

Watergate Report

3/5/74 Secret Evidence

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U.S. District Chief Judge

John J. Sirica will hold an open court hearing Wednesday to consider what he should do with a secret federal grand jury report believed to contain evidence concerning President Nixon and the Watergate cover-up.

Sources familiar with the Watergate case said yesterday that arguments at the hearing may focus on whether a federal grand jury can legally issue such a report separate from an indictment and, if so, whether it can be forwarded to a congressional body, such as the House Judiciary Committee, which is considering the impeachment of the President.

"All interested counsel," presumably including lawyers for Mr. Nixon, Special Prosecutor Leon Jaworski and the seven former Nixon aides indicted by the grand jury last Friday, may present arguments at the hearing, Sirica said yesterday.

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Informed sources have said that the sealed report, presented along with a briefcase of supporting documents to Sirica in court on Friday, contains a summary of evidence that, in the belief of the grand jurors, shows that Mr. Nixon was involved in the conspiracy to obstruct justice in the Watergate case.

The 23-member Watergate grand jury did not state its conclusions in the secret report, according to these sources, but did recommend that Sirica forward the evidence to the House Judiciary Committee for its impeachment inquiry.

White House sources said yesterday that Mr. Nixon's lawyers have not yet decided what to do about the secret report. They added that the grand jury action had produced some confusion in the White House. "They're betwixt and be-

Chicago Hampton

tween about what to do, one source said.

At his daily press yesterday, deputy White House press secretary Gerald L. Warren said Mr. Nixon's lawyers had "no present intention" to try to prevent Judge Sirica from transmitting the secret report to the House Judiciary Committee.

However, later in the day, after two White House attorneys and five lawyers from the special prosecutor's office met with Judge Sirica to set up Wednesday's hearing, Warren declined to repeat his statement about the President's intentions concerning the secret report.

"The White House counsel will attend the hearing" in court Wednesday, Warren said on the second occasion, adding, "We have nothing to say further at this time. Our position will be made known in open court."

Judge Sirica's closed door meeting yesterday with lawyers from the White House and Jaworski's staff lasted for 1½ hours. Afterwards, Sirica read a one-sentence announcement of Wednesday's open court hearing and refused to answer questions from reporters.

James St. Clair, Mr. Nixon's chief Watergate lawyer, said before the meeting that it was being held at his request. He and the other participants also refused to discuss with reporters what they had discussed with Judge Sirica.

Attending the last half-hour of the meeting were John J. Wilson and Frank H. Strickler, defense attorneys for former White House aides and Watergate cover-up defendants John Ehrlichman and H. R. (Bob) Halde- man. They said they came at Sirica's request.

Strickler said later that he and Wilson will participate in Wednesday's court hearing. When asked if he had been given a copy of the secret report and how he could state his views on the case if he had not seen the report, he replied:

"We will argue questions of law. It will be a legal argument."

One informed source said Sirica did not show anyone at the meeting anything from the grand jury's secret report. Sirica's law clerk, D. Todd Christofferson, said later that the court's copy of the report is still locked in a safe.

Although Wednesday's court session will be open to the public, court sources said it is unlikely that details of the grand jury's secret report will be revealed. Instead, the lawyer's arguments are expected to skirt the contents of the report, which presumably are still unknown to them, and concentrate on the legal issues involved.

One of the two questions that sources expect to be argued is whether a federal grand jury, in addition to voting indictments, can issue a report like the one in question.

Although such investigative reports are commonly issued in addition to or in lieu of indictments by state and local grand juries, some lawyers say there is a strain of legal argument claiming that the only function of a federal grand jury, after investigating possible crimes, is to decide whether or not to return indictments.

The second question — whether such a report can legally be forwarded to Congress — arose early in the history of the Senate Watergate committee when its chairman, Sam Ervin (D-N.C.) requested access to the Watergate grand jury's minutes. It became moot, however, when Ervin withdrew his request after preliminary legal arguments.

Attorneys familiar with this and other cases say it is unusual but not unprecedented for attorneys to argue legal issues like these without being able to apply them to the specific facts in

the case being argued.

The grand jury presented Judge Sirica its secret report and supporting documents in the same court session on Friday when it returned its Watergate cover-up indictments charging Haldeman, Ehrlichman, former Attorney General John N. Mitchell, former White House special counsel Charles W. Colson, former White House aide Gordon Strachan and former Nixon campaign committee lawyers Robert C. Mardian and Kenneth W. Parkinson with conspiracy, obstruction of justice and other crimes.

Several sources have told The Washington Post that the grand jury also considered indicting Mr. Nixon, but decided not to do so after Special Prosecutor Jaworski concluded that the Constitution precludes the indictment of an incumbent President.

The grand jury's secret report, these sources said, contains approximately 50 paragraphs outlining evidence involving the President and was written after Jaworski's staff spent several weeks studying ways to forward such evidence to the House Judiciary Committee.

Judge Sirica, these sources said, now must decide whether to forward the report to the Judiciary Committee, rule that the Committee must seek it through subpoena proceedings, declare that the Committee is not entitled to the report and must gather its own evidence, or allow the grand jury to take over action on the evidence.

Contributing to this story were Washington Post staff writers Carl Bernstein and Bob Woodward.