93D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 93–774

INVESTIGATORY POWERS OF COMMITTEE ON THE JUDICIARY WITH RESPECT TO ITS IMPEACHMENT INQUIRY

FEBRUARY 1, 1974.—Referred to the House Calendar and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

together with

ADDITIONAL, SUPPLEMENTAL, AND SEPARATE VIEWS

[To accompany a resolution [H. Res. 803] providing appropriate power to the Committee on the Judiciary to conduct an investigation of whether sufficient grounds exist to impeach Richard M. Nixon, President of the United States, and for other purposes.]

The Committee on the Judiciary having considered the following resolution, (H. Res. 803), and by voice vote taken, a quorum being present, on January 31, 1974, with no objection heard, reports favorably thereon and recommends that the House adopt that resolution:

Resolved, That the Committee on the Judiciary, acting as a whole or by any subcommittee thereof appointed by the chairman for the purposes hereof and in accordance with the Rules of the committee, is authorized and directed to investigate fully and completely whether sufficient grounds exist for the House of Representatives to exercise its constitutional power to impeach Richard M. Nixon, President of the United States of America. The committee shall report to the House of Representatives such resolutions, articles of impeachment, or other recommendations as it deems proper.

SEC. 2. (a) For the purpose of making such investigation, the committee is authorized to require—

(1) by subpena or otherwise:

(A) the attendance and testimony of any person (including at a taking of a deposition by counsel for the committee); and

(B) the production of such things; and

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(2) by interrogatory, the furnishing of such information; as it deems necessary to such investigation.

(b) Such authority of the committee may be exercised—

(1) by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the committee for decision the question whether such authority shall be so exercised and the committee shall be convened promptly to render that decision; or

(2) by the committee acting as a whole or by subcommittee.

Subpenas and interrogatories so authorized may be issued over the signature of the chairman, or ranking minority member, or any member designated by either of them, and may be served by any person designated by the chairman, or ranking minority member, or any member designated by either of them. The chairman, or ranking minority member, or any member designated by either of them (or, with respect to any deposition, answer to interrogatory, or affidavit, any person authorized by law to administer oaths) may administer oaths to any witness.

For the purposes of this section, "things" includes, without limitation, books, records, correspondence, logs, journals, memoranda, papers, documents, writings, drawings, graphs, charts, photographs, reproductions, recordings, tapes, transcripts, printouts, data compilations from which information can be obtained (translated, if necessary, through detection devices into reasonably usable form), tangible objects, and other things of any kind.

Sec. 3. For the purpose of making such investigation, the committee, and any subcommittee thereof, are authorized to sit and act, without regard to clause 31 of rule XI of the Rules of the House of Representatives, during the present Congress at such times and places within or without the United States, whether the House is meeting, has recessed, or has adjourned, and to hold such hearings, as it deems necessary.

Sec. 4. Any funds made available to the Committee on the Judiciary under House Resolution 702 of the 93d Congress, adopted November 15, 1973, or made available for the purpose hereafter, may be expended for the purpose of carrying out the investigation authorized and directed by this resolution.

General Statement

The scope of the investigation authorized by this resolution is stated broadly to permit consideration of any matter necessary to the Committee's inquiry into the existence or nonexistence of sufficient grounds for impeachment.

This resolution empowers the committee to require the attendance and testimony of such witnesses as it deems necessary, by subpoena or otherwise. It authorizes the committee to take such testimony at hearings or by deposition. Depositions may be taken before counsel to the committee, without a member of the committee being present, thus expediting the presentation of information to the committee. This resolution further authorizes the committee to require the furnishing of information in response to interrogatories propounded by the commit-

tee. Like the deposition authority, the authority to compel answers to written interrogatories is intended to permit the committee to conduct a thorough investigation under as expeditious a schedule as possible. Interrogatories should prove particularly useful in providing a basis for the efficient exercise of the committee's subpoena power, by enabling it to secure inventories and lists of documents, materials, and things and the names of potential witnesses.

The committee's investigative authority is intended to be fully coextensive with the power of the House in an impeachment investigation—with respect to the persons who may be required to respond, the methods by which response may be required, and the types of information and materials required to be furnished and produced.

