

The Senate Prepares to Judge

Even before the Judiciary Committee had voted on the second and third articles of impeachment, the Democratic and Republican leaders of the Senate met in Majority Leader Mike Mansfield's office. After the meeting, Mansfield, together with Minority Leader Hugh Scott and Democratic and Republican Whips Robert Byrd and Robert Griffin, announced that the Senate Rules Committee would review existing impeachment trial rules.

Mansfield then unveiled a total revision and updating of the Senate's impeachment rules, which were written in 1868 for the trial of Andrew Johnson. One of the 13 proposed rules, allowing television coverage of the Senate trial, is almost certain to be approved. However, Mansfield's proposals met argument in several important areas, including:

THE STANDARD OF PROOF. Mansfield's rules would enable the Senate to uphold the House's articles of impeachment if they found the evidence against the President to be "clear and convincing." This standard falls between the dif-

ficult one of "beyond a reasonable doubt" used in criminal trials and the easier "preponderance of the evidence" standard established for civil cases. It was applied by the House Judiciary Committee after, ironically enough, being proposed by Presidential Counsel James St. Clair. But Republicans, led by Minority Leader Scott, favored "beyond a reasonable doubt," feeling that "clear and convincing" was too lax.

ADMISSIBILITY OF EVIDENCE. Mansfield would allow into the impeachment trial any evidence that would be admissible in federal or state courts, no matter what the nature of the case. This would permit information produced in congressional hearings as well as substantial hearsay evidence to be introduced. This was also opposed by Republicans as far too permissive and aimed at bolstering what they consider a technically weak case against the President.

THE POWERS OF THE CHIEF JUSTICE. Mansfield's rules would take away the Chief Justice's authority to issue subpoenas and writs, to "charge" the Senators,

or to cast tie-breaking votes as he presides over the impeachment trial. Mansfield argued that both precedent and the 1868 rules have compromised the Senate's "sole power to try" the President by giving too much power to the Chief Justice. Some Republicans countered that this rule expressed a Democratic fear that Chief Justice Warren Burger would wield a pro-Nixon gavel.

Still another potential controversy is looming: what to do in case the trial is not completed before the new 94th Congress is convened next Jan. 3. Mansfield, who is planning a six-day-a-week, seven-hour-a-day schedule for the trial in the hope of getting it through by Christmas, wants the new Senate to carry on where the old one left off. "The Senate is a continuing body, and we wouldn't have to start the trial over again," he argues. He plans to provide seats in the chamber for new Senators elected in November so that they can hear the evidence before they take office. Republicans doubt whether that would be fair or legal; they would probably urge a new trial if the current 93rd Congress does not finish the job—an alarming prospect for the Senate and the nation.