

Garrison Against Ouster Unless It Serves 'Best Interests of Country'

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 Special to The New York Times

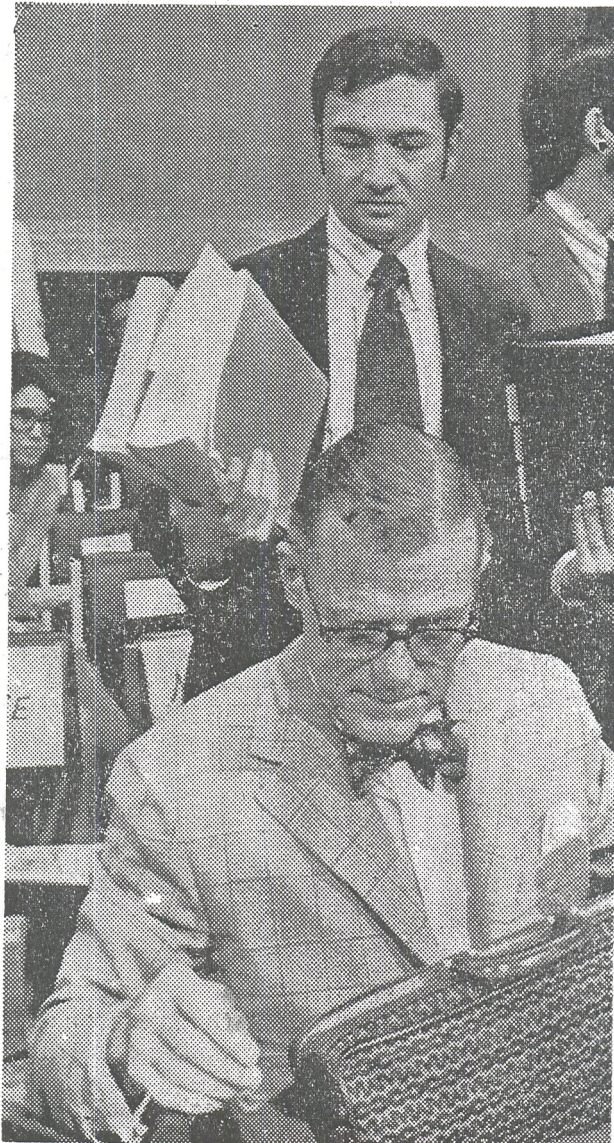
WASHINGTON, July 22 — The House Judiciary Committee's newly designated Republican special counsel contended today that the House should not impeach President Nixon unless it appeared probable that he would be convicted in a Senate trial and removed from office.

Even then, the Republican counsel, Samuel A. Garrison 3d, told the Judiciary Committee, the House has an obligation to make a "political" judgment whether "the best interests of the country" would be served by ejecting Mr. Nixon from the Presidency.

Mr. Garrison, who had been the assistant Republican counsel, was asked by the committee Republicans to make the argument in support of the President. The Republicans agreed late last week that the pro-impeachment views of Albert E. Jenner Jr., the Republican counsel, were not serving the partisan interests of the committee minority.

The House itself, meanwhile, voted a rules change that would permit live television and radio coverage of the committee's final impeachment inquiry sessions, which start

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The New York Times/George Tames
 Samuel A. Garrison 3d, rear, special minority counsel who presented case against impeachment, and Albert E. Jenner Jr., nominal minority counsel, at hearing.

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Wednesday. The committee then voted to allow such coverage. [Page 28.]

Mr. Jenner, who was said by Republicans to have been "transferred laterally" rather than dismissed from the post of Republican special counsel, attended the closed meeting this morning and later told reporters that he disagreed with one argument offered by Mr. Garrison.

The argument was that the President, in citing the doctrine of executive privilege as a basis for defying committee subpoenas for 147 tape-recorded conversations and a number of documents, was, in effect, exercising a Fifth Amendment protection against self-incrimination.

The thrust of Mr. Garrison's summation was in sharp contrast to the defense against impeachment presented to the committee earlier by James D. St. Clair, the President's attorney.

Mr. St. Clair contended that there was no evidence to justify impeachment, but Mr. Garrison argued, in effect, that the committee members should decide whether to support impeachment despite the evidence accumulated in the inquiry.

Issue of Hush Money

Reaction to Mr. Garrison's presentation, particularly among Republicans who are undecided on their attitude toward impeachment, was mixed.

Representative M. Caldwell Butler, Republican of Virginia, described Mr. Garrison's presentation as "much the best argument we've had by any counsel." He termed it "very persuasive."

But another undecided Re-

publican, Representative Tom Railsback of Illinois, said that he was "not impressed" with Mr. Garrison's position that impeachment, which is a bringing of charges by the House, should be predicated upon the likely outcome of a Senate trial.

Mr. Railsback also told reporters that, in focusing on the charge that Mr. Nixon authorized a \$75,000 payment of Watergate hush money in March, 1973, Mr. Garrison was "addressing a speck on a great big canopy—I think the coverage is bigger than hush money."

