

Prosecutors Say Quiz of Nixon Can Be Justified

By Carl Bernstein
and Bob Woodward

Washington Post Staff Writers

The Watergate prosecutors have told the Justice Department that there is justification for calling President Nixon to answer questions before the federal grand jury investigating the case, according to reliable government sources.

However, the prosecutors and their superiors in the Justice Department, including Assistant Attorney General Henry E. Petersen, believe that the Constitution appears to preclude calling an incumbent President before a grand jury, the sources said.

In meetings and discussions this month with Petersen and other Justice officials, the prosecutors have outlined their theory of the case and recommended that Mr. Nixon's principal White House and campaign deputies be indicted, the sources said.

The President's role in the Watergate case is the one key question that remains to be clarified in the current grand jury investigation, according to Justice Department sources.

The prosecutors have told their superiors that evidence justifies questioning the President about how members of Mr. Nixon's innermost circle could perpetrate a massive obstruction of justice without his knowledge, the sources reported.

The prosecutors' theory of the case holds that a Watergate cover-up was undertaken by the White House to prevent disclosure of a covert program of illegal activities conducted by the Nixon administration, the sources said, including the break-in at the office of Daniel Ellsberg's psychiatrist in 1971.

Evidence presented to the grand jury of a cover-up, hearsay testimony involving the President at the Senate's Watergate hearings and additional evidence—details of which could not be learned—all raise legal questions about the President's role, according to Justice Department sources.

"There is no bombshell tucked away," one department source stressed. Rather, he said, "there is an evidentiary pattern" that raises questions about the President's role, "No document does it," the source said.

"The President should be given an opportunity to explain himself," another knowledgeable source said.

The sources said that if it were any other person than the President, that person would have been subpoenaed to testify before the grand jury.

The problem of how to proceed with the investigation of the President's role has been discussed in meetings with the new special prosecutor in the case, former U. S. Solicitor General Archibald Cox, according to high-level Justice Department sources. It is now his decision on how to proceed, the sources said.

Cox has asked the three prosecutors in the case—Assistant U. S. Attorneys Earl J. Silbert, Seymour Glanzer and

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Special prosecutor Archibald Cox expects to name several top assistants this week.

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Donald E. Campbell—to remain on the case for the time being.

Through a spokesman, Cox stressed last week that he now was in charge of the case and all previous decisions by the prosecutors are subject to his review.

After researching the constitutional question, the prosecutors and other Justice Department officials believe that only the House of Representatives, which is charged with deciding if the President should be impeached, can undertake a full-scale investigation of the President that would compel his questioning under oath. The term "impeachment" refers to the presentation of charges against the President by the House. Following impeachment by the House, a President is tried by the Senate, with the Chief Justice of the United States presiding.

The prosecutors in the Watergate case also have informed superiors in the Justice Department that there is sufficient evidence to indict President Nixon's former principal deputies, including H. R. Haldeman, John D. Ehrlichman, John W. Dean III and John N. Mitchell, the sources reported.

Until special prosecutor Cox entered the case last week, the three-man team of assistant U.S. attorneys in charge of the investiga-

tion had intended to issue a comprehensive indictment in the case within the next 60 to 90 days.

The proposed indictment, as outlined by the prosecutors to superiors in the Justice Department, would have strongly indicated by its content and wording that the President should be the subject of further investigation, according to one high-level source.

President Nixon said last week that he placed restrictions on the initial Watergate investigation because of "national security." The prosecutors and other Justice Department officials express some skepticism about the legitimacy of this claim, according to department sources.

"The minute we heard what the President had to say about 'national security,'" one Justice source said, "we recognized that it was intended for the grand jury. It gives everybody, including the President, a cover."

Under the law Justice Department sources said, the President generally is empowered to decide what government activities should be kept secret because of national security. The grand jury could be effectively stopped from probing potentially illegal activities by the Nixon administration if presidential aides called before it are successful in citing national security

grounds for refusing to answer questions, the sources said. However, some Justice Department lawyers believe a judge could rule on the legitimacy of whether national security concerns are involved in questions asked by the grand jury.

One Justice Department source said that the House and the Senate have the power to determine if a national security cover is being used to protect illegal actions and could force disclosure. However, the White House could refuse to cooperate with either a judge or the Congress, the source said, thus precipitating a constitutional impasse.

As one Justice Department source said:

"The Watergate investigation has run smack into the Constitution. We now must deal with the question of how the President can be investigated . . . and how the Congress or the (Justice) Department can determine if the White House abused its national security authority."

