

Judiciary Committee Staff Cites Subpoena Justification

Following in the introduction to the staff memorandum on the Judiciary Committee's power to subpoena documents from the President.

The Constitution vests in the House of Representatives the sole power to impeachment. Implicit in the power to impeach are the power to inquire and the power to compel the giving of evidence. The full investigative power of the House has been delegated to the Committee on the Judiciary by H. Res. 21, adopted February 6, 1973.

Because the impeachment power of the House is "the most undebatable express power," the House's authority to make impeachment inquiries "has been asserted from the first, and . . . has never been judicially questioned." Indeed, the Supreme Court has contrasted the broad scope of the inquiry power of the House in impeachment proceedings with its more confined scope in legislative investigations. From the beginning of the federal government, Presidents have stated that in an impeachment inquiry the Executive Branch could be required to produce papers that it might withhold in a legislative investigation.

The power to inquire nec-

essarily implies the further power to compel the production of testimonial and other evidence to enforce compliance with a subpoena and to punish noncompliance. This memorandum discusses the alternative methods that are available to the House for this purpose.

Each of these methods presents problems, especially in the case of a subpoena duces tecum directed to the President. If the President refuses to comply, the practical difficulties of enforcing the subpoena may well be insurmountable, and for this reason this memorandum also raises the possibility that factual inferences may be drawn from presidential noncompliance with a subpoena or that noncompliance may itself be a ground for impeachment.

At the outset, it should be noted that the question of whether a subpoena duces tecum should issue to the President is separate from the question of the method of enforcement or the effect of noncompliance. The principle was stated early in our history, and reaffirmed only recently, that the lack of physical power to enforce process against a President is no reason why the process should not issue.

It should not be presumed that rejection of a request for the production of evidence will be followed by disobedience of a subpoena, should one be issued. The President's legal position would be altered by service of a subpoena. Although the committee's request letters to the President's counsel specifically identified the materials to be produced and clearly expressed the will of the House acting through the committee, they do not have the legal effect of a subpoena. There is every reason to assume that the President would comply with a subpoena, lawfully issued by the committee for the purpose of its inquiry.

From the outset the goal of the committee and its staff has been to obtain the materials it has requested. If the President complies with a subpoena and produces the materials the committee seeks, the committee and the House will be in a better position to evaluate fully and on the merits whether or not grounds for impeachment exist. Such an evaluation is preferable to one based on incomplete evidence or partly on the President's refusal to produce further evidence the committee considers necessary for its inquiry.