

# Sirica Agrees to Lift Secrecy On Records Naming Nixon

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U.S. District Court Judge John J. Sirica yesterday lifted the seal of secrecy that he had put on court records naming President Nixon an unindicted co-conspirator in the Watergate cover-up.

The judge said, however, that it would take a similar step by the Supreme Court to make the documents public. The records were sent to the high court early last week for review in connection with Watergate Special Prosecutor Leon Jaworski's efforts to force Mr. Nixon to surrender new evidence in the Watergate scandal.

A spokesman for the Supreme Court indicated that the records would remain sealed at least through the weekend. He said last evening that the justices had yet to receive any formal notification of Judge Sirica's decision.

It was a hectic day in the courts for Watergate developments. In other actions:

- The U.S. Court of Appeals here, in a five-to-one ruling, rejected the efforts of five Watergate cover-up defendants to prevent Sirica from presiding at their trial. The defendants had charged that the judge was biased in favor of the prosecution. The appeals court turned down their plea late yesterday in a one-page order issued without any accompanying opinion.

- Judge Sirica reversed a ruling he had made last year upholding the confidentiality of the final 17½-minute segment of one of Mr. Nixon's Watergate tapes.

Sirica said he had re-examined the Sept. 15, 1972, recording and found "almost all" of it relevant to Watergate grand jury investigations.

At a busy afternoon hearing, Sirica first took up the President's request to unseal the documents showing that the Watergate grand jury had unanimously voted earlier this year to name Mr. Nixon an unindicted co-

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conspirator in the cover-up case.

Sirica said he felt that "the entire record ought to be made public in light of the President's formal request.

"All these items were sealed in the interest of fairness to the President in connection with the impeachment proceedings," the judge said in listing a series of legal briefs and transcripts compiled on the issue last month.

Mr. Nixon's chief defense lawyer, James D. St. Clair, asked the judge to rescind the protective order because of news reports Thursday disclosing the Watergate grand jury's action against the President.

Lawyers involved in the extraordinary case—in which the President has now been alleged to have participated in a criminal conspiracy—said there were no other grand jury secrets in the documents before the Supreme Court.

Assistant Watergate Special Prosecutor Richard Ben-Veniste indicted that all the other justifications for subpoenaing the tapes and records of 64 White House conversations in preparation for the cover-up trial were based on public materials—such as testimony before the Senate Watergate committee.

Jaworski asked the Supreme Court to reject the President's claims of executive privilege for these tapes and to direct compliance with the subpoena which Judge Sirica upheld May 2.

Mr. Nixon took part in all but one of the 64 conversations at issue. According to Jaworski, all of the discussions took place in the course of "the criminal conspiracy" to block the original investigation of the Watergate bugging and break-in at Democratic National Committee headquarters here.

Jaworski privately disclosed the grand jury's naming of the President as an unindicted co-conspirator to St. Clair and then to Judge Sirica early last month in an effort to secure compliance with the subpoena.

An unindicted co-conspirator cannot be prosecuted un-

der the indictment so naming him, but any of his acts and statements in furtherance of the alleged conspiracy can be held against those who are brought to trial. In addition.

At closed hearings before Judge Sirica last month, St. Clair reportedly took the position that the President had not properly been named a co-conspirator in any event.

According to lawyers who attended the hearings, St. Clair maintained the Watergate grand jury missed its chance when it failed to name the President in the cover-up indictment itself.

Returned on March 1, the indictment simply accused seven of the President's former top aides and campaign advisers of conspiring with others "known and unknown" to keep a lid on the Watergate scandal. According to informed sources, Jaworski did not want to make any public accusation against the President until the House impeachment inquiry had made its own judgment.

The prosecutor promised this week to submit a bill of particulars listing all the alleged co-conspirators, but he has yet to do so.

In refusing to disqualify Judge Sirica from the cover-up trial, the five member majority on the appeals court said it might issue a lengthier ruling later on, but for the moment simply denied the defendant's petition without giving its reasons.

Circuit Judge George MacKinnon dissented. He protested that the defendants had in effect been denied "their most fundamental rights" without even being given a hearing.

The court acted solely on the basis of printed briefs and pleadings; on the basis of that record MacKinnon said he would have voted to disqualify Sirica, but he said he felt even more strongly that a hearing should have been granted.

Before winding up his own hearing, Sirica announced his intention to turn over to Jaworski the final portion of the Sept. 15, 1972, tape that the judge had previously held to be privileged.

Jaworski contended that the last part of the meeting

—between Mr. Nixon, former White House chief of staff H.R. (Bob) Haldeman and former White House counsel John W. Dean III—dealt with an illegal attempt to initiate an Internal Revenue Service investigation of former Democratic National Chairman Lawrence F. O'Brien.

Sirica said he reviewed the recording again and found "almost all of the tape unquestionably relevant" to the prosecutor's investigations.

"The court examined this tape last December looking only for Watergate matters—namely, the break-in and the alleged cover-up," Sirica said. He said he had now re-examined the recording for "Watergate matters in the broadest sense."

St. Clair examined a transcript of the final 17½ minutes of the Sept. 15 meeting during a break in the hearing, along with two sealed affidavits that Jaworski had given the judge.

The White House lawyer told Sirica that he would check with the President over the weekend to see if he still wants to claim executive privilege for the last part of the tape. Mr. Nixon can still contest Sirica's ruling in the U.S. Court of Appeals here.

Albert E. Jenner Jr., minority counsel for the House impeachment inquiry, main-

tained in a strongly worded plea that Sirica had a duty, like any other citizen, to turn over relevant evidence to the House.

Sirica said he was "very impressed" by Jenner's argument, but could not agree with it.

In further Watergate developments:

- The Senate by voice vote approved a resolution releasing to the special prosecutor, under classified procedures, the transcripts and related materials of a series of hearings, which started May 9, 1973, on CIA involvement in the Pentagon Papers and Watergate affairs.

- Appearing on the White House lawn, St. Clair told newsmen the naming of Mr. Nixon as an unindicted co-conspirator was "regrettable and we think inappropriate."