Impeachment: The Power To Protect the Nation

by Edward Spannaus

During the debates leading into the ill-advised impeachment of President Bill Clinton by the House of Representatives in late 1998, many Democrats and Constitutional scholars expressed the fear that to impeach Clinton for lying about sex—a private matter—would drastically "lower the bar" for impeachment, and make it far too easy to impeach a future President.

But, ironically, the fiasco of the Clinton impeachment by the House, and the failure of the Senate to convict him, has *raised* the bar, so to speak, seemingly making it *more* difficult to impeach a President, or in the case facing us today, a Vice President who wields more power than the President himself, and who has grossly abused that usurped power.

The argument oft-heard today in the halls of Congress, is that the nation cannot afford to go through another impeachment, after the Clinton debacle, that it would be divisive, that it would prevent Congress from carrying out its vital work, and so on and so forth.

(As to the latter contention, we simply note that Congress has two major powers: oversight and legislation. Impeachment proceedings would constitute the highest form of oversight, and, as regards legislation, President Bush, at Dick Cheney's direction, simply ignores any legislation he doesn't like, often explicitly justifying this by means of unconstitutional "signing statements" coming out of Cheney's office.)

Given the gravity of the crisis facing our nation, and given that the *only* means of resolving that crisis is to remove Dick Cheney from office so he can do no more harm, it is high time to restore impeachment to its rightful place in our Constitutional plan of government.

What the Constitution Says

Impeachment is not a criminal trial. Its purpose is not punishment; rather, it is intended to protect the nation and its citizens, by removing an official from office who violates his trust and abuses his power, and who threatens the liberties and the well-being of society itself.

As Prof. Lawrence Tribe of Harvard University told a House Judiciary subcommittee in November 1998, the central purpose of impeachment "is not to punish, but to protect the functioning of our Constitutional system from injury at the hands of Federal officials who turn against the nation, or corrupt its processes."

In *Federalist* No. 65, Alexander Hamilton wrote, regarding impeachment: "The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself" (capitalization in original).

White House Photo

Vice President Dick Cheney

Article I, Section 2 of the Constitution vests the sole power of impeachment in the House of Representatives. Section 3 of Article I vests the sole power to *try* impeachments in the Senate. (In other words, the House performs the function of a grand jury, bringing the equivalent of an indictment; the Senate functions as the jury, which can convict or acquit.)

Section 3 further provides that in the case of the President, the Chief Justice shall preside (there is no requirement as to who shall preside in the case of the Vice President or other officials), and it specifies that "no Person shall be convicted without the concurrence of two thirds of the Members present."

And making it clear that the purpose of impeachment is the protection of the nation; and that it is not a criminal trial imposing punishment, Article I, Section 3 concludes: "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law."

Article II, Section 4 specifies who may be subject to impeachment:

"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 Case of Richard Nixon

Since each House of Congress "may determine the Rules of its Proceedings," under Article I, Section 5, both the House and the Senate can determine how to proceed with an impeachment. In current practice, a resolution or other means of initiating an impeachment (such as a memorial from a state legislature) is referred to the House Judiciary Committee, which takes evidence and decides whether or not to approve Articles of Impeachment; if it does, the Articles are then presented to the entire House for a vote.

In the impeachment proceedings against President Rich-

ard Nixon in 1974, the House Judiciary Committee approved three Articles of Impeachment, charging Nixon with actions damaging to the nation, its laws, and its Constitution; these were:

1. Obstruction of justice in connection with the coverup of the Watergate burglary, including offers of pardons; making false and misleading statements to investigators and counseling others to give false and misleading testimony; inducing others to commit perjury; and withholding material evidence.

2. Abuse of the powers of his office, by utilizing the Federal Bureau of Investigation (FBI), Internal Revenue Service (IRS), and Central Intelligence Agency (CIA) to harass citizens and violate their Constitutional rights, and interfering with operations of agencies of the Executive branch including the Department of Justice and the FBI.

3. Violating the Separation of Powers provision of the Constitution, by refusing to comply with Congressional subpoenas for documents and evidence, thus interfering with the Constitutional functions of the House.

Each of the three Articles was followed by the following statement:

"In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice and to the manifest injury of the people of the United States.

"Wherefore, Richard M. Nixon, by such conduct, warrants impeachment and trial, and removal from office."

In Nixon's case, he resigned from office upon being advised by a delegation of fellow Republicans that the House would overwhelming vote for impeachment, and that the Senate would almost certainly, and overwhelmingly, vote to convict.

Republicans today, would do well to heed the words of Rep. Robert McClory (R-Ill.), who said in 1974: "Preserving our Republican Party does not, to my mind, imply that we must preserve and justify a man in office who would deliberately and arbitrarily defy the legal processes of the Congress, nor can our party be enhanced, if we as Republican members of the United States House of Representatives tolerate the flouting of our laws by a President who is Constitutionally charged with seeing that the laws are faithfully executed, as provided in Article II.

"We will enhance our Republican Party and assure a viable two-party system only if we are courageous enough and wise enough to reject such conduct, even if attributed to a Republican President. The essential question which we must answer is not what is best for our party, but what is best for our nation."

Trial in the Senate

If, unlike Nixon, the charged official does not resign at that point, then the House as a whole votes on whether to approve Articles of Impeachment, which are then delivered to the Senate. The House appoints "managers," who function as prosecutors, and present the case for impeachment in the Senate.

Although the Senate, as a whole, tried the impeachment of President Clinton, the entire body need not do so. In the 1989 impeachment trial of Federal judge Alcee Hastings, the evidence against him was heard by a designated committee of 12 Senators, a vote was then taken by the entire Senate; he was convicted on the first article by an 86-29 vote, and removed from office. (The Senate did not bar Hastings from holding office, and he was elected a U.S. Representative from Florida, in 1992.)

In a Senate Judiciary Committee hearing on July 24, 2007, when discussing possible contempt proceedings against White House officials, Sen. Arlen Specter (R-Pa.), the ranking member, cited the Hastings case to illustrate how a trial could be conducted by a designated committee, without tying up the entire Senate for such a proceeding.

When Impeachment Should Be Used

As was pointed out during the impeachment proceedings against Bill Clinton in the House of Representatives, impeachment has been an instrument rarely used, and, as Democrats and their allies argued, it is one that should not be trivilized, but reserved for the most serious abuses of office, or offenses against the state—which, today, certainly fits the bill for the impeachment of Dick Cheney. Up to that point, in 1998, the House had impeached only one President (Andrew Johnson, 1868), one Senator (William Blount of Tennessee, 1799), one Secretary of War (William Belknap, 1876), and 12 judges.

Cheney's offenses—using lies to drag the country into an unjustified war against Iraq, and plotting to do the same against Iran; promoting illegal wiretapping and surveillance of U.S. citizens; advocating and promoting torture in violation of U.S. laws and treaties; corruptly enriching himself and his cronies through war contract profiteering, etc.—far exceed any offenses for which U.S. officials have previously been impeached. More important than specific past offenses, is that his contempt for the U.S. Constitution and its Separation of Powers, and for the Constitutionally mandated role of Congress and the Courts, demand his removal from office for the protection of the country in the immediate future.

Cheney and his puppet George W. Bush justify their offenses against the Constitution in the name of "national security." Yet, we should listen to Alexander Hamilton on the question of the sources of our national security:

"If it be asked, What is the most sacred duty and the greatest source of our security in a Republic? The answer would be, An inviolable respect for the Constitution and Laws—the first growing out of the last. . . . A sacred respect for the constitutional law is the vital principle, the sustaining energy of a free government."