It is the intention of the committee that its investigation will be conducted in all respects on a fair, impartial and bipartisan basis. In this spirit, the power to authorize subpoenas and other compulsory process is committed by this resolution in the first instance to the chairman and the ranking minority member acting jointly. If either declines to act, the other may act alone, subject to the right of either to refer the question to the committee for decision prior to issuance, and a meeting of the committee will be convened promptly to consider the question. Thus, meetings will not be required to authorize issuance of process, so long as neither the chairman nor the ranking minority member refers the matter to the committee. In the alternative, the committee possesses the independent authority to authorize subpoenas and other process, should it be felt that action of the whole committee is preferable under the circumstances. Thus, maximum flexibility and bipartisanship are reconciled in this resolution.

After careful consideration, the committee determined not to establish a deadline for its final action. The committee concluded that it is not now possible to predict the course and duration of its inquiry and that establishment of dates would be unrealistic and thus misleading. The committee was anxious to avoid an arbitrary deadline that might ultimately operate as an unnecessary hindrance to an early and just conclusion to its inquiry.

ADDITIONAL VIEWS OF MR. DRINAN

I write these views with the hope that the apparent or asserted partisan differences between the majority and minority members of the Judiciary Committee may be analyzed. I have the hope that such an analysis will bring about a modification or even an elimination of the view accepted by many individuals that the impeachment proceeding almost inevitably involves partisan factors.

I have the hope that the 38 attorneys on the Judiciary Committee will not argue or vote as Democrats or Republicans but as members of the bar with a responsibility to define and apply the historic impeachment provisions in the U.S. Constitution. On July 31, 1973 I enunciated this principle in a statement in the Congressional Record. I stated at that time that "impeachment should not be a partisan issue". I noted that members of both political parties should approach the question of impeachment as unbiased jurors or triers of the facts.

I sought to follow that principle in the votes which took place in the Judiciary Committee on amendments proposed to the resolution designed to secure subpoena powers for the Judiciary Committee from the full House.

I voted against a proposal for having a deadline date of April 30, 1974 for all proceedings on impeachment within the Judiciary Committee. I did not vote against this resolution because it was proposed by a Republican or because I am a Democrat but solely and exclusively because it was a bad idea. The proponents of this concept could not name a single trial or a hearing before a grand jury or any other event even remotely comparable to an impeachment proceeding in which those involved, prior to hearing any of the evidence, had established an arbitrary period of 13 weeks in which the matter had to to be concluded.

I also voted against a proposal made by a Democrat on the Judiciary Committee that would have required the Committee to issue an interim report on or before April 30, 1974 if the final report of the Committee was not ready.

I am sure that the American public is puzzled by the fact that the vote that rejected the date of April 30, 1974 as the final deadline was along party lines. I too am puzzled. I hope that the Judiciary Committee will not have votes in the future which can be explained only on the basis that they followed party lines. There is no "party line" about impeachment. I am sure that every member of the Judiciary Committee, whether Democrat or Republican, is determined to follow his convictions and his conscience wherever the evidence might lead, regardless of the potential or even probable political consequences to himself.

In the Judiciary Committee I voted in favor of another amendment offered by Congressman Charles Wiggins of California. This proposal

would require that the material to be sought by the subpoena of the Judiciary Committee must be not only "necessary" in the opinion of the Committee but that it should also be "relevant." Both majority and minority counsel to the Committee felt that the single norm that the material sought should be "necessary" is a desirable standard.

They felt that the addition of the requirement that the evidence be "relevant" would narrow and complicate the basis for action by the Judiciary Committee in the exercise of the subpoena power. I proposed a compromise version which would require that the evidence sought be "necessary" but that it should also possess characteristics which would make it "likely to lead to relevant" material. This particular concept and language is consistent with the federal rules of civil procedure which stipulate that evidence to be sought in a deposition need not necessarily be "relevant" in and of itself but that some showing must be made that the evidence sought is likely to lead to something relevant. Congressman Wiggins' proposal was rejected in a vote with 15 ayes and 22 nays, again almost entirely along party lines.

