

Nixon's Case Is Heard

Panel Urged To Consider Effect on U.S.

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The House Judiciary Committee heard counsel for its Republican members yesterday raise legal and policy questions it should consider before recommending that President Nixon be impeached.

Deputy minority counsel Samuel A. Garrison told the committee in closed session it should carefully consider the national interest issue of whether the need to impeach the President, even if charges against him were clearly proved, outweigh the wrenching effect the process would have on the country.

Garrison also urged the committee, as a "prudent prosecutor," to be satisfied that the case for impeachment is compelling, because if the House voted impeachment, House members would have to prosecute the case in a Senate trial.

Garrison also raised questions on whether the committee could properly draw adverse inferences from the President's refusal to turn over tapes of his conversations, and whether a President should be impeached solely on procedural grounds of defying subpoenas, which have no direct bearing on his guilt or innocence of substantive offenses.

Garrison made both a written and an oral presentation. The only part of his text released yesterday dealt with legal questions that did not go to the merits of the evidence on allegations against the President of obstruction of justice in the Watergate cover-up, abuse of power for illegal surveillance and other acts, tax evasion and contempt of Congress for defiance of com-

mittee subpoenas. Garrison reportedly argued against the charges on grounds that the evidence did not meet required levels of proof. He said other parts of his presentation will be released later in the week.

Garrison summed up for Republican members because the chief minority counsel, Albert Jenner, has joined with special counsel John Doar in arguing all-out for impeachment.

Those committee Republicans who want their counsel to play a partisan role have had this trouble with Jenner since he was hired 6½ months ago. He has sided with Doar on every public issue.

Garrison has been called on throughout the inquiry to prepare Republican position papers. Senior committee Republicans have now given up any pretense of relying on Jenner for advice, though he will retain his title and will continue in his actual role of co-counsel with Doar.

Jenner spoke briefly after Garrison had concluded and reportedly rebutted some of his points, especially Garrison's suggestion that the committee was not entitled to draw adverse inferences from the President's defiance of committee subpoenas.

Rep. Charles Sandman (R-N.J.) objected to Jenner's speaking, asking whom he represented. Chairman Peter W. Rodino (D-N.J.) cut off Sand-

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man and let Jenner proceed. When a reporter later asked Jenner the same question, he replied:

"I represent the House of Representatives and all the people of the United States who want to live in happiness and privacy and peace."

Republican members generally agreed that Garrison had performed a valuable service by raising these legal questions. Democrats generally complained that he was making a political argument that had nothing to do with the question of whether the President had committed offenses.

The committee told Mr. Nixon months ago that his refusal to turn over 147 subpoenaed tapes could cause members to believe he had something to hide and might be made an impeachable offense. Doar and Jenner have now recommended that it be made one of the articles of impeachment.

Garrison said rules of evidence do permit inferences to be drawn from facts, but not from suspicions. From the chronology of the President's appointment lists, the commit-

tee may have reason to suspect that he discussed Watergate in specified taped conver-

sations. But it does not know this for a fact, he said.

"There is no way of knowing why this information would be damaging," Garrison contended.

Garrison also noted that the President in refusing to turn over the tapes had argued that he had a constitutional right and duty to do so to protect the need of Presidents to have confidential discussions with their aides. Mr. Nixon invoked the power of executive privilege, which he contends is part of the separation of powers doctrine that protects each branch of government from dominance by one of the other two.

The President's power to withhold tapes is being pondered now by the Supreme Court in a case not related to impeachment brought by Watergate Special Prosecutor Leon Jaworski, who wants 64 tapes for use in Watergate trials scheduled for September.

Garrison conceded that impeachment is a specific exception doctrine.

"The power to impeach and to the separation of power to remove a President would be sterile if it did not include the power to secure information upon which to act," he said. But it can also be argued, said Garrison, that the committee's right to know does not include the power to compel production of everything it demands.

The committee should "assess the reasonableness, under all the circumstances" of the President's refusal to comply with subpoenas, Garrison said. It should consider relevance, "degrees of necessity," quantity of material sought, the extent of the President's previous cooperation, and the "efficacy" of the President's alternative proposal to permit committee chairman Peter W. Rodino Jr. (D-N.J.) and senior Republican Edward Hutchinson (R-Mich.) listen to the tapes at the White House, Garrison said.

The President gave the committee the same 19 tapes he had already given the special prosecutor. The eight subpoenas demanding 147 tapes and related material produced edited transcripts of about 40. Rodino and Hutchinson turned down the invitation to listen, without expert staff, to tapes not available to their 36 committee colleagues.

Garrison suggested that after making this assessment, the committee should "address the question whether the President has conducted himself in a manner so serious, contemptuous and destructive of the relation and balance which

ought to exist between the government's branches, as to merit removal from office."

Nearly two-thirds of the 41 pages of Garrison's written presentation released yesterday dealt with the President's defiance of subpoenas and inferences that could properly be drawn from that.

Garrison said of the public interest question that if the committee concludes that the President "has engaged in conduct for which he could properly be impeached," it should "then step back and assess the situation more generally to determine whether under all the circumstances [the President] is liable to removal and whether the best interests of the country would be served by his removal or continuance in office."

Doar has recommended that tax evasion be made one article of impeachment because of the President's underpayment of income taxes by nearly half a million dollars during his first term. Garrison raised a question as to whether a Pres-

ident should be impeached for private conduct, as distinguished from an act committed in the conduct of his office. But he added:

"It may be argued that non-payment of taxes or tax evasion by a President is related to his office and indeed is particularly to be condemned, because the President is ex officio in charge of the collection of all taxes, since he is head of the executive branch."

Doar has proposed one broad article of impeachment headed "abuse of power," which includes a long list of alleged offenses such as illegal surveillance, establishment of the White House "plumbers" and knowing that his Attorney General-designate lied to the Senate Judiciary Committee.

Garrison suggested that "abuse of power" was too vague a term. Would it be an impeachable abuse of power to use the office of the President to serve political interests, Garrison asked. It may be questioned whether "abuse of power" may be "precisely the vague kind of formulation of an impeachment charge, devoid of independent content, which the framers (of the Constitution) sought to avoid."

Doar's proposed article specifies the conduct which he considers abuse of power.

Garrison's written presentation did not mention Watergate and the proposed obstruction of justice charge contained in Doar's recommendations.

But members said Garrison argued in his oral presentation that insufficient evidence

had been produced to show the President guilty. Garrison, like the President's lawyer, James D. St. Clair, reportedly focused largely on the question of whether the President

in his March 21, 1973, conversation with then White House counsel John W. Dean III, approved payment of hush money to Watergate conspirator E. Howard Hunt.

Rep. Robert McClory (R-Ill.)

said Garrison had performed "a very important and necessary job. It's most appropriate that we raise all the questions. We've heard only one side so

far and he's showing that it's not an open and shut case, not by any means."