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# House Panel's Debate on Impeachment Revolves on Issues of Proof and Doubt

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WASHINGTON, July 25 — "Presumption of innocence." "Proof beyond a reasonable doubt." They are words from the criminal law, and they peppered the debate today over the impeachability of Richard M. Nixon.

They were mixed with words from the noncriminal law — "clear and convincing," for example—and the mixture made the point: The House Judiciary Committee's proceedings are a legal hybrid.

The speeches of the committee members made another point: The rules governing the hybrid are far from clear.

The committee's proceedings are part trial, part grand jury investigation and part legislative hearing. They are also part "removal hearing," in the sense of a hearing into the removal of a public employe such as a teacher or a civil service bureaucrat.

They are clearly legal proceedings—"constitutional" proceedings, to be exact—for they are under way to implement the law of impeachment described in the Constitution. They are clearly governed by the constitutional requirement for due process.

#### Key Questions Emerge

How the concept of due process is to be applied, and what it requires the committee to do, is part of the debate. Representative Edward Hutchinson, Republican of Michigan suggested last night that "proof beyond a reasonable doubt" was the appropriate standard for the committee, while other members followed the suggestion that the standard be "clear and convincing evidence."

The debate involves—in addition to the question of the standard of proof—such questions as these:

¶Is the President entitled to the presumption of innocence?

¶May the committee legally vote to recommend Mr. Nixon's impeachment on the basis of

evidence that would not be admissible at trial?

¶Have some committee members in effect disqualified themselves by deciding to vote for or against Mr. Nixon's impeachment before hearing the full debate?

One constitutional expert, Leon Friedman of the American Civil Liberties Union, noted today that the courts had held that due process required "procedures followed by the Judiciary Committee is determined by the nature and purpose of the committee's task."

#### Options in the Law

On the subject of the standard of proof on which the committee should weight the evidence, the law—theoretically at least—allows several options. There is the standard of "preponderance of evidence" used in civil cases; "probable cause," used by grand juries in deciding whether or not to indict, "clear and convincing," used in administrative proceedings, such as deportation hearings; and proof "beyond a reasonable doubt," the standard in criminal trials.

The Judiciary Committee's function is technically to decide whether or not to recommend that charges be brought against Mr. Nixon. Thus, it is like a grand jury, which uses the "probably cause" standard.

Yet the committee, unlike a grand jury, is not dealing with precise statutes setting forth the charges they may bring.

The committee is also deciding something of monumental importance to the nation, of great impact and, if Mr. Nixon is in fact convicted, of great harm to Mr. Nixon. In criminal trials, the legal proceeding in which the defendant faces the greatest potential loss, the standard is reasonable doubt.

To many commentators, and apparently to many committee members, the appropriate standard is thus somewhere in between probable cause and beyond a reasonable doubt — "clear and convincing," — the phrase suggested by Mr. Nixon's lawyer, James D. St. Clair, for instance.

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The "presumption of innocence" is a maxim from the criminal law — it means that a person is innocent until proved guilty. As one lawyer put it today, it is "the reverse side of the coin of 'proof beyond a reasonable doubt,'" meaning that a person may not be subject to criminal penalties until proved guilty beyond reasonable doubt in a fair proceeding.

The impeachment proceeding is not a criminal prosecution. While the charges involved may include criminal offenses, there is no criminal penalty such as imprisonment.

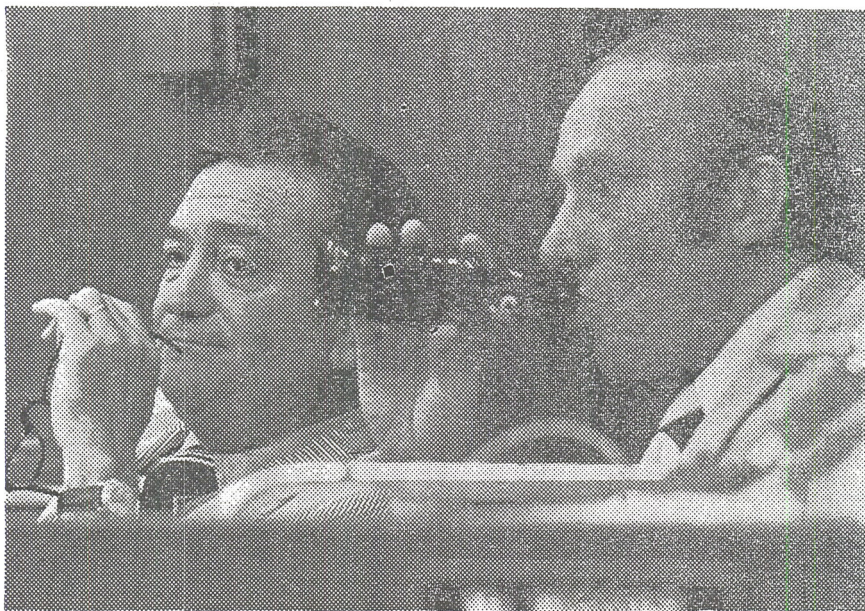
#### Evidence an Issue

But the presumption of innocence is a deeply-ingrained concept. The effect of conviction on an impeachment defendant, moreover, is as momentous as many criminal penalties. Hence, apparently, Representative Charles E. Wiggins, Republican of California, said during the debate today, that Mr. Nixon "is entitled to the presumption of innocence."

As for the questions regarding the type of evidence gathered by the committee—much of it hearsay—the nature of the committee proceedings is also instructive.

Grand juries regularly return indictments based on evidence that would be inadmissible at trial. They are allowed to do this in part because their function is only to decide whether or not to bring charges against a defendant — not to decide whether or not the defendant is actually guilty. This rationale would apply to the Judiciary Committee as well.

Charles L. Black, in his book, "Impeachment: a Handbook," makes another point, based on the special function of impeachment as a way to check misconduct by officials, whether criminal or not. "Both the House and the Senate ought to hear and consider all evidence which seems relevant, without regard to technical rules."



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Tom Railsback, Illinois Republican, drinks a soda while listening to the statements made by his fellow Representatives. Charles W. Sandman Jr. of New Jersey, who is also a Republican, is at left.

Some Republican members raised another complaint about the committee evidence. It is "circumstantial" and hence, they say, inadequate. Yet, as many lawyers point out, circumstantial evidence is admitted in both civil and criminal trials. The crucial factor is not whether or not evidence is circumstantial, it is whether evidence is reliable and substantial.

Some Nixon supporters and others have suggested that some members of Congress may be unacceptable as "jurors" in the impeachment case because of their partisanship and already-announced views. Here, too, the nature of the proceeding is a guide, if not an answer.

In criminal cases, the Constitution provides for trial by an impartial jury. The courts have devised techniques of jury selection to help assure impartial juries.

#### Congress Alone

But the Constitution provides that Congress and Congress alone handle impeachment. As Mr. Black notes, if Senators were disqualified for partiality, "a great many Senators would inevitably be disqualified" and

"it might easily happen that trial would be by a quite small remnant." So, too, with members of the House, in the preliminary stage.

On the other hand, the basic feature of due process is "fairness"; if those who vote against Mr. Nixon do so on political grounds rather than on the

evidence, the result is obviously not fair.

So, though there is no precise constitutional phrase and no statute either, there is some law. Mr. Black phrases it thus: "Members of the House of Representatives ought to try for the impartiality of a good grand jury member."



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David W. Dennis, Republican of Indiana, taking his place before the start of yesterday's session. Of the impeachment process, he said that Congressmen should "approach it dispassionately and analyze it professionally, as lawyers." He stressed legal procedures.