On another matter, I and two other Democrats voted for an amendment which would have deleted the last clause of Section 2(b)(1) of the subpoena resolution. In that section it is stipulated that the authority of the Committee may be exercised:

> (1) by the chairman and ranking minority member acting jointly, or, if either declines to act, by the other acting alone, except that in the event either so declines, either shall have the right to refer to the Committee for decision the question whether such authority shall be so exercised and the Committee shall be convened promptly to render that decision * * *.

The Proposal to omit all of the language after the word "except" in the foregoing was intended to prevent the majority of the Judiciary Committee having the implicit power to prevent the ranking minority member from acting alone in extending a subpoena to individuals or documents desired by him. Obviously the Committee could come together if they so desired and, exercising those rights spelled out in the rules of the House of Representatives, vote against the issuance of the subpoena in question.

The proposal to omit these words was defeated in a vote with 16 ayes and 21 nays, almost all on a party basis.

It is my conviction that the majority and the minority should be permitted to seek evidence wherever they desire it and to subpoena it in any way consistent with the orderly progress of the impeachment proceeding.

Some observers of the action of the Judiciary Committee in its meeting of January 31, 1974 might conclude that the Democrats on the Committee fear that the Republicans would be likely to block access to information required by the impeachment investigation. I personally do not believe that any Republican on the Judiciary Committee would act in such a manner. Indeed, I would feel that Republicans would seek to bring out all of the facts so that the impeachment could be settled as expeditiously as possible.

Observers of the Judiciary Committee might also be inclined to suspect that Republicans harbor a view that Democrats would be

likely to go after witnesses or evidence even though they were not sure that the evidence would be relevant. It is understandable that some Members of Congress involved in investigating unlawful conduct within the Administration would feel frustration at the many attempts to withhold that information from the Congress and from the courts. At the same time the Democratic members of the Judiciary Committee should recognize that fairness and due process in an impeachment proceeding is urgently necessary. It is also urgently necessary that the entire nation have the feeling that total fairness and complete due process are in fact present in the impeachment proceeding. These imperatives constituted one of the reasons why I voted to add the standard of relevancy to that of necessity as the norms by which the subpoena power should be exercised.

In the impeachment inquiry the Judiciary Committee will be exercising a right vested exclusively by the Constitution in the House of Representatives. There is no such thing as a Democratic or Republican approach to the allegation of impeachment. The House of Representatives is now involved in a proceeding which was described by Colonel George Mason when he addressed the framers of the Constitution meeting in Philadelphia. Colonel Mason noted that the Constitution provides "for the regular punishment of the executive when his misconduct should deserve it" but also "for his honorable acquittal when he should be unjustly accused". For members of both parties, therefore, the impeachment process should be looked upon as the one way by which the executive will either be impeached or secure that "honorable acquittal" to which he is entitled if he has "been unjustly accused."

The impeachment process requires that all of the members of Congress be rational, responsible and reasonable. Only conduct of this type will prevent the House from falling into the excesses of partisanship which stigmatized the impeachment proceeding a century ago.

ROBERT F. DRINAN.

ADDITIONAL VIEWS OF MESSRS. McCLORY, HOGAN, AND MARAZITI

We fully support the inquiry of the Committee on the Judiciary to determine whether the President has committed any impeachable offenses. We fully support the resolution reported by the Committee to enable it to conduct its inquiry. However, we regret that the Committee did not see fit to recommend to the House that the Committee complete its work by a date certain.

The Chairman has repeatedly indicated his intention to complete the inquiry, if possible, by the end of April. We believe that the Committee is committed to such a deadline. However, an amendment to

If we truly desire an expeditiously conducted inquiry, we should reduce this commitment to writing failed by a 23–14 vote.

have bound ourselves to the Chairman's deadline. There will be many temptations along the way to digress, explore, and confront. Before such temptations occur, the Committee should be bound. If the Committee does not wish to bind itself, as the above vote indicates, the House should bind the Committee by amending the reported resolution.

For what is at stake here is the accountability of the Committee to the House itself.

For if the Committee fails to meet the April deadline, it need not make an accounting to anyone. And even if an accounting is made, the House will not be asked to accept or reject any proferred justification for continuing the inquiry. But if the House imposes a deadline on the Committee, the Committee will have to complete its work by then or convince the House that it should continue.

