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Impeachment Inquiry: Uncertain Path

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WASHINGTON, July 4—The House Judiciary Committee, in the view of senior inquiry officials, has not yet faced up to the crux of the question of impeachment because its members have become so enmeshed in 8,000 pages of documentary evidence that they may have overlooked the dimensions of the case.

Their search, thus far in vain, for the one piece of conclusive, irrefutable evidence of Presidential criminality that might seal the outcome has distracted the committee from a circumstantial pattern of White House misconduct that these senior officials consider to be the heart of the matter.

The members have mistaken their role, in that view, and have slipped from a position of investigation to one of trial.

And the committee's Democratic chairman, Representative Peter W. Rodino Jr. of New Jersey, while he may have demonstrated a sense of fair play in yielding, usually belatedly, to White House and Republican demands for participation by President Nixon's lawyers, appears to have permitted the inquiry to become the adversary confrontation that the chairman had said must be prevented.

There was little doubt, as the committee recessed its inquiry

for the long Independence Day weekend, that a majority eventually would recommend that Mr. Nixon be impeached. But how the panel reaches that recommendation—and on what basis—figures to influence heavily the actions taken later by the full House and, if Mr. Nixon is impeached, by the Senate.

For two weeks, the committee has been beset with an endless series of partisan squabbles over such procedural matters as the list of witnesses to be summoned to impeachment hearings. But the bickering has overshadowed deeper divisions and more significant issues on which the outcome of the inquiry will probably turn.

Decisions put off months ago will have to be made after the committee members return Monday to complete their hearings and begin their deliberations.

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The key matters still to be faced include the following:

¶What standard of proof will the members adopt individually to weigh the impeachment evidence? A grand juror would seek "probable cause" that a crime had been committed. A trial juror in a civil lawsuit would make a finding based on a "preponderance of evidence." A trial juror in a criminal case would require proof "beyond a reasonable doubt."

¶How will individual members interpret the grounds for impeachment listed, with some vagueness, in the Constitution as "treason, bribery, or other high crimes and misdemeanors"? James D. St. Clair, the President's chief defense lawyer, has contended that Mr. Nixon could be impeached only for a serious violation of criminal law. John M. Doar, the committee's special counsel, has suggested that a President might also be impeached for such purely constitutional offenses as a failure to carry out the law or conduct derogating his high office.

¶In debating proposed articles of impeachment two weeks from now, will the committee concentrate on evidence related to specific questions such as Mr. Nixon's possible role in the payment of hush money to a Watergate conspirator on March 21, 1973? Or will the committee also propose to charge the President with misconduct on the basis of evidence covering a broad array of matters ranging from underpayment of Federal income taxes to the creation of a domestic spy unit in the White House?

In theory, the role of Judiciary Committee members in the impeachment proceeding is roughly analogous to the duty of grand jurors in a criminal case. They hear the evidence presented by one side—the prosecutors—and decide if it is sufficient to warrant a trial.

#### A Political Process

But impeachment is also a political process of the most serious nature. Conviction of the President after a Senate trial would lead to his dismissal. Because of the magnitude of the responsibility and because their actions will be judged by the public, committee members generally have sought to go beyond the role of grand jurors and to try Mr. Nixon's conduct rather than investigate it.

"The case you have here [before the committee] is the case you're going to have before the Senate," Representative Walter Flowers Democrat of Alabama, said yesterday. "I will look at it as a Senator voting on impeachment."

But others on the committee,

including Mr. Rodino, have said from the outset that, if the Judiciary Committee went beyond the mere collection of evidence, it would be usurping the Senate's constitutional authority to try impeachment cases.

Moreover, well-placed officials said that Mr. Rodino would begin emphasizing to his colleagues and the public that any major gaps in the evidence collected by the committee were the result of Mr. Nixon's defiance of subpoenas for about 15 tape recordings of White House conversations.

The withheld evidence could bear significantly on the outcome. Mr. St. Clair has said that the proper standard for weighing the evidence should be something more than mere "probable cause" but not necessarily so stringent as "beyond a reasonable doubt."

