

A Look at Co-Conspir

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The naming of President Nixon as an unindicted co-conspirator in the Watergate coverup is not, legally, the intrinsically significant act that his indictment would be.

Unlike an indictment, it gives Mr. Nixon no few clearcut rights and duties, no right to a trial, no duty to plead to the accusations.

But it has significance for Mr. Nixon, and the seven indicted defendants as well. And for all eight, the implications seem largely negative at present.

Analysis and Opinion

The naming of the President as a co-conspirator gives the prosecution an advantage in the trial of the seven coverup defendants, by making it easier for the prosecution to use certain

It probably means that Mr. Nixon cannot escape his present problems by resigning unless he first makes a deal with the prosecution, such as the deal former Vice President Spiro Agnew made.

It may also mean that Mr. Nixon's case in resisting the prosecution subpoenas may become even weaker.

These implications stem mainly from two things — first, what the naming of someone has an unindicted co-conspirator suggests about the evidence against the person; and second, the

law of conspiracy.

Unindicted co-conspirators are often named in conspiracy prosecutions.

As Ronald L. Goldfarb, a lawyer and a former Justice Department official, said, "They're not innocent passers-by." They are persons against whom the prosecution has at least some in-

criminating evidence.

Sometimes, the grand jury does not have sufficient evidence to indict. Other times, the prosecution agrees to an arrangement in which an individual will testify against the other accused conspirators in return for which he or she will not be prosecuted.

The prosecution may name such a person an unindicted co-conspirator to take advantage of a rule of law that allows evidence about one conspirator to be used against another, or as Goldfarb noted, the prosecutor may want to "smear" the person.

This is not a particularly

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acceptable or common practice, but it does seem to show up now and then.

The reports about the Watergate grand jury's action in Mr. Nixon's case indicate another possibility.

According to some sources, the jury voted to name the President a co-conspirator because it had originally wanted to indict him, but Special Prosecutor Leon Jaworski had advised them that indictment of an incumbent President raised legal problems.

In this interpretation, the jury was trying to put on record its view that the President was "culpable" though not "indictable."

The problems for the coverup defendants arose because of an aspect of the law on conspiracy called the co-conspirator rule.

The rule says that once a conspiracy is shown to exist and certain persons are shown to be involved in it, acts or statements that any conspirator makes in "furtherance" of a conspiracy are attributable to the other conspirators.

According to Daniel Reznick, a Washington lawyer expert in criminal defense matters, the tape of Mr. Nixon's conversation on Xch 21, 1973, in which he discussed hush money payments, might be enough to show that Mr. Nixon was a co-conspirator.

A lawyer for one defendant agreed that because of the co-conspirator rule, the case is substantially easier.