Since the American people want an expeditious inquiry, the House should require that the Committee offer sound reasons for failing to be expeditious. If sound reasons exist, the Committee has nothing to fear. The House will grant an extension. But the judgment is one that should be made by the House and not by the Committee itself.

The impeachment inquiry will take its toll. It will paralyze the legislative and executive branches of government. Solutions to pressing problems will be left lingering. The people will be confused. Leadership will be difficult, if not impossible. It is suggested that these factors weigh heavily on the side of expediting the inquiry. The delicate balancing of the need for thoroughness versus the need for expedition is something that should not be left to the Committee itself but should be reserved to the House. We trust that the House will protect its prerogatives and amend the resolution.

The resolution is privileged and will be considered under the hour rule. Since the Speaker will undoubtedly recognize the Chairman of

the Committee, it is our hope that he would yield to a Member of the Committee for the purpose of offering the following amendment:

> Strike the last sentence of section 1 of the resolution and insert in lieu thereof the following:
>
> The committee shall submit its final report to the House of Representatives on or before April 30, 1974, and such report shall set forth the Committee's conclusions with respect to the investigation authorized and directed by this resolution, together with such resolutions, articles of impeachment, or other recommendations as it deems proper.

By doing this the Chairman would be guaranteeing to the House an opportunity to vote on this important question.

ROBERT MCCLORY.
LAWRENCE J. HOGAN.
JOSEPH J. MARAZITI.

SUPPLEMENTAL VIEWS OF MR. WIGGINS

There can be no reasoned objection to the grant of subpena power by the full House to its Judiciary Committee, providing two conditions are met:

The power granted must be exercised fairly; and
The power granted must be exercised reasonably.

As to each of these conditions, the proposed Resolution is deficient.

Elsewhere in this Report, supplemental views address the issue of fairness. It is hoped that the Members will not tolerate the present bias in favor of the majority which is implicit in the proposed Resolution. If the will of the House is to insure that the repeated promise of future fairness by the majority becomes the absolute rule under which the Judiciary Committee must operate, it will be necessary to vote down the previous question to permit that amendment to the proposed Resolution which is discussed in the supplemental views of Mr. Dennis and others.

Additional corrective surgery is required, however, if the second minimum condition is to be met. Section 2 of the Resolution vests authority to subpena witnesses and to compel the production of such things as the Committee "deems necessary to such investigation." This is a sweeping grant of authority which admits of no necessary limits save the discretion and self-restraint of the Committee itself. The word "necessary" is without any understood legal meaning. What is "necessary" to some may be regarded as a fishing expedition by others. That which is politically "necessary" may dictate the pursuit of evidence which is legally irrelevant to the issue of impeachment. Adoption of the Resolution in its present form would grant to the Committee the authority to engage in a politically motivated witch hunt using the extraordinary power of the House in impeachment proceedings as the vehicle for doing so. It is not enough that good faith disclaimers of any such intention have been repeatedly made by the Chairman of the Judiciary Committee. Rules must be fashioned which require the future performance which now is only promised.

An amendment was offered in the Committee to add the words "and relevant" following the word "necessary" in Section 2 of the proposed Resolution. If adopted, authority to subpena witnesses and to compel the production of things would have been limited to that which the Committee deemed "necessary and relevant" to its investigation. Unfortunately, the amendment failed by a close vote.

If the previous question is voted down, an amendment will be offered on the floor which embodies the concept of relevancy, but which will be in slightly modified form, as follows:

After the word "necessary" add the words "and relevant" and after the word "investigation" delete the period and add the words "or

which it deems reasonably calculated to lead to the discovery of necessary and relevant evidence."

The proposed amendment follows the language of the liberalized discovery rules contained in the Federal Rules of Civil Procedures. It will in no way limit the authority of the Committee to conduct a proper investigation of alleged impeachable misconduct by the President. It will, however, compel the Committee to confine its investigation to that which it deems to be relevant or which may lead to relevant evidence concerning the issue before it. It will preclude an abuse of the impeachment power of the House made possible under the proposed Resolution which grants to the Judiciary Committee authority to forage at will into matters unconnected with impeachable misconduct.