For committee members to conclude, in most central areas of the inquiry, that Mr. Nixon had committed impeachable wrongs, they would have to draw adverse inferences that the President had refused to surrender the tapes because they contained incriminating evidence.

#### "The Murder Weapons"

Panel members, especially Republicans, have made no secret of their unfulfilled wish to find some item of evidence—"the murder weapon," as they jokingly describe it—that would permit a relatively easy judgment of the charges.

Early in the impeachment hearings, reporters asked a Democratic Representative what he had heard on one of the Watergate tapes that day. The Congressman pressed a button on a small tape recorder and played back Mr. Nixon's voice admitting that he had helped plan and then cover up the Watergate burglary.

It soon became evident that the recording was a satire, a composite of various speeches of Mr. Nixon's, produced by the editors of the National Lampoon.

But the satirical "confession" was what many Judiciary Committee members had hoped to find, rather than the damaging, distasteful—but inconclusive—evidence on the tapes and in the edited tape transcripts released by the White House.

Most Republicans, following Mr. St. Clair's lead, have focused on the events of March 21, 1973, when \$75,000 in alleged hush money was paid to E. Howard Hunt Jr. after the President discussed such a payment at length with John W. Dean 3d, the former White House legal counsel.

According to Judiciary Committee transcripts, Mr. Nixon at one point said that the money "should" be paid and later replied to Mr. Dean's suggestion

that some signal be given to Mr. Hunt by saying, "For Christ's sake, get it."

The Watergate grand jury named Mr. Nixon as an unindicted co-conspirator on the basis of such evidence, but the Judiciary Committee, whose recommendation would be equivalent to a proposed indictment, has been more reluctant to come to the same conclusion.

#### No Conclusions

One reason is that in presenting the voluminous evidence to the committee, Mr. Doar and his aides refrained from characterizing it or suggesting any conclusions that should be drawn from the material.

On Monday, Mr. Rodino established five "task forces," each containing four Democratic members of the committee, to examine in depth the central areas of the inquiry—the Watergate case, alleged political dealings between the White House and major 1972 re-election campaign contributors, domestic surveillance activities, alleged White House attempts to misuse Government agencies, and Mr. Nixon's personal taxes.

Although the ostensible reason for making the assignments was to develop expertise among the Democrats on the various issues, Mr. Rodino was said to have had a more fundamental purpose in mind.

"The whole process is to teach the members the [impeachment] case," one of the chairman's colleagues said.

He added that too few of the members appeared to have followed the presentation of evidence with attention to the relationships among different aspects of the case.

"Viewed broadly, in terms of patterns, there is a strong circumstantial case" against the President, the official said. "Viewed narrowly, one issue at a time, 'it's not that strong.'"

Mr. Rodino and the committee lawyers reportedly favor adoption of a general article of impeachment alleging that Mr. Nixon did not heed his constitutional duty to "take care that the laws be faithfully executed."

#### White House Opposition

But the White House is expected to oppose such a charge on the ground that it would be improper to add together a number of different items that, individually, might not be sufficient to warrant impeachment. Most Republicans on the committee are likely to agree.

Mr. Rodino was quoted last week as having said he expected that all 21 of the committee's Democrats would support an impeachment recommendation and that as many as five Republicans might be needed to make clear that the bill of impeachment had bipartisan support. Despite White House denunciation of

Mr. Rodino for the alleged assessment, few impeachment observers would quarrel with it.

White House officials have reportedly begun focusing on the full House in apparent expectation of an unfavorable vote in the judiciary committee.

What remained to be seen was whether the committee would be any more cohesive in the ultimate stage of its inquiry—the deliberations over evidence—than it has been in the recent divisive discussions over procedure.

As the committee's hearings

lapsed into a holiday silence, not many members were as confident as Representative Don Edwards, Democrat of California, that the panel would agree on a bill of impeachment that "is going to be very persuasive, I'm sure."