

House Lawyers Weighing Tape Subpoena on Sirica

Judiciary Panel Aides Consider Action to Get Recordings Denied by Judge— Move in Hush Money Inquiry Put Off

By JAMES M. NAUGHTON
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WASHINGTON, May 31—

Lawyers for the House Judiciary Committee have begun exploring the possibility of issuing a subpoena to Judge John J. Sirica of the United States District Court to obtain four White House tape recordings that are in the judge's custody.

Committee officials cautioned, however, that they had started only exploratory discussions about the highly unusual move and that it would be fraught with serious legal and constitutional complications.

Judge Sirica turned down yesterday a request from Albert E. Jenner Jr., the committee's chief Republican counsel, for access to the four recordings. The tapes are among a number that President Nixon has refused to provide in response to committee subpoenas.

Temporary Role Cited

Judge Sirica said in a legal memorandum that he would not be "dragged into" the tapes dispute between the Judiciary Committee and the President and that he could not honor the committee request because he was merely a temporary custodian of the four recordings.

But Mr. Jenner said in an interview this afternoon that he and John M. Doar, the special counsel on impeachment, had begun examining whether the committee had authority under the Constitution to demand that Judge Sirica comply with an impeachment subpoena.

Mr. Jenner said he believed that the House power of impeachment was sufficiently broad to permit the issuance of a subpoena to a Federal judge. Mr. Doar declined to discuss the matter but suggested obliquely that he might not share Mr. Jenner's view.

The issue first arose near the end of an unruly and largely inconclusive meeting of the committee at which the following related developments took place:

The committee deferred a proposal by Representative David W. Dennis, Republican of Indiana, to summon 13 witnesses to testify about the alleged payment of \$75,000 in hush money to E. Howard Hunt Jr., a convicted Watergate conspirator, on March 21, 1973.

The panel's chairman, Representative Peter W. Rodino Jr., Democrat of New Jersey, delayed, perhaps for several weeks, any decision on whether to make public the bulk of the Watergate evidence presented to the committee during eight days of closed impeachment hearings. The delay was in response to concerns that publication of the evidence might jeopardize forthcoming Watergate-related criminal trials.

Mr. Doar reported to the committee that James D. St. Clair, the President's chief defense lawyer, had pledged this morning to consider supplying the committee with the records of two Internal Revenue Service audits of the President's income tax payments from 1969 through 1972.

At an impromptu news conference on the White House lawn, Dean Burch, counselor to the President, sharply criticized the committee's decision yesterday to continue impeachment hearings behind closed doors and the decision today to withhold publication of evidence already presented.

Mr. Burch said he understood the committee's desire to avoid publicity that could prejudice the rights of defendants in criminal trials.

But the President is the ultimate defendant in the court of public opinion," he added.

Shortly before the committee meeting ended, Representative Harold V. Froehlich, Republican of Wisconsin, suggested that the committee staff be directed to prepare a subpoena compelling Judge Sirica to make available the four tapes.

"I take it," interjected Representative Dennis, "that the gentleman is saying that inasmuch as we took on the executive branch we should also take on the judicial branch."

Mr. Froehlich replied that if the power of impeachment was so broad that "no President should stand in our way, I'm saying likewise no judge should stand in our way."

The question was not resolved at the meeting, but later Mr. Jenner told reporters it had been discussed among the senior staff members this morning. Asked whether, in his view, the committee had authority to issue a subpoena to a judge, Mr. Jenner answered, "yes, sir."

Informed of Mr. Jenner's remarks, Mr. Doar at first told reporters they must have misunderstood the Republican counsel. When he told that Mr. Jenner had been explicit on the point, Mr. Doar declined to discuss it further.

Legal sources said that a subpoena of a Federal judge was unusual but not unprecedented.

Other committee officials said that the matter was sensitive and, more important, far from settled. They noted, for example, that even if the committee believed it clearly had authority to issue such a subpoena it was not certain how Judge Sirica would react. Should the judge refuse to comply or appeal the subpoena to higher courts the impeachment proceeding could become ensnarled in a new judicial thicket, which the committee has sought to avoid, the officials said.

Nixon Role at Issue

The four recordings are thought to be keys to an ultimate determination of Mr. Nixon's involvement in various matters the committee has under investigation. It was for that reason that Mr. Jenner first approached Judge Sirica to seek access to them.

Two of the recordings are of long conversations Mr. Nixon had on June 20, 1972—the first working day at the White House after the burglary of the Democratic party's Watergate offices three days earlier—with H. R. Haldeman, the former White House chief of staff, and John D. Ehrlichman, the former adviser to Mr. Nixon on domestic matters.

A third recording is of a luncheon meeting among the President, Mr. Haldeman and former Attorney General John N. Mitchell on June 30, 1972. The luncheon preceded by one day Mr. Mitchell's resignation from the directorship of the President's 1972 re-election campaign.

The fourth tape in question is of a Sept. 15, 1972, meeting involving the President, Mr. Haldeman and John W. Dean 3d, the former White House legal counsel.

The President turned over the tapes to Judge Sirica late last year, in response to subpoena from the Watergate special prosecutor.

Rupling by Sirica

After screening the conversations, Judge Sirica ruled that only small portions of them were directly relevant to the Watergate investigation. He supplied those portions to the prosecutor and, eventually, the Watergate grand jury passed them on to the impeachment inquiry.

The Judiciary Committee believes that other, excised sections of the conversations are relevant to the impeachment investigation and has sought the full tapes. Mr. Dean has testified, for example, that part of the Sept. 15 discussion dealt with the President's consideration of use of the Internal Revenue Service to retaliate against Mr. Nixon's Political opponents.