WXPost

# Senate Panel Opens Debate on Impeachment Rules

By Spencer Rich
Washington Post Staff Writer

The Senate Rules Committee yesterday opened debate behind closed doors on rules to govern the possible impeachment trial of President Nixon amid signs that a major fight is brewing over three key issues.

The committee, under a mandate from the Senate to come up with procedural recommendations by Sept. 1 in anticipation of a trial starting later in September, will start holding executive meetings Monday to hear the views of senators on procedure and on television broadcast of the trial. It is already apparent that there are sharp disagreements on at least three major problems.

They are the powers of the Chief Justice of the United States, whom the Constitution designates as presiding officer of the Senate during an impeachment trial involving a President, the standards of proof needed to convict the President and the use of hearsay evidence.

Committee Chairman Howard W. Cannon (D-Nev.) and Robert C. Byrd (D-W. Va.), chairman of a subcommittee that will conduct the study of impeachment rules with all members of the committee participating, told reporters they favor prohibiting the Chief Justice from voting on any matter, even to break ties on procedural questions. They said that since he isn't a member of the Senate, he shouldn't be allowed to vote.

But Senate Minority Leader Hugh Scott (R-Pa.), a Rules member, said, "As we start down this grim and dolorous road . . I favor the Chief Justice casting the tie-breaking vote" in procedural deadlocks. He said that in the 1868 trial of Andrew Johnson—the only precedent for impeachment of a President—Chief Justice Salmon P. Chase had cast tie-breaking procedural votes several times.

The question of the Chief Justice's vote is part of a larger issue on the presiding officer's overall role, which would be substantially reduced in matters of organization and scheduling under proposed code of rules submitted to the Rules Committee Tuesday by Majority Leader Mike Mansfield (D-Mont.). Mansfield not only proposed barring the Chief Justice from voting, but also taking away many of his powers under the existing 106-year-old rules and giving them to the Senate leadership and the secretary of the Senate.

Sen. James B. Allen (D-Ala.), a committee member, and Scott both expressed reservations about some of these changes.

A second major issue in conflict is the standard of proof needed for conviction which requires a two-thirds vote of the senators present. In criminal law the standard is proof of guilt "beyond a reasonable doubt," difficult to achieve. In civil law, it is a much easier basis, "preponderance of the evidence." Mansfield proposed using "clear and convincing evidence" of guilt—a concept legally about halfway between the other two.

The existing rules don't contain any guidance on what standards of proof should be used.

Robert P. Griffin (R-Mich.), Rules member and GOP Senate whip, said "Library of Congress research indicates that beyond-a-reasonable-doubt was generally applied (in past impeachment trials), although different senators of course can make up their own minds. If we adopt a lower standard for this defendant, in this trial, I don't think the Senate will be helping itself in terms of the appearance of fairness."

Scott said, "I believe that many senators would expect the proof to be beyond a reasonable doubt."

However, Byrd said he didn't think a requirement should be included at all in the trial rules, because "each Senator in his own mind can set his own standard, and I don't know of any way under heaven that one could hold senators to any one standard of proof."

The most bitterly contested question is likely to be the kind of evidence that should be admitted. At present, there aren't any specific standards in the rules. Mansfield proposed letting any evidence that is acceptable in federal legal proceedings and certain state proceedings be used in impeachment trials. This would allow much hearsay evidence to be used but still set guidelines precluding bringing in the kitchen sink.

(Both the White House tapes and the direct testimony of John W. Dean III, as to what the President said would probably be admissible.)

Without such guidelines, the White House is likely to yell "kangaroo court," one senator said, and the votes of some Southern senators who are sticklers on evidence might be lost.

On the other hand, if the rules are too strict, material and relevant from the White House tapes might be excluded. Byrd said he opposed setting any evidence rules in advance, asserting, "I don't believe the Senate should box itself in." Such rules, he said, "are designed to give evidence to jurors. An impeachment trial is quite something different."

Allen and Scott appeared to favor installing some rules of evidence, and Griffin said hearsay evidence could become a problem, particularly if the trial is televised (which the committee probably will recommend).

Cannon said he favored some rule on hearsay evidence, while favoring existing rules allowing the Senate to decide by majority vote any controversy over a specific piece of evidence as it comes up.

Both Griffin and Robert Taft Jr. (R-Ohio), who isn't on the committee, said they are unhappy about live television.

The committee meets again today.

Taft is to testify on this next week, and a block of four senators—Charles MCC. Mathias Jr. (R-Md.) Philip A. Hart (D-Mich.), Edward M. Kennedy (D-Mass.) and Jacob K. Javits (R-N.Y.) are to testify on general procedural problems, probably Monday. They say about 40 issues must be settled.

Byrd, summing up his position, said a few changes in existing rules are called for, but "in the main the present rules are adequare" and he doesn't favor a wholesale overhaul.