

Probers' Theory

'Justification' For Questioning Nixon Reported

By Carl Bernstein and Bob Woodward
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The Watergate prosecutors have told the Justice Department that there is justification for calling President Nixon to answer questions before the federal grand jury investigating the case, according to reliable government sources.

However, the prosecutors and their superiors in the Justice Department, including Assistant Attorney General Henry E. Petersen, believe the Constitution appears to preclude calling an incumbent President before a grand jury, the sources said.

In meetings and discussions this month with Petersen and other Justice Department officials, the prosecutors have outlined their theory of the case and recommended that Mr. Nixon's principal White House and campaign deputies be indicted, the sources said.

The President's role in the Watergate case is the one key question that remains to be clarified in the current grand jury investigation, according to Justice Department sources.

JUSTIFIED

The prosecutors have told their superiors that evidence justifies questioning the President about how