Court Hearing Set Today on Jury's Report

Rare Session

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The U.S. Circuit Court of Appeals will hold an emergency hearing at 10:30 a.m. today on efforts to prevent the Watergate grand jury's secret report on President Nixon from going to the House Judiciary Committee.

The extraordinary session was scheduled after U.S. District Court Judge John J. Sirica said he would wait only until 4 p.m. today before ordering the turnover.

Former White House aides H. R. (Bob) Haldeman and Gordon C. Strachan asked the Court of Appeals in separate petitions to keep the secret evidence from the House impeachment inquiry.

Their lawyers contended, as they did earlier this month before Judge Sirica, that release of the report to the Judiciary Committee would inevitably generate publicity prejudicial to their clients. Both Haldeman and Strachan have been indicted on charges of covering up the Watergate scandal; they face trial in September.

Spokesmen for the nine-member Court of Appeals said today's hearing will be before the full court.

The appellate judges could uphold Sirica's order, overturn it, or grant a postponement. They could also simply deny a postponement, which would have the effect of letting Sirica's order stand unless the Supreme Court intervened.

Judge Sirica ruled Monday that the secret report dealing with the President's involvement in the Watergate scandal was clearly "material" to the House impeachment inquiry. He said its delivery to the Judiciary Committee was "eminently

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proper, and indeed obligatory."

At the same time, Sirica granted a stay until yesterday afternoon to permit time for appeals.

Haldeman's lawyers, John J. Wilson and Frank H. Strickler, asked the judge yesterday morning to extend the stay indefinitely and wait until the Court of Appeals resolved the controversy. The judge, however, refused to go that far and said he would give them only another 24 hours—until 4 p.m. today—to get a ruling from the appellate judges.

Watergate prosecutors contended in a memo filed yesterday afternoon on behalf of Judge Sirica as well as the Watergate grand jury that not even postponement could be justified.

They said there would be "adequate remedies later to deal with any hypothetical publicity that may or may not develop" from delivery of the report to the Judiciary Committee.

The defense lawyers asked the appeals court for a writ of prohibition that would prevent the turnover of the evidence and force Judge Sirica to suppress it.

Wilson and Strickler filed the petition only in Haldeman's name although they also represent former White House aide John D. Ehrlichman, another defendant in the Watergate cover-up case.

The attorneys said they did not know what the grand jury report contains, but they said they felt sure it includes either a tape or a transcript of the President's conversation on March 21, 1973, with Haldeman and former White House counsel John W. Dean III.

In addition to other charges, Haldeman was indicted for perjury in telling the Senate Watergate committee that the President had said at that meeting that "it would be wrong" to pay hush money to the original Watergate defendants.

Haldeman's lawyers contended that Sirica's decision to give the grand jury report to the Judiciary Committee was "an unnecessary abuse" of his judicial discretion.

Judge Sirica and the grand jury, the defense lawyers argued, "are merely making it convenient for the committee to get the dispatched materials. The committee has subpoena power to get the same materials that the prosecutors got. There, the prejudice may be created by the committee. This, the defendants would deal with in due course, but the action of the judge, who will preside at their trial, to create the possibility of such a prejudice can be avoided **now** through the supervisory powers of this court."

Strachan's lawyer, John M. Bray, protested that Sirica, in holding the grand jury report "material" to the impeachment inquiry, had held in effect that the evidence involved "is clearly of significant moment."

As a result, Bray argued, Strachan "runs the distinct risk of being put on trial by the legislative branch of our government and of being prejudged by the general public with no opportunity to cross-examine witnesses, rebut evidence or avail himself of any of the other procedural safeguards guaranteed to him by the Constitution."

Bray also maintained that the Watergate grand jury had no right to issue the secret report before it has been discharged.

"Courts at all levels have recognized that even where grand jury proceedings are disclosed, they should not be disclosed while the grand jury is still functioning," Strachan's lawyer said.

Watergate prosecutors emphasized Judge Sirica's finding that the report "focuses" on the President and that Mr. Nixon himself has not objected to its disclosure to the Judiciary Committee. The judge said that other persons were involved in the report "only indirectly" and that those who have been indicted would have the chance at their trial to reply "to any incidental references to them."

Beyond that, Watergate Special Prosecutor Leon Jaworski argued, an indefinite postponement "would be unfair to the grand jury, the House Judiciary Committee and the President, all of whom have urged that delays would adversely affect their legitimate objective of having the pending impeachment inquiry resolved promptly."