

Impeachment Process Enters Second Stage

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Special to The New York Times

WASHINGTON, July 31—For all practical purposes, the first stage of the impeachment proceedings ended last night with the House Judiciary Committee's final vote. The second stages a decision by the full House of Representatives, thus became inevitable — notwithstanding the possible White House strategy described today by President Nixon's aides.

The aides said that Mr. Nixon might call on the House to impeach him by unanimous vote, without debate. The case would then do directly to the Senate, and the second stage would have been far briefer than expected.

The function of the second stage, though, would remain the same. And, legally if not politically, so would the meaning of a House vote to impeach.

Impeachment is a constitutional remedy. The Constitution does not say much about the impeachment process, but it says very clearly that it has two major parts — the bringing of charges by the House and the trial by the Senate.

Focus on Three Articles

Whether or not the House debates the charges before it votes, the vote to impeach is a finding that there is sufficient evidence of serious misconduct by the President to merit the bringing of formal charges against him and to warrant his trial on those charges by the Senate.

The House Judiciary Committee proceedings that ended last night with a resolution that Mr. Nixon should be impeached on three articles, or charges, were

a crucial phase of the Nixon impeachment: The articles will be the focus of the House debate, if there is a debate, and of the House vote.

The committee's proceedings seemed to many observers to resemble a trial. The committee members heard and then debated evidence and in their debate, they applied a relatively high standard of proof.

Yet technically, the work of the Judiciary Committee was just a part of the basic job of the House of Representatives set forth in the provision of Article I, Section 2, that the House "shall have the sole power of impeachment."

Decades-Old Procedure

The Constitution does not describe or even mention the role of the Judiciary Committee, or any other committee, in the impeachment process. Instead, the use of a committee in the preliminary stages of impeachment proceedings is a technique devised by the House decades ago to help carry out its constitutional mandate.

The House has, in fact, always referred impeachment matters to one or another of its committees—in recent times the Judiciary Committee — for initial work.

It has done so, generally, with the type of resolution with which it forwarded the Nixon matter last Feb. 6, telling the committee to "investigate fully and completely whether sufficient grounds exist to impeach" and then to report to the House "such resolutions, articles of impeachment, or other recommendations as it deems proper."

These recommendations are not binding on the full House. The proposed articles can be amended, accepted or rejected.

Additional articles can be suggested. And proposed articles rejected by the committee can be revived. In 1933, the Judiciary Committee investigated Judge Harold Louderback and found the evidence wanting, but the full House voted to impeach nonetheless.

The long proceedings carried out by the Judiciary Committee in the Nixon case appeared to include some features unnecessary to the assignment — as when the committee let the President's lawyers attend the proceedings. The committee explained such actions as part of its effort to make the proceedings to appear fair — to give Mr. Nixon, as one committee member put it, "due process quadrupled."

If the House votes to impeach Mr. Nixon, it will function as prosecutor in the Senate trial, arguing the case against the President through appointed Representatives called managers. The Senate, as trier, is limited to the charges brought by the house and may not add new ones of its own.

The men who drafted the Constitution in 1787 copied the English system of impeachment in which Commons is the accuser and the House of Lords the trier.

Some commentators also suggested that they were copying to some extent the two-tiered system of the criminal law — with a grand jury proceeding first, and then a trial.

The parallels are obvious—an initial screening of the evidence to see if it warrants trial in both systems—yet impeachment is a hybrid proceeding, and the differences between it and the criminal law are equally obvious.

A grand jury, for instance,

operates in private. It is pretty much controlled by the prosecutor. It applies a standard of proof called probable cause, a relatively low standard.

The House, on the other hand, functions—at least in the final stages of its work—in public. It is the members of the House, not the staff lawyers, who are truly in charge. The standard of proof, in the Nixon case at least had been substantially higher than "probable cause."

The Senate trial of impeachment cases is also different in critical ways from an ordinary trial.

In an ordinary trial, the jurors must be impartial; the judge rules on such questions as admissibility of evidence; the jurors decide only factual issues, accepting the law as stated by the judge.

In a Senate trial there is a presiding judge — the Chief Justice of the United States when the defendant is the President. But the judge's rulings on procedure and on such matters as admissibility of evidence can be overruled by the Senate. Senators, moreover, need not be disqualified for impartiality, though they may disqualify themselves.

And perhaps most significant, the Senators can decide for themselves what the law is. When the House impeaches a President on specific articles, it is saying in effect that it considers the conduct alleged in the articles to be impeachable offenses. But the Senators can reject that finding, and impose their own definition of an impeachable offense.

Thus, they may vote down an article even if satisfied that the President did in fact commit the act alleged.