

## **ANOTHER NIXON IS PRECEDENTIAL**

By William Nicoson

“The House of Representatives...shall have the sole power of impeachment.”  
U.S. Constitution, Article I, Section 2.

“The Senate shall have the sole power to try all impeachments.”  
Id., Article I, Section 3.

Taken together, these mandates appear to preclude the Senate from determining what offenses are impeachable and the House from convicting or acquitting impeached officials.

Lawyers and journalists have speculated that at some early point in the Senate trial the president’s counsel will introduce a motion to dismiss the proceedings on the grounds that, if true, the articles of impeachment adopted by the House fail to state an impeachable offense. Senators of both parties might find this a convenient means of ending an unpopular trial. If all 45 Senate Democrats vote to dismiss, only 6 Republicans need join them to prevail.

The presiding officer, Chief Justice William Rehnquist, must first determine whether the Constitution permits the Senate to dismiss or disregard as unimpeachable those offenses which the House has found impeachable in the exercise of its “sole power of impeachment”. The Chief Justice might well conclude that the Senate has no such power.

On the objection of any senator, however, the Senate might then by majority vote overturn the ruling of the Chief Justice. And the Senate’s determination is likely to be beyond appeal to the courts, under a Supreme Court opinion by that same Chief Justice, refusing to review the impeachment conviction of Judge Walter Nixon in 1989.

Is this Washington or Wonderland? Maybe there’s never been a difference. It gets curiouser.

Judge Nixon was convicted and removed from office by the Senate for lying under oath to a grand jury on a matter unrelated to his official duties. Sound familiar? A number of sitting senators on both sides of the aisle today, including minority leader Tom Daschle, voted for his conviction and removal. For that matter, so did Vice President Al Gore, then still a senator.

It’s true that Judge Nixon had earlier been convicted and sentenced to a prison term in a criminal prosecution, but the Senate voted to remove him not because of his court conviction but because it found he had committed an offense referred by the House as impeachable.

This most recent impeachment precedent raises the question whether our president, the most powerful chief executive in the world with vastly more ability to harm the nation than any of the multitude of judges he appoints, should be held to a lower standard in impeachment proceedings than a district court judge convicted of an identical offense ten years ago.

Does precedent matter?

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