

For Congress: A 'Make-or-Break' Test

Twelve years ago California voters rejected Mr. Nixon's offer to be their governor, causing columnist Murray Kempton to feel rerieved: "Richard Nixon's defeat in California has removed him to that small place in history which belongs to national disasters which did not quite happen."

But it is still too early to write Mr. Nixon off as a national disaster. He seems to want to be a disaster, but the unintended effects of public figures are often more important than their intended effects.

Mr. Nixon did not intend to spend his second term conferring self-respect on Congress, or nullifying the impeachment provisions of the Constitution. But he is going to do one or the other, and whichever it is, we will be better off.

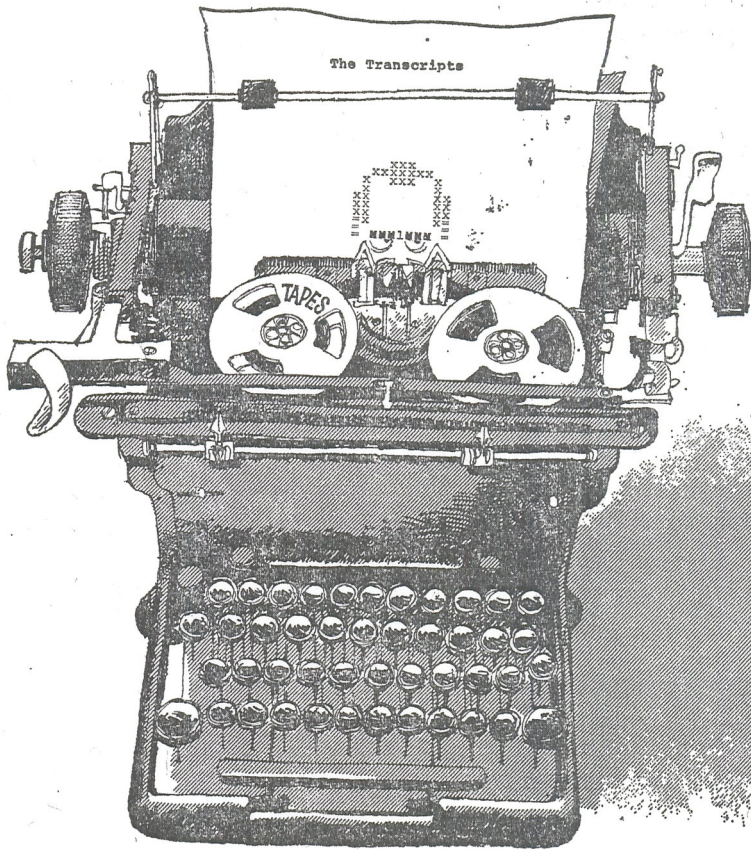
All this became inevitable when Archibald Cox, the first Special Prosecutor, unintentionally became the Anne Boleyn of American history.

Ms. Boleyn, Henry VIII's second wife, gave birth to a girl. Henry did not understand chromosomes, so he did not suffer baby girls gracefully. He terminated the marriage, thereby bringing on the English Reformation and, you might say, the United States.

Similarly, Mr. Cox never really did anything except displease the sovereign, who beheaded Mr. Cox. This caused the impeachment process to clank into what passes for motion in the House of Representatives. This led ineluctably to the House Judiciary Committee's subpoena for the "best evidence"—the tapes.

The subpoena produced a few custom-tailored transcripts, and a letter from Mr. Nixon telling the committee to stop pestering him.

Mr. Nixon has thrown down the gauntlet in the form of a doctrine. His doctrine is: a President has the right to decide which offenses he will permit himself to be impeached for, and



By MacNelly for the Richmond News Leader

he also has the right to select, trim, polish and edit any evidence used against him.

If Mr. Nixon sticks to this doctrine, and if he is not impeached for sticking to it, it will become the definitive precedent. It will establish presidential control over impeachment inquiries against Presidents. It will mean that Presidents are immune from impeachment.

Of course it is conceivable that Mr. Nixon's assertion of this doctrine may have a dramatic unintended effect.

All Napoleon wanted to do was subdue those rival principalities. But he inadvertently provoked them into becoming modern Germany. Mr. Nixon's aggressive doctrine may provoke the little rival princes on Capitol Hill. They may unite against him in defense

of their institution's prerogatives.

Mr. Nixon's doctrine is a potentially lethal blow aimed at the constitutional impeachment process itself. As such it is his worst offense yet, worse even than hiring the people he hired and helping to cover up what they did.

If Mr. Nixon sticks to his doctrine and is not impeached, then perhaps he is right in saying that Presidents should be immune from impeachment. Perhaps Congress is too confused to be trusted with anything as weighty as the impeachment power.

The 93rd Congress, now sitting, is a typical Congress. Using anesthetics and forceps, it has extracted a bit of doctored evidence from Mr. Nixon.

If Congress does not think Mr. Nixon's denial of all other evidence—his attempt to destroy the impeachment process—is itself an impeachable offense, then Congress should indeed quit pestering Mr. Nixon. It should stop its impeachment charade.

Worse than unenforced laws are unenforceable laws. Worse still is a constitutional provision that is unenforceable. Worst of all is a constitutional provision that is unenforceable but not recognized as such.

Impeachment, as regards Presidents, may be such a provision. It may offer only the illusion of recourse against abuse of power.

If Mr. Nixon gets away with his doctrine nullifying the Constitution's impeachment provision—that is, if he sticks to his doctrine and still manages to finish his term then the first business of the 95th Congress when it convenes January, 1977, should be to amend the Constitution, deleting all language that suggests impeachment applicable to presidents.

We should make the 95th Congress do that, and then we should forbid all Congresses to do anything, else of consequence, ever.