachment proceedings begin, there was no special Watergate prosecutor. Petersen, himself, was in charge of the Watergate investigation. There also was at that time little indica-

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tion that evidence involving the President in an impeachable offense would turn up. Thus Petersen's "waltzing" remark was more of a warning than a statement of seriously considered intention.

In the intervening months, as the President's personal role in Watergate has deepened, and the possibility of an impeachment proceeding has grown, there has been a simple understanding, based in good part on Petersen's publicized statement, that should evidence turn up during the Watergate investigation implicating the President in a crime it could simply be turned over to the House or its Judiciary Committee. When Archibald Cox was in the early stages of pulling together the Watergate Special Prosecution Force, it was the judgment of his advisers that all material involving the President could be placed in a written report and delivered to the House. Since that time, some lawyers on the special prosecutor's staff have toyed with other possibilities of dealing with information on the President, arising from the Attorney General's guidelines which set among the duties of the special prosecutor, "authority for investigating and prosecuting . . . allegations involving the President . . ."

With the recent organization of

the House Judiciary Committee's impeachment inquiry under two highly-competent lawyers, John Doar and Albert Jenner Jr., a new serious look is being taken at how pertinent material in the hands of the special prosecutor could be delivered to the House committee. Doar and Special Prosecutor Leon Jaworski have met at least twice, during which the turn-over of material was explored. I would assume, therefore, that the special prosecution force has some document, or perhaps a taped conversation or testimony of a witness that might stand as evidence against the President in the impeachment process. Why else would the matter be under discussion?

Standing in the way of Petersen's waltzing of evidence proposal is a federal rule of procedure which requires secrecy in grand jury proceedings. Evidence obtained by the special prosecutor pursuant to a grand jury subpoena or testimony presented to a federal grand jury cannot automatically be given the House committee. The House committee could, itself, subpoena the material from Jaworski, but that step could create a tangle of legal problems.

Two months ago, when the House Judiciary Committee was studying legislation on the special prosecutor's office, Rep. Thomas Railsback (R-Ill.) proposed and had approved an amendment authorizing the special prosecutor to report regularly to the committee studying impeachment and turn over evidence relative to that study. When the special prosecutor bill died in the House, so did the Railsback amendment.

Within the next 10 days, Judiciary Committee Chairman Peter Rodino plans to go to the House floor seeking approval of a resolution granting his committee special subpoena power for the impeachment investigation. In order to avoid unnecessary delays or legal battles, Rodino would do well to introduce the Railsback amendment as legislation necessary to his inquiry. The grand jury secrecy rule could be waived by passage of such a measure and the House committee impeachment study could proceed, avoiding a legal snarl and with all pertinent material.