

Judiciary Panel Weighs Options

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"Realistically," said the lawyers for the House Judiciary Committee, "the President cannot be compelled to comply with a subpoena duces tecum by use of the processes of either the House or the courts."

This advice was offered last month as the committee considered issuing a subpoena for White House tapes and pondered its options in the event of noncompliance by President Nixon.

Some of those options appeared to have been bypassed by the committee's 20-to-18 vote Wednesday night to write President Nixon telling him "You have failed to comply with the committee subpoena" by shipping edited transcripts instead of tape recordings to Capitol Hill. Other options remained distinctly viable.

Special counsel John Doar, in a staff memorandum, listed four principal kinds of committee response to noncompliance:

- Sending Sergeant-at-Arms Kenneth R. Harding to the White House to seize the requested evidence. "the practical difficulties of this procedure are obvious," Doar noted.

- Contempt proceedings in the House, with penalties ranging from a light reprimand to jailing the Chief



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Executive for the duration of the 53d Congress. Doar did not recommend this tack and Chairman Peter W. Rodino Jr. (D-N.J.) emphatically rejected it as diversionary before the committee tabled a contempt motion, 32 to 5.

- Taking the President to court. Doar suggested that this was both "inappropriate" because Congress is sole tribunal for impeachment and ineffective because the courts, like Congress, have no enforcement army.

- Avoiding pursuit of President Nixon and letting him instead, suffer the con-

sequences of noncompliance.

The last option remains the most promising and Doar appeared to favor it at the outset.

"There is no direct precedent," Doar conceded, for treating the President's conduct as a separate impeachable offense or for inviting Congress to draw adverse inferences from withheld evidence—but he said there was logic in the idea.

If contempt of Congress is a federal crime Doar suggested, it was an equally grave offense to disobey a committee subpoena "in derogation of the authority explicitly vested by the Constitution in the House of Representatives"—that is, the impeachment hower.

As for adverse inferences, Doar cited two standard treatises on evidence for the proposition that in trial practice "an unjustified refusal to produce evidence within the control of a party permits the inference that its tenor is unfavorable to the party's cause."

Thus, on a series of close questions of fact, Mr. Nixon could suffer a number of evidentiary setbacks in House impeachment proceedings or at a Senate trial. In a sense, the members of Congress could file a subpoena caused by deletions from the massive White House

transcripts or supply any voice inflection they deemed

Doar's staff memorandum deplored such a prospect. Emphasizing that the committee above all sought the

After Nixon's Noncompliance

tapes themselves, he said the impeachment judgment should be based on the evidence, not on "incomplete evidence or partly on the President's refusal to pro-

duce further evidence the committee considers necessary for its inquiry."

The possibility also emerged that Mr. Nixon's release of the edited transcripts,

coupled with his limited offer to submit the written account to verification, could cloud any question of direct defiance of the committee and make it harder for some

members to hold Mr. Nixon's actions against him as a matter of law.

suitable to an ambiguous word or phrase in cold print.