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# Impeachment: The Matter of Fairness

SO NOW THE BRIEFCASE has been passed from Judge Sirica to the House Judiciary Committee. The committee's leaders and chief counsel, working under tight security, have begun to examine the Watergate grand jury's secret report and evidence relating to the President. And while the committee proceeds in this solemn, careful and bipartisan way, the White House has stepped up its public and private campaigns to limit and retard the inquiry, to court selected members of the Congress, and to foster a public image of the President as a wholly reasonable man valiantly trying to protect the presidency against a small pack of partisans—and, of course, the media.

The present White House performance is sadly reminiscent of the way in which Mr. Nixon has tried to deal with the two special prosecutors. He complains about delays while putting up one obstacle after another. Press secretary Ronald Ziegler gives gratuitous advice to the Judiciary Committee to work nights. Presidential counsel James D. St. Clair offers legal aid. Mr. Nixon himself volunteers to define impeachable offenses and to sift the evidence. All this cooperation does not, however, extend to giving up the additional tapes and other materials which the committee has said it needs.

In such an atmosphere, it is easy to be skeptical—indeed, it is hard not to be—about recent White House demands for "fairness" and about Mr. St. Clair's specific request to be allowed to cross-examine witnesses, participate in the taking of depositions, and present witnesses and evidence of his own. But that particular proposition is less easy to dismiss as just another White House maneuver designed to provoke an ugly and destructive party-line split in the committee. Of course a committee majority could exercise its constitutional prerogative to determine the scope and manner of the investigation in such a way as to confine the White House to a wholly passive role. But that could be a foolish, self-defeating course. The fact is that the eventual outcome of the impeachment inquiry will depend in no small part on a public and congressional perception that the proceedings have been conscientious, judicious, and —the word is inescapable—fair.

"Fairness" in this context relates not so much to any legal term of art as to a fundamental, layman's sense of equity. The impeachment process is not, after all, exactly analogous to a criminal proceeding; it if were, the Judiciary Committee would be conducting a combination of a prosecutorial investigation and a grand jury probe—and at such stages of a criminal proceeding, the counsel for a potential defendant would enjoy few of the privileges which Mr. St. Clair has sought. But since impeachment is a political undertaking in the most basic sense—an inquiry into abuses of a high public trust—it does seem prudent for the committee, in the interests of promoting public confidence in that inquiry, to allow the President's counsel some limited and carefully agreed-on role. That involvement should probably be less than that provided for defense counsel in a trial court; the House committee is not supposed to be conducting a rehearsal for a possible Senate trial. But it is disingenuous to maintain, as some House Democrats have, that there is no adversary aspect to the committee's work at all. On the contrary, Mr. Nixon is doing all he can to paint the inquiry as not only hostile but vindictive and unfair; as Joseph Kraft suggests in a column on the opposite page today, nothing might better aid and abet Mr. Nixon's desperate tactic than a partisan decision to shut the door entirely on Mr. St. Clair.

Any precise definition of the President's counsel's role seems premature, however, until the Judiciary Committee has decided how it will proceed—and how many witnesses, if any, should be called; how many depositions, if any, should be taken; how many public hearings, if any, should be held. Such judgments should wait, in turn, until Chairman Peter Rodino, the ranking Republican Rep. Edward Hutchinson and the staff have obtained and examined all of the relevant tapes and documents—including those which the White House has so far refused to provide.

The situation may seem to offer the makings for a trade—42 tapes in exchange for cross-examination rights, or something of that sort. But deals of all sorts should be avoided. The committee's need for evidence, as the committee and its staff define that need, ought to be non-negotiable. Contrary to the White House view, the sufficiency of evidence cannot be weighed in terms of pounds of documents or hours of tapes—especially when much of that evidence came from other bodies, such as the grand jury, which did not focus on the President's role and activities. Nor should the committee be required to justify its request by drawing up a list of charges first. Investigations in this country do not work that way: once allegations have been raised, the facts come next, and the formal charges, if any, emerge from them. That is a central element in the national concept of fairness, too. But Mr. Nixon, in his current predicament, invokes that concept only selectively. That is all the more reason for the Judiciary Committee to proceed, as it has in the main so far, with an inquiry which is thorough, bipartisan, and fundamentally fair not only to the President but to the Congress and the nation as well.