

Cox Seeks Limiting of Hearings on TV

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Special Watergate prosecutor Archibald Cox asked a federal court yesterday to prevent the Senate Watergate committee from allowing televising of the testimony of two key witnesses.

Cox contended that such a court order would be appropriate as a condition to any grant of immunity from prosecution for the two men—former White House counsel John W. Dean III and Jeb Magruder, former deputy director of President Nixon's 1972 re-election campaign.

He also demanded some proof that unless Dean got immunity, he would invoke his Fifth Amendment rights and refuse to testify.

Citing a report in Sunday's editions of The Washington Post about Dean's allegations against President Nixon, Cox said that wasn't yet clear, and it should be.

He said that the statute prescribing immunity for testimony before Congress limits such protection to information that a witness "refuses to give or provide on the basis of his privilege against self-incrimination."

The Select Senate Committee and its chairman, Sen. Sam J. Ervin Jr. (D-N.C.), contend that the law gives the courts no choice but to grant immunity for

designated congressional witnesses.

Cox made his requests in a 13-page memo on the committee's application for the immunity orders.

Federal District Judge John J. Sirica has scheduled a hearing on the issue for 10 a.m. Friday.

Rebuffed by the committee earlier this week when he asked it to postpone its hearings for one to three months, Cox charged that Dean's and Magruder's testimony on nationwide television "would in all likelihood present a clear and present danger" to successful prosecution of them or anyone they might implicate.

Under the congressional "use" immunity law, witnesses cannot be prosecuted for the testimony they give, but they are still liable to indictments based on other evidence.

Cox, however, maintained that massive news coverage would obliterate that option.

"The proposed testimony would raise difficulties exceeding even the traditional problems associated with pretrial publicity," Cox said, "since what is expected is the dramatic, broadcast confessions of these witnesses, implicating themselves and others in a variety of criminal acts."

"This compelled, incriminating testimony would, of course, be inadmissible at

trial against the witnesses. Its availability to prospective jurors prior to trial might make it impossible to provide a fair trial at all," he said.

The result, Cox warned, "may well be the award of complete amnesty to these witnesses and all those who acted in concert with them."

Cox conceded that the courts "cannot, unconditionally, deny" the Senate committee's requests for immunity, since the law states that they "shall" be granted, subject to 30-day delays. In the cases of Dean and Magruder, that delay has already been invoked and expires next week.

But the prosecutor maintained that Judge Sirica still can "condition any order granting immunity upon measures safeguarding the integrity of grand jury investigations and the fairness of any resulting trials for criminal offenses."

Cox said he felt it would be best to bar all press coverage of Dean's and Magruder's testimony and have them appear in closed committee session without even subsequent publication of their stories.

But he said that in light of the Ervin committee's vote this week to push ahead with public hearings, "the most appropriate condition would seem to be the exclusion, during the giving

of compelled, self-incriminatory testimony, of live or recorded radio, television, and other coverage not permitted at a criminal trial."

Senator Ervin has insisted that the need of the public to know the truth about Watergate and its ramifications "is of paramount importance." Ervin also said Monday that "we cannot afford the delay incident to awaiting further action by the Department of Justice."

Cox, however, decided to take the issue to court, a step that he said last week he had never even considered.

Citing a string of cases involving prejudicial publicity, Cox argued that the courts have firmly established their right and responsibility "to take reasonable preventive action" to insure fair trials.

He said his proposal would still leave the Senate Watergate committee free to take Dean's and Magruder's testimony and thus sustain its right to "information essential to the legislative function."