It must be specially noted that questions concerning relevancy are not submitted under this amendment to any court for final resolution. All such questions are to be resolved by the Committee itself. It does compel the Committee, not as an exercise in self-restraint, but as a positive mandate from the House to confront the issue of relevancy rather than to rely upon an empty standard of "necessity."

The amendment will be offered if the previous question is voted down. It will be offered in a spirit of good faith to improve the Resolution. It will not be offered to restrict the scope of the Committee's investigation if it is to be conducted in a reasonable way.

But if the House fails to impose reasonable restraints upon the exercise of power by one of its Committees, it is questionable whether the power should be given at all.

CHARLES E. WIGGINS.

INDIVIDUAL AND SUPPLEMENTAL VIEWS OF MESSRS. DENNIS, WIGGINS, MAYNE, HOGAN, BUTLER, LOTT, MARAZITI, AND DRINAN

We support this resolution, which gives the Committee on the Judiciary the formal authorization of the House of Representatives to proceed with its impeachment inquiry, and which empowers the Committee with the right to issue subpoenas, which is a power essential to the efficient conduct of that inquiry.

An amendment respecting the subpoena power was, however, offered in Committee by Mr. Wiggins of California, the adoption of which would have added a great measure of simple fairness to the terms of this resolution.

Under the terms of the resolution, as stated in sec. 2(b) thereof, authority for the issuance of subpoenas may be exercised "by the chairman and the ranking minority member acting jointly, or, if either declines to act, by the other acting alone, *except* that in the event either so declines, either shall have the right to refer *to the Committee for decision* the question *whether such authority shall be so exercised* * * *"

This provision practically nullifies any truly independent subpoena power for the ranking minority member, because in any case in which he may wish to issue a subpoena to which the chairman will not agree, the latter is clothed with the authority to take the question to the full Committee, where—in the sensitive type of case in which this situation is likely to arise—the chairman will predictably be upheld, and the minority overruled in most cases, by a straight party-line vote.

The alleged concomitant power of the ranking minority member to likewise appeal to the Committee as a whole where the chairman wishes to act in a matter in which the ranking minority member declines to join, is largely a decision—for the simple and obvious reason that he will probably not be able, in such cases, to command a majority of the Committee.

Mr. Wiggins simply proposed to *strike out* the words "except that in the event either so declines, either shall have the right to refer to the Committee for decision the question whether such authority shall be so exercised * * *."

This would have left the right to authorize the issuance of subpoenas in "the chairman and the ranking minority member acting jointly, or, if either declines to act, *by the other acting alone.*"

Thus the minority and the majority would have had an absolutely equal and untrammeled right to issue subpoenas in the course of this important investigation as it might desire; and the right of the Committee as a whole to issue subpoenas, in cases where it might wish to do so, would have been preserved, just as it is now, by the language of sec. 2(b)(2).

This proposed amendment seems so obviously fair, even-handed, and just, that the failure of the Committee to adopt it can not help but raise questions as to possible partisanship which, it was hoped, would not arise, and which, had the desire been present, would have been easy, in this instance, to have avoided.

An effort will probably be made to defeat the previous question when this resolution comes before the full House, so that the Wiggins amendment may again be offered.

At that time it is hoped that each Member of the House, of both parties, will seriously ask himself or herself the question, whether this historic and important inquiry is to be launched under ground rules which deliberately build in an inherent bias and inequity.

DAVID W. DENNIS.
CHARLES E. WIGGINS,
(by David W. Dennis, by direction).
WILEY MAYNE.
LARRY HOGAN,
(by David W. Dennis, by direction).
M. CALDWELL BUTLER.
TRENT LOTT.
JOSEPH J. MARAZITI.
ROBERT F. DRINAN.

SEPARATE VIEWS OF MR. MOORHEAD

I cannot concur with this overly broad grant of the subpoena power. There is no limitation placed in the resolution to restrict materials subpoenaed to matters which are relevant to the inquiry.

This can only precipitate a Constitutional confrontation and further divide the people of our country. This will delay rather than expedite the present proceedings.

CARLOS J. MOORHEAD.

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