

Report Splits Impeachment Panel Chiefs

By Richard L. Lyons
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The two top members of the House Judiciary Committee differed sharply yesterday over conclusions of its staff that President Nixon could be impeached for acts that are not indictable crimes.

The 50-page memo prepared by the legal staff, including Republican counsel Albert Jenner, for the committee's help during its impeachment inquiry takes the broad view that the President could be impeached for acts constituting misuse of power, which must be seri-

ous but need not be crimes under the law.

In releasing the report, Chairman Peter W. Rodino (D-N.J.) said: "It has been my view all along that grounds for impeachment need not arise out of criminal conduct."

Rep. Edward Hutchinson (R-Mich.) flatly disagreed. "There should be criminality involved," he said at a news conference. "I don't endorse it," he said of the report.

Both emphasized that the report was for the guidance of the committee and did not intend to speak for the

committee. However, Rodino said copies would be made available to all members of the House. It may help shape their positions when the House votes on the question of whether Mr. Nixon should be impeached for Watergate or other matters.

Targets of impeachment attempts from President Andrew Johnson in 1868 to Supreme Court Justice William O. Douglas in 1970 have argued the narrower view that an official can be impeached and removed from office only for defined crimes. The Justice Department has prepared a study,

still not released, which reportedly takes the narrow view.

The department has indicated that the House Committee could obtain a copy of its report by asking for it. Rodino said he would receive anything sent to the committee but would not request a copy from the Justice Department report. "This is our job to do," he said. The committee is jealous of its constitutional jurisdiction over impeachment proceedings.

The Constitution provides that the President and other
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IMPEACH, From A1

civil officers of the United States shall be removed from office, upon impeachment (indictment) by a majority vote of the House and conviction by two-thirds vote of the Senate of "treason, bribery or other high crimes and misdemeanors."

Treason and bribery are well-defined offenses, but "high crimes and misdemeanors" are not. Rodino said the purpose of the staff study was to shed light on their meaning and to guide the committee on what constitutes impeachable offenses.

The staff study traces the history of impeachment from 14th century England, when "high crimes and misdemeanors" was first used. A misdemeanor was then not a legal crime, but an act that "subverted the system of government," the report said.

The phrase was placed in

the Constitution in 1787 with practically no debate. But writings of the founders such as James Madison and Alexander Hamilton agreed that the words were intended to cover acts other than legal crimes, the report said.

In less than one-third of the 83 articles of impeachment adopted by the House since 1789 was a legal crime alleged as the ground for impeachment, the report stated. But it added that 10 of those charges of illegal acts were directed against Andrew Johnson, the only President ever impeached.

The emphasis in all impeachment cases, said the report, "has been on the significant effects of the conduct—undermining the integrity of office, disregard of constitutional duties and doath of office, arrogation of power, abuse of the governmental process, adverse impact on the system of government. Clearly, these effects can be brought about in ways not anticipated by the criminal law."

The staff report noted that the Constitution imposes on the President the duties "to take care that the laws be faithfully executed," to "faithfully execute the office of President of the United States" and to "preserve, protect and defend the Constitution . . ."

"The duty to take care is affirmative," said the report. It "emphasizes the responsibility of a President for the overall conduct of the executive branch . . . He must take care that the executive is so organized and operated

that this duty is performed."

The President's duty to uphold the Constitution, said the report, "includes the duty not to abuse his powers or transgress their limits—not to violate the rights of citizens such as those guaranteed by the Bill of Rights and not to act in derogation of powers vested elsewhere by the Constitution."

The report concludes that not all presidential misconduct is impeachable; it must also be substantial. "Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance on constitutional duties of the presidential office."

The report did not discuss at any length or reach any conclusion on another serious question facing the committee. This is the extent to which a President can be held responsible for acts of his subordinates, whether he knew of them or not.

This question could become crucial in matters such as the Watergate cover-up, or the burglary of the office of Daniel Ellsberg's psychiatrist. Committee special counsel John Doar said this was not discussed because the study dealt only with "general principles."

Rodino had said earlier he thought the committee should vote on a definition of impeachable offenses. But he apparently will not press this because many members feel it is a decision each congressman must make for himself.



Associated Press

House Judiciary Committee Chairman Peter W. Rodino, left, with ranking Republican Edward Hutchinson and

minority counsel Albert Jenner, holds copy of report designed to aid committee in defining impeachable offense.