The heart of Mr. Garrison's presentation, both orally and in a written brief, the first part of which was made public today, was that House members were obliged to approach the impeachment of a President with both "legal" and "political" considerations in mind.

Mr. Garrison told newsmen that he was using the word "political" in a broad sense—"politics with a capital P," he said—to denote the "common weal."

The issue, he said, is "not a narrow question of whether the President did, on a certain date, perform an act of which they [in Congress] disagree, or even whether it could be considered, on some theory of law, as complicity in a crime."

Rather, Mr. Garrison continued, the central question is "whether the public interest would be served or disserved by removal from office."

He challenged an underlying premise of the 306-page "Summary of Information" in which John M. Doar, the committee's special counsel on impeachment, concluded that impeachment was warranted on the basis of direct and circumstantial evidence.

In his brief, Mr. Garrison

asserted that "much of the case against the President" was inferential, particularly in presuming that subpoenaed Watergate tapes and other evidence that Mr. Nixon had refused to produce were damaging to his defense.

"To build a case upon an inference based in turn on a suspicion is inappropriate for this inquiry," the legal brief said.

Cites Fifth Amendment

Moreover, Mr. Garrison contended that it would be improper to draw adverse inferences from defiance of subpoenas "when the party from whom evidence is sought has a constitutional right to withhold it."

In that context, Mr. Garrison reportedly made the argument to the committee that Mr. Nixon's reliance on the doctrine of executive privilege to withhold evidence was analagous to a claim of the Fifth Amendment guarantee against being required to incriminate oneself. Under the law, no adverse inferences may be drawn by a jury when a defendant refuses

to testify.

"I would not share that view," Mr. Jenner, who had joined in preparation of the committee staff's critical analysis of the President's conduct, told reporters.

Representative Charles B. Rangel, Democrat of Manhattan, also said, with evident sarcasm, that Mr. Garrison had done "a hell of a job" in equating executive privilege with the Fifth Amendment guarantee. "It is unbelievable," Mr. Rangel added, "We just looked at each other."

The committee chairman, Representative Peter W. Rodino Jr., Democrat of New Jersey, smilingly confined his reaction

to Mr. Garrison's presentation to remarking, "All I can say is he's articulate."

Members of the committee generally agreed that, as Representative Lawrence J. Hogan, Republican of Maryland, put it, Mr. Garrison had made a "lawyerlike" summation. Beyond that, however, there was sharp disagreement, cutting across party lines, as to Mr. Garrison's persuasiveness.

Representative William S. Cohen of Maine, one of several potential Republican supporters of impeachment, said that Mr. Garrison's theory "breaks down" in contending that House members should consider withholding a vote for impeachment if they were uncertain that two-thirds of the Senate would find

Mr. Nixon guilty of impeachable wrongs "beyond a reasonable doubt."

Mr. Cohen termed the contention "inconsistent" with the constitutional role of the House to determine if the evidence was sufficient to order a trial and the subsequent role of the Senate to try the case on its merits with a full-fledged defense.

Merits of Case Assessed

But Representative Hogan said he had already decided that it would be a "cop-out," if he were to favor impeachment without assessing the merits of the case. He said that he agreed with Mr. Garrison that "a prudent prosecutor does not proceed with a case he does not feel he can win."

Much of Mr. Garrison's presentation mirrored arguments that Representative Charles E. Wiggins, a California Republican who has become Mr. Nixon's most forceful defender, has been making for several weeks. Mr. Wiggins said today

that the case against the President outlined last week by Mr. Doar was "only a hypothesis," while Mr. Garrison was "persuasive if you're interested in the facts."

Praised by Nixon Foe

Representative Jerome R. Waldie, a California Democrat who is one of the most ardent critics of the President, said that he thought Mr. Garrison had offered "a better case" than Mr. St. Clair, Mr. Nixon's chief defense attorney.

Mr. Waldie said Mr. Garrison had told the panel members that they might choose to refrain from impeachment if a Senate trial would not lead to a conviction and, thus "embarrass the House and the President and do damage to the country."

As he began his presentation, Mr. Garrison reportedly expressed gratitude to Mr. Doar and the Democratic majority staff for "extreme cooperation." The Republican counsel also

said to have set himself apart from White House charges that Mr. Doar and the Democrats on the panel were a "kangaroo court."

Members quoted Mr. Garrison as terming the impeachment hearings "eminently fair" and saying that he wished to "dissociate myself from other views on that subject."

Mr. Garrison sat, as usual, alongside Mr. Jenner at the counsel table in the Judiciary Committee hearing room.

Mr. Jenner said that he had been given no official notice from the Republican minority that he was no longer its senior special counsel.

"I'm here for the duration," he said. "I was told when I

came aboard the first day I was not expected to defend the President."

The committee will begin formal deliberations Wednesday on proposals to recommend that Mr. Nixon be impeached and tried by the Senate. A test vote, showing committee sentiment, could come as early as Friday.