One Justice Department source cited these options for dealing with evidence regarding the President's possible involvement in the case:

- The grand jury, in its indictment, could recommend that the Justice Department formally refer the case to the House of Representatives, which would examine the evidence and decide

whether impeachment is warranted.

- Cox, through Attorney General Elliott P. Richardson could independently convey the case to the formal attention of Congress either with or without a recommendation on whether impeachment is justified.

- In its indictment, the grand jury could spell out its preception of the President's role in the case and Richardson and Cox would simply sign the indictment without communication with Congress. In this instance, the Congress would then have to decide how to proceed, without the benefit of any recommendation from the grand jury or Justice Department.

- Although the Justice Department believes the Constitution precludes calling the President before a grand jury, it could ask for a court ruling on the question.

- The House of Representatives could decide that there were insufficient grounds to begin any investigation of the President.

The whole scope of evidence being considered by the grand jury is not publicly known. Justice Department sources say that some of the case already is on the public record — through news accounts, congress-

sional hearings and the President's own statements regarding the coverup.

Information—much of it hearsay and circumstantial—already on the public record regarding the President's role includes:

- Warnings of a White House cover-up made to the President as early as last July by former acting FBI Director L. Patrick Gray III, who told Mr. Nixon that he could be "wounded" by the actions of his aides in the White House. [The President said last week: "With hindsight, it is apparent that I should have given more heed to the warning signals I received along the way about a Watergate cover-up and less to the reassurances (from staff members). . . ."]

Published allegations by former presidential counsel John W. Dean III and his spokesmen that Mr. Nixon knew of the cover-up. Dean met with the Watergate prosecutors on April 6 and provided them with information that led to several major breaks in the case, including discovery of the Ellsberg break-in, according to Justice Department sources. It is not known what he told the prosecutors in regard to the question of presidential involvement in the case. Dean has told others that the President at-

tempted to force his resignation and make Dean accept the blame for covering up high-level involvement in the Watergate bugging.

- Documents taken from the White House by Dean that at a minimum demonstrate that President Nixon, for at least five days in 1970, gave his approval to a program of covert activities that included breaking and entering. President Nixon said last week that the plan was never put into effect because the late FBI Director J. Edgar Hoover vetoed it. Justice Department sources said the grand jury wants to know if the plan was really discontinued or if it was secretly put into effect by a special White House investigations unit.

- Statements by former Attorney General John N. Mitchell, the President's ex-campaign manager, that he listened to proposals to bug the Watergate and vetoed them on each occasion. According to Justice Department sources, the prosecutors are attempting to determine if Mitchell ever told Mr. Nixon about those discussions of the bugging.

- Sworn statements by former CIA Director Richard Helms and Deputy Director Lt. Gen. Vernon Walters that they had been pressured by Haldeman and Ehrlichman to protect the Watergate burglars with a CIA cover. Gen. Walters said

in a memorandum to Congress that Haldeman told him: "It is the President's wish" that the CIA keep information from Watergate investigators. (Following release of the memo, Haldeman issued this statement: "I can flatly say that the President was not involved in any cover-up of anything at any time.")

(Rep. Lucien N. Nedzi (D-Mich.), the chairman of the House Armed Services Oversight Committee, said later that Gen. Walters had backed off the assertion in his memorandum and incorrectly inserted the reference to Mr. Nixon because "the thought was implicit in (his) mind.")

- Testimony by John Caulfield, formerly an in-house agent of the White House investigative network, who told the Senate that former presidential counsel Dean ordered him to offer executive clemency to Watergate conspirator James W. McCord Jr. "This offer of executive clemency is a sincere offer which comes from the highest levels of the White House," Caulfield said he was told by Dean. President Nixon last week denied that he had authorized executive clemency for anyone in the case. Dean has told others that Ehrlichman ordered him to extend the offer to McCord through Caulfield.

- President Nixon's own acknowledgement that "with-

in a few days (after the Watergate break-in) . . . I instructed Mr. Haldeman and Mr. Ehrlichman to insure that the investigation of the break-in did not expose either an unrelated covert operation of the CIA or the activities of the White House investigations unit." That decision, according to Justice Department sources, hampered the Watergate probe.

- The President's acknowledgement that he also ordered creation of the special White House unit—the "plumbers"—that carried out the Ellsberg burglary. According to The New York Times, the grand jury has been told by former White House aide David Young that Haldeman and Ehrlichman directed illegal operations against Ellsberg.

Two members of the "plumbers"—E. Howard Hunt Jr. and G. Gordon Liddy—also were convicted in the Watergate case. Regarding his creation of the special White House unit for "national security" purposes, President Nixon said last week, "Because of the emphasis I put on the crucial importance of protecting the national security, I can understand how highly motivated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention."