

MAR 27 1974

Memo Argues for Cross-Examination

Nixon Probe Stance Outlined

By Carroll Kilpatrick
Washington Post Staff Writer

The White House has prepared a document arguing that the House Judiciary Committee would be "severely prejudicing" President Nixon's rights if it refused to allow his counsel to represent him and cross-examine witnesses in its impeachment inquiry.

The document was prepared in the counsel's office to support the contention of James D. St. Clair, the President's lawyer, that he should be allowed to cross-examine witnesses and to summon witnesses in the President's de-

fense during the committee inquiry.

Republican members of the Judiciary Committee generally have supported St. Clair's request, but there has been opposition from Democrats and no decision has yet been made.

If the committee does not allow the President's counsel to represent him it could be guilty of denying the President due process of law, the document contends.

In the early days of the Republic, the White House memo says, neither the accused nor his counsel appeared before

committee inquiries on impeachment.

But beginning in 1826 most impeachment inquiries have permitted those accused to be present or to be represented by counsel and to speak and to cross-examine witnesses.

The document does not say so, but an exception was the impeachment proceeding against President Andrew Johnson. The House Judiciary Committee examined witnesses and proceeded in what has been described as a desultory way for months before voting a bill of indictment.

In the Senate trial, of course, Johnson was repre-

mented by counsel. He himself offered to appear and testify, but his lawyers persuaded him not to do so.

Since the first quarter of the 19th century "the sentiment has been in favor of permitting the accused to explain, present witnesses, cross-examine and be represented by counsel," the document says.

Opposition to allowing the accused to be represented in the proceedings is based mainly on the view that the proceedings are not adversary in nature but are like those of a grand jury, the document says.

But it argues that impeach-

ment proceedings are not analogous to that of a grand jury because:

• "In grand jury proceedings usually it is only the prosecutor's case that is presented.

• "Grand jury proceedings are supposedly secret so that no prejudice results to defendant from the presentation of only the prosecutor's side of the evidence."

Not only is there no evidence that the committee's hearings are to be secret but the question of having them televised has been discussed, the White House document says.

"If they are public then the President will be severely

prejudiced by not being represented by counsel to cross-examine witnesses to establish the truth, to introduce evidence in his behalf, and otherwise afford him the protection of counsel.

"To refuse to grant this right could well be a denial of due process of law."

The document also says "it is necessary that a record be established before the committee for consideration by the House as a whole in considering its vote.

"If that record is established without counsel representing the President particularly, the House as a whole will not have an adequate record on which to base its judgment."

The White House document says that since 1826 the House Judiciary Committee in 16 impeachment cases has allowed the accused or counsel or both to appear during its inquiries. Fourteen of the cases involved federal judges, one a port collector and the other Secretary of War William W. Belknap in 1876.