## WXPost

## ens Debate

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 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 e 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 form told reporters they favor prohibiting the Chief Jus-tice 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 do-

lorous road . . I favor the Chief Justice casting the tiebreaking vote" in procedural deadlocks. He said that in the 1868 trial of Andrew Johnson—the only pre-cedent for impeachment of a President—Chief Justice Salmon P. Chase had cast Justice 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 sub-mitted 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 also taking away many of his powers under the exist-106-year-old rules

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 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 are not

standards of proof should be used.

in say

Robert P. Griffin (R-Mich.), Rules member and GOP, Senate whip, "Library of Congress re-search indicates that be-yond-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 tested 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 trials. 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 would probably 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 commitprobably recommend).

Cannon said he favored some rule on hearsay evi-dence, while favoring exist-ing rules allowing the Sen-

ate 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.

committee ' meets The 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.