

Court Won't Block Grand Jury Report

Appeal Is Called Unlikely

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The U.S. Circuit Court of Appeals refused yesterday to block the turnover of a secret grand jury report on President Nixon's role in the Watergate scandal to the House Judiciary Committee.

The six judges who took part in the decision gave Watergate defendants fighting the disclosure until 5 p.m. Monday to seek Supreme Court review of the decision.

"We think it of significance that the President of the United States, who is described by all parties as the focus of the report and who presumably would have the greatest interest in its disposition, has interposed no objection" to the turnover, the court's four-page ruling stated.

The appellate court said it agreed with U.S. District Court Judge John J. Sirica that the former White House aides who asked for the report's suppression — H. R. (Bob) Haldeman and Gordon C. Strachan—had "at best a slender interest" in the controversy.

The lawyers for the two men, both indicated in the Watergate cover-up, said they would not decide until Monday whether to appeal to the Supreme Court.

However, Frank H. Stickler,

one of Haldeman's attorneys, said he doubted they would make the effort.

"My thoughts are that this is the end of the line," Stickler told reporters. "I think we've exhausted all reasonable avenues." His partner, John J. Wilson, said he agreed at least "at the moment."

Strachan's lawyer, John M. Bray, declined to go that far. "We'll decide Monday," he said on his client's behalf.

The ruling amounted to a 5-to-1 decision with Judges David L. Bazelon, Harold Leventhal, Carl E. McGowan, Spottswood W. Robinson III, and J. Skelly Wright speaking for the court.

Judge George E. MacKinnon concurred in part, but then issued a dissent in which he said he would expunge the Watergate grand jury's report along with its "selective evidence" and instead open up all of the grand jury's proceedings to the Judiciary Committee.

In this way, MacKinnon said, "potentially exculpatory material" favoring the President would also be available for the House impeachment inquiry.

A former congressman appointed to the court by Mr. Nixon in 1969, MacKinnon said he was concurring in the decision of the other judges only because of representations by Watergate prosecutors at a hearing yesterday morning that the President should be entitled to "due process of law" at any impeachment trial in the Senate.

MacKinnon did not make clear how he expected any such assurance by Watergate prosecutors to make itself felt.

Judge Sirica had ruled earlier this week that the secret grand jury report should be delivered to the Judiciary Committee and he set a final deadline of 4 p.m. yesterday for the turnover.

The appeals court, however,

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automatically extended that deadline by taking custody of the Watergate grand jury documents Wednesday evening and holding onto them while they deliberated into the evening before issuing their formal ruling. It seemed to be, if nothing else, an object lesson in the old axiom that possession is nine-tenths of the law.

The court issued its decision shortly after 6:30 p.m.

The other three judges on the court—Roger Robb, Edward A. Tamm, and Malcolm Wilkey—disqualified themselves: Tamm and Wilkey gave no reasons. Robb apparently disqualified himself because he was once a law partner of Kenneth W. Parkinson, a Nixon re-election committee lawyer who was also indicted in the Watergate cover-up.

At an extraordinary hearing before the Court of Appeals yesterday morning, Watergate prosecutors urged that the secret grand jury report be turned over to the Judiciary Committee even if it could jeopardize criminal indictments in the Watergate scandal.

They said they did not think the indictments would have to be dismissed, but they said this was a calculated risk that they were prepared to take.

The counsel for the Watergate prosecution force, Philip A. Lacovara, said the House's efforts to determine whether Mr. Nixon should be impeached were of overriding public importance.

He made the plea in response to the petitions of two former White House aides indicted in the Watergate cover-up—H.R. (Bob) Haldeman and Gordon C. Strachan—for suppression of the secret grand jury evidence. Their lawyers protested that its disclosure to the House committee would generate an "avalanche" of prejudicial publicity and destroy their clients' rights to a fair trial.

The appellate judges gave no hint of it during the 1½-hour hearing, but they had already taken custody of the bulging satchel of evidence concerning Mr. Nixon from Judge Sirica.

The Watergate grand jury's secret report, including the satchel, was taken out of Sirica's safe and delivered to the appellate judges while they were privately conferring on the controversy around 5 p.m. Wednesday.

Circuit Court Clerk Hugh E. Kline refused to say—both before and after the morning hearing—whether the judges had privately inspected the secret documents.

They took the controversy under advisement at the close of the hearing, but their questioning at the session suggested little sympathy with Haldeman's and Strachan's attempts to keep the information from going to the Judiciary Committee.

Chief Judge Bazelon emphasized, however, that the prosecutors should be prepared to accept the consequences of the turnover, in case the fears of the indicted Watergate defendants should prove well-grounded.

"Did your office take into account the possibility, maybe the probability, that the government will have to dismiss the indictments?" Bazelon asked Lacovara at one point. The prosecutor said he did not think this would happen. He said the publicity over Watergate so far has been largely factual—in contrast to cases where convictions have been reversed because of inflammatory news coverage.

"You recognize there is a risk?" Bazelon persisted.

"Yes," Lacovara replied.

"You are well aware of that risk?" the judge continued.

Lacovara: "We are well aware of the risk."

Bazelon: "And you have made the determination to assume it?"

Lacovara again said yes.

Alluding to the Watergate cover-up trial scheduled for September, he said the prosecutors were confident that "it will be possible to find 12 jurors plus alternates who can honestly and conscientiously say they can try these defendants on the basis of evidence presented in court and in court alone."

Lacovara said any problems over prejudicial publicity should be dealt with at the time of trial. He said they could be overcome by cautious questioning of potential jurors or, if necessary, other steps, such as postponing the trial or holding it in another city.

Under questioning by Judge MacKinnon, Lacovara gave the most elaborate official description thus far of what the Watergate grand jury's secret report contains.

In addition to a two-page letter recommending quick submission of the report to the House Judiciary Commit-

tee, Lacovara said, it includes:

- A summary or "index" which lists the events involving the President that the grand jury has found may be important or pertinent to the impeachment inquiry.

- "Materials relating to each of these specified incidents," including Watergate grand jury testimony and exhibits.

"The evidence deals with the President of the United States," Lacovara emphasized. He said the package includes references to both Haldeman and Strachan, but he said those references were only "incidental" and do not go beyond the allegations in the cover-up indictment accusing them and five other of President Nixon's former advisers and campaign aides of conspiring to obstruct justice.

Strachan's lawyer, John M. Bray, protested that the defendants were entitled to a decision from the court that was "better informed . . . as to what we're talking about."

At that, Bazelon leaned forward and asked Bray: "What would you suggest we do about it?" The judge did not mention that the appeals court, on its own motion, had already obtained the grand jury package with a one-sentence order the day before.

"It certainly would seem appropriate to me for this court to review what Judge Sirica has reviewed," Bray replied.

Haldeman's lawyer, John J. Wilson, protested that whatever the secret report contains, "it is a moral certainty that this material is going to be made public," either through news leaks on Capitol Hill or through open and deliberate publication necessitated by the impeachment proceedings.

"It's a very dangerous practice to open up the grand jury's rights to special reports," Wilson contended. "There will be a rash of them as sure as I'm sitting here."

Wilson warned the appellate judges against "falling into the trap of looking at this case sui generis," as though it were unique. And he suggested that the jurists would be inclined to squelch the secret report if it simply dealt with an ordinary citizen.

"Would you approve extraordinary conditions for every Tom, Dick or Harry, or is it only because the President of the United States is involved that the courts will be more liberal in applying the rules?" Wilson demanded at one point.