

# House Unit Drafting Letter Warning Nixon on Stance

## Refusal to Honor Subpoenas for Inquiry Expected to Risk the Conclusion That Incriminating Evidence Is Withheld

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WASHINGTON, May 28 — Lawyers for the House Judiciary Committee are drafting a letter warning President Nixon that his refusal to honor impeachment inquiry subpoenas risks the eventual conclusion that the President is withholding incriminating evidence.

The proposed letter—in effect a warning to the President that his defiance of the Judiciary Committee increases the prospects of his impeachment—will be presented to the panel on Thursday, according to officials close to the inquiry.

The plan to send Mr. Nixon the strongly worded letter became known today as Republicans and Democrats on the committee met separately in private to consider their options for dealing with the President's refusal last week to honor two subpoenas.

Several Democrats on the panel said that they would prefer to deal more firmly with the President by asking the full House to cite him formally for contempt of Congress.

A few Republicans, on the other hand, urged that the Judiciary Committee file legal papers to join as an Amicus curiae—that is, friend of the court—in the Watergate special prosecutor's request for a Supreme Court ruling that Mr. Nixon had no right to withhold Watergate-related evidence.

### Majority Course Seen

But members of the committee said they believed the only course of action likely to produce a bipartisan majority would be to send the stiffly phrased letter to the President.

Committee members, preparing to resume closed impeachment hearings tomorrow, also discussed at their separate caucuses whether to subpoena additional materials from the White House.

Several Democrats said that John M. Doar and Albert E. Jenner Jr. the Judiciary Committee's majority and minority counsels in the impeachment inquiry, would propose Thursday that the committee issue a new subpoena for tape recordings of 65 more Watergate-related conversations.

On a separate issue, the decision on whether to disclose publicly material that the committee has examined at its closed hearings on the alleged Watergate cover-up, the Republicans and Democrats appeared to be divided.

Representative Lawrence J. Hogan, Republican of Maryland, said he had detected a consensus in the Republican meeting this afternoon against disclosure of the confidential information because it might pose a risk of jeopardizing the rights of defendants in pending Watergate criminal trials.

mittee was prepared to make a "negative inference" about the President's refusal to surrender evidence.

In criminal law, a "negative inference" means that it is fair to presume that a defendant's refusal to supply evidence is based on the likelihood that the evidence will be found incriminating.

Representative John J. Republican leader, said at a news conference this morning that the committee seemed to be "chasing rainbows" by focusing on the withheld tape recordings. Instead, he said, the panel should interview witnesses to try to determine what role the President may have played in the alleged Watergate cover-up.

At the same time, however, Mr. Rhodes appeared to endorse an approach by which the committee would ultimately hold the President responsible for defying its subpoenas.

Committee members, Mr. Rhodes said, "would be justified in drawing inferences from the refusal to turn over certain evidence."

The panel has been seeking a bipartisan consensus for some formula to deal with the President's defiance last Wednesday of two committee subpoenas—one demanding tapes of 11 Watergate-related conversations and the other seeking records of Mr. Nixon's White House appointments during nine months of 1972 and 1973.

### Possible Courses

The discussion has centered on three possible courses.

The committee can ask the full House to cite the President for contempt of Congress. This approach is favored by, among others, Democratic Representative's Jerome R. Waldie of California, John Conyers Jr. of Michigan and Wayne Owens of Utah.

But most committee members appear unwilling to risk a potential political dispute now on the House floor over the contempt issue and contend that, as a practical matter, the House has no means of enforcing such a citation.

A second option would be to file a lawsuit seeking a Supreme Court judgment that Mr. Nixon had no right to withhold evidence in an impeachment proceeding. Advocates of this course include Representative Tom Railsback of Illinois and Hamilton Fish Jr. of upstate New York, both Republicans.

But committee lawyers oppose a court case, on the ground that it would delay the proceedings and, more important, involve the judiciary in what is, under the Constitution, solely a matter for Congress to decide.

### Consensus Sensed

A Democratic member, Representative John F. Seiberling of Ohio, said after the Democrats' caucus ended this evening, however, that the committee majority appeared prepared to release most of the private information, perhaps as early as next week.

The White House has urged that all of the evidence presented to the committee be made public.

Mr. Hogan told reporters that many Republicans believed it would be "a worthwhile gesture" to send President Nixon a letter advising him that he had failed to comply with the Judiciary Committee's subpoenas.

Nonetheless, a majority of the committee appeared to favor the letter, couched with the clear notice in it that the com-

### Most Likely Option

Thus the committee appears most likely to settle on the third option—notification to the President that he had not complied with the subpoenas and that his action could lead eventually to the legal conclusion that the withheld evidence was incriminating.

When Mr. Nixon withheld recordings subpoenaed by the Judiciary Committee on April 11 and instead made public edited transcripts of the conversations, the panel voted nearly along party lines, 20 to 18, to send the President a stating that he had failed to comply with the subpoena.

The only Republican who supported that action was Representative William S. Cohen of Maine.