

Nixon Asks Sirica To Open Records

Hearing Set Today By Court

By George Lardner Jr. and Carroll Kilpatrick
Washington Post Staff Writers

President Nixon asked U. S. District Court Judge John J. Sirica yesterday to unseal court records naming Mr. Nixon as an unindicted co-conspirator in the Watergate cover-up.

Mr. Nixon's chief defense lawyer, James D. St. Clair, said there were no longer any "compelling" reasons for secrecy in light of news stories Thursday disclosing the Watergate grand jury's action against the President.

Judge Sirica said he would take up the White House request at a hearing today at 2 p.m.

The Watergate grand jury, in a unanimous vote of 19 to 0, specifically named Mr. Nixon as an unindicted co-conspirator in the cover-up case before returning criminal charges March 1 against seven of the President's former top aides and campaign advisers. The grand jurors, informed sources told The Washington Post, had at first wanted to indict Mr. Nixon along with the others for conspiracy to obstruct justice.

The jurors, however, reportedly settled on naming the President as an unindicted co-conspirator after Watergate Special Prosecutor Leon Jaworski told them indictment of an incumbent President might not be legally feasible.

An unindicted co-conspirator cannot be prosecuted under an indictment so naming

him, but the action constitutes a charge that he was a participant in illegal acts.

St. Clair, in confirming that Mr. Nixon had been named by the jury, told reporters on Capitol Hill that he was first informed of the grand jury action by Jaworski three or four weeks ago.

The President's lawyer contended that the allegation was unjustified and called it "unfortunate" that word of it had leaked out.

When Mr. Nixon was told of it last month, St. Clair said that the President responded: "They just don't have the evidence and they are wrong."

"He's not a co-conspirator only because a grand jury says he is," St. Clair told newsmen at the House impeachment inquiry. "It won't be the first

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time a grand jury was wrong. Grand jury allegations are far from proof and have no legal effect."

St. Clair protested that revelation of the grand jury's action "leaves the President with really no way of defending himself—except before the American people."

The White House attempted to turn aside other questions on the disclosure by saying that St. Clair had provided a comment.

Deputy press secretary Gerald L. Warren, when pressed for the President's own reaction, declined to go beyond the St. Clair statement.

The matter was "rumored and reported at the time the indictments were handed down," Warren said. I have nothing to add to what Mr. St. Clair said."

Asked when the President found out the jury had voted to name him as an unindicted co-conspirator, Warren quoted

St. Clair as saying he and Alexander M. Haig Jr., White House chief of staff, informed Mr. Nixon "three or four weeks ago."

When a reporter reminded Warren that the President had said earlier that any White House aide named as an unindicted co-conspirator would be ordered to take a leave of absence, Warren cut him off sharply.

"I'm not going to accept questions such as that relating to the President of the United States," Warren said. "I'm just not going to do it. I'm not going to debate this matter."

The published transcripts of presidential conversations show that on April 17, 1973 the President told Assistant Attorney General Henry E. Petersen that "anybody that was an unindicted co-conspirator would then be immediately put on leave."

Petersen had advised the President that members of his staff faced the prospect of being named as unindicted co-conspirators.

"Anybody who is named as an unindicted co-conspirator in that indictment is in all probability going to be in-

dicted later on," Petersen told the President.

The decision of the Watergate grand jury, which has a lengthier and more extensive exposure to the scandal than any other investigative body, remained a closely guarded secret until it was publicly reported in a story written for Thursday's editions of the Los Angeles Times. The Washington Post subsequently contacted three separate sources who confirmed the action.

Jaworski evidently had informed St. Clair of it on Sunday, May 5, at a meeting concerning the special prosecutor's subpoena for the tapes and other records of 64 White

House conversations that Jaworski wants for the cover-up trial.

The news apparently prompted the White House to reconsider the possibility of complying with the subpoena. On Monday, May 6, St. Clair and Jaworski jointly asked Judge Sirica for a five-day delay in the court fight over the tapes in order to discuss "possible compliance."

The next day, however, St. Clair announced that the President was determined not to surrender the recordings after all. The court battle resumed in secret hearings where the grand jury's action was disclosed to defense attorneys.

The records were kept under seal, even after Judge Sirica ordered the President on May 20 to surrender the tapes. The Supreme Court had the records before it last week when it granted Jaworski's plea for prompt review of Mr. Nixon's continued claims of executive privilege.

The White House had sought to expunge some of the records in the case, presumably including the grand jury's action against Mr. Nixon, but Judge Sirica had refused, ruling that all the sealed documents were "a necessary part of the record in this matter."

In the motion St. Clair submitted yesterday, Mr. Nixon formally requested the judge "to lift the protective order regarding the June 5, 1972, grand jury's naming of certain individuals as co-conspirators in the above-styled cause and to any additional extent

deemed appropriate by this court."

The President's lawyer added in an accompanying memo: "This court may take judicial notice of recently published statements in the news media concerning disclosure of matters that were heretofore and still remain under a protective order issued by this court. Public disclosure as to those matters and any additional matters deemed appropriate by this court may be permitted since the reasons for the continuance of the protective order are no longer compelling."

Judge Sirica said he would take up the issue in open

court this afternoon, but declined to say whether an immediate ruling could be expected.

In addition to the grand jury's naming of Mr. Nixon as an unindicted co-conspirator, the sealed records in the subpoena dispute contain secret grand jury testimony offered in support of Jaworski's demand for the additional White House tapes. Mr. Nixon took part in all but one of the 64 conversations at issue.

Jaworski's office refused to comment on the White House motion except to indicate that the names of all the alleged co-conspirators would not be made public immediately.

According to informed sources, the special prosecutor had been determined not to name Mr. Nixon publicly before the House impeachment inquiry had delivered its own judgment.

Accordingly, the cover-up indictment itself, which the grand jury returned March 1, simply accused the seven defendants of conspiring with others "known and unknown" to block the original investigation of the 1972 Watergate bugging and break-in at Democratic National Committee headquarters here.

Faced with defense demands for a bill of particulars listing the co-conspirators, Jaworski

agreed Wednesday to submit a complete listing, but held off the submission of any names. A spokesman for the prosecutor said the list would be filed only when Judge Sirica orders it.

According to legal experts, nothing forbids prosecutors or grand juries from subsequently charging an unindicted co-conspirator in a new indictment.

The controversy over Mr. Nixon's tapes, meanwhile, continued on another front with questioning of Mr. Nixon's appointments secretary, Stephen B. Bull, before a separate grand jury which is investigating the 18½ minutes of era-

asures on one of the Watergate tapes that the President surrendered last year.

The President's personal secretary, Rose Mary Woods, also appeared before the grand jury during the day. She and Bull were among a handful at the White House who had had access to the erased tape. Technical experts, in a final report to Judge Sirica this week, strongly reaffirmed their findings that the 18½-minute gap was the result of at least five separate erasures, all done manually.

Bull told reporters after a 4½-hour session before the grand jury that he considered himself "an important tape had

been deliberately destroyed, but he hedged when asked if he has been told he is a "target" of the inquiry.

"We have received no letter to that effect," Bull said. He declined to say whether he had been warned orally.