

Sec. 4—Impeachment

ciary Committee, charging obstruction of the investigation of the “Watergate” burglary inquiry, misuse of law enforcement and intelligence agencies for political purposes, and refusal to comply with the Judiciary Committee’s subpoenas.⁸⁷⁴ Following President Nixon’s resignation, the House adopted a resolution to “accept” the House Judiciary Committee’s report recommending impeachment,⁸⁷⁵ but there was no vote adopting the articles and thereby impeaching the former President, and consequently there was no Senate trial.

In the course of the proceedings, there was strenuous argument about the nature of an impeachable offense, whether only criminally-indictable actions qualify for that status or whether the definition is broader.⁸⁷⁶ The three articles approved by the Judiciary Committee were all premised on abuse of power, although the first article, involving obstruction of justice, also involved a criminal violation.⁸⁷⁷ A second issue arose that apparently had not been considered before: whether persons subject to impeachment could be indicted and tried prior to impeachment and conviction or whether indictment could occur only after removal from office. In fact, the argument was really directed only to the status of the President, as it was argued that he embodied the Executive Branch itself, while lesser executive officials and judges were not of that calibre.⁸⁷⁸ That

⁸⁷⁴ H.R. REP. NO. 93–1305.

⁸⁷⁵ 120 CONG. REC. 29361–62 (1974).

⁸⁷⁶ Analyses of the issue from different points of view are contained in Impeachment Inquiry Staff, House Judiciary Committee, 93d Cong., *Constitutional Grounds for Presidential Impeachments*, (Comm. Print 1974); J. St. Clair, et al., Legal Staff of the President, *Analysis of the Constitutional Standard for Presidential Impeachment* (Washington: 1974); Office of Legal Counsel, Department of Justice, *Legal Aspects of Impeachment: An Overview, and Appendix I* (Washington: 1974). See also RAOUL BERGER, *IMPEACHMENT: THE CONSTITUTIONAL PROBLEMS* (1973), which preceded the instant controversy; and MICHAEL J. GERHARDT, *THE FEDERAL IMPEACHMENT PROCESS: A CONSTITUTIONAL AND HISTORICAL ANALYSIS* 103–06 (2d ed. 2000).

⁸⁷⁷ Indeed, the Committee voted not to recommend impeachment for alleged income tax fraud, an essentially private crime not amounting to an abuse of power.

⁸⁷⁸ The question first arose during the grand jury investigation of former Vice President Agnew, during which the United States, through the Solicitor General, argued that the Vice President and all civil officers were not immune from the judicial process and could be indicted prior to removal, but that the President for a number of constitutional and practical reasons was not subject to the ordinary criminal process. *Memorandum for the United States*, Application of Spiro T. Agnew, Civil No. 73–965 (D.Md., filed October 5, 1973). Courts have held that a federal judge was indictable and could be convicted prior to removal from office. *United States v. Claiborne*, 727 F.2d 842, 847–848 (9th Cir.), *cert. denied*, 469 U.S. 829 (1984); *United States v. Hastings*, 681 F.2d 706, 710–711 (11th Cir.), *cert. denied*, 459 U.S. 1203 (1983); *United States v. Isaacs*, 493 F.2d 1124 (7th Cir.), *cert. denied sub nom. Kerner v. United States*, 417 U.S. 976 (1974).