

IMMUNITY DENIED

But Sirica Grants It in the Senate Inquiry— Bars Plea for Delay

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By ANTHONY RIPLEY
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WASHINGTON, June 12—

John W. Dean 3d lost his two-month struggle for immunity from prosecution today and for the first time went before the Watergate criminal grand jury on orders from Chief Federal Judge John J. Sirica of the United States District Court.

Mr. Dean's appearance before the grand jury, according to a source close to the case, was a 20-minute visit in which he

Excerpts from Sirica opinion and Cox response, Page 34.

refused to answer questions on the ground of possible self-incrimination.

In another ruling, Judge Sirica blocked a move by Special Prosecutor Archibald Cox to bar television and radio coverage of Mr. Dean and Jeb Stuart Magruder when they testify before the Senate Watergate committee.

While the judge refused to grant Mr. Dean immunity for his grand jury appearance, he did grant Mr. Dean and Mr. Magruder immunity for their pending testimony before the Senators investigating the Watergate scandals.

Such immunity means they cannot be prosecuted for anything they say before the committee unless such evidence can be developed independently.

Judge Sirica, who presided at the Watergate trial in January, ordered Mr. Dean without further explanation to "appear before the grand jury immediately following court proceedings this morning."

On the controversial request by Mr. Cox to ban television and radio coverage of Mr. Dean's testimony and testimony by Mr. Magruder, Judge Sirica said the court was powerless to interfere.

Mr. Cox said later he would not appeal the judge's ruling.

Mr. Dean was President Nixon's counsel until he was dismissed April 30. Mr. Magruder was second in command at the Committee for the Re-election of the President last fall. Both are key figures in the investi-

Continued on Page 34, Column 6

Continued From Page 1, Col. 5

gation.

Mr. Dean in particular has been an explosive figure in the case since its beginning with the break-in at the Democratic national headquarters at the Watergate complex last June 17.

He and his lawyers have met repeatedly with the old prosecution team and with the new special prosecutors offering them what his lawyers called "a plethora of information" on both himself and others involved in the planning of the break-in and in the subsequent cover-up attempts.

He was negotiating for immunity and thus, never appeared before the grand jury until today.

With the Senate Watergate committee pressing for his appearance, the criminal prosecutors ended their negotiations with a subpoena last Friday ordering him to appear yesterday before the grand jury.

They offered no immunity.

Written Opinion Expected

Mr. Dean's lawyers, Charles N. Shaffer and Robert C. McCandless, responded with a motion to quash the subpoena. It was this motion that the judge denied today. He is expected to file a written opinion later this week.

The actions before the judge today all centered on the immunity problem. Much as there are two separate major investigations of Watergate under way—by the Senate and by the special prosecutor—there are also two separate types of immunity involved.

In criminal prosecutions, a witness who refuses to testify on Fifth Amendment ground of self-incrimination may be ordered by the courts to testify in exchange for immunity from having his own words used against him.

Likewise, in Senate hearings testimony can be forced on the basis of court-ordered immunity that guarantees that nothing said before the Senators can be used against a witness at later criminal trials.

Judge Sirica dealt with the Senate immunity problem in his ruling on Mr. Cox's request to ban television.

The Senate had requested immunity for Mr. Magruder and Mr. Dean for their appearances, which are expected this week and next week. Mr.

Cox tried to modify the court's immunity grant by suggesting the hearings on the two men be held in executive session or that severe limits be put on radio and television coverage.

Judge Sirica would not modify his order. He cited the 1970 law passed by Congress, which makes it mandatory for a judge to issue an immunity grant at the request of the Senate.

Sirica's Reasoning

"The court has concluded that in this case its duties are purely ministerial, and that any attempted exercise of discretion on its part, either to deny the requests or to grant immunity with conditions, would be an assumption of power not possessed by this court," the judge said.

Philip B. Heymann, arguing the case for Mr. Cox, had suggested that the court, in granting immunity, attach certain conditions, such as a ban of television coverage, to its order. He had warned that the committee "in this case is plainly endangering the prosecution."

Mr. Heymann said that excessive pretrial publicity through the use of television would make later trials difficult, though, he conceded, not impossible.

Mr. Cox had first tried to work the problem out informally with Samuel Dash, chief counsel of the Senate committee and later with its chairman, Senator Sam J. Ervin Jr., Democrat of North Carolina.

But his negotiations failed

and he made a public statement of his request that the hearings be put off for one to three months while he caught up with the highly complex case.

Senator Ervin turned him down, and Mr. Cox went to court with his appeal.

In his ruling, Judge Sirica pointed out that there were no indictments returned by the prosecutors and thus no one's rights were before the court to be protected.

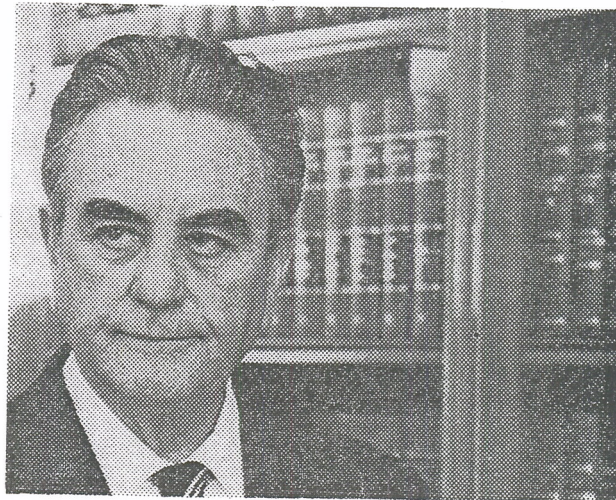
"The matter is simply not ripe for judicial action," he said. "But e'ven supposing that a court might be able to act in a premature situation such as the instant one, it is clear that the court could not go beyond administering its own affairs and attempt to regulate proceedings before a coordinate branch of government."

He said the law "mandates" a "hands-off policy."

"Inasmuch as the court is without discretion in this matter," the judge said, "it is not invited to comment in the wisdom or unwisdom of granting immunity in this case or to express its opinion on the desirability or undesirability of implementing the Special Prosecutor's proposals. To comment would be not only gratuitous but graceless."

Mr. Cox said in his statement:

"I have decided not to appeal Judge Sirica's order. I regret the outcome but to press the legal argument further would risk unduly delaying proceedings and divert attention from our essential tasks."



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Federal Judge John J. Sirica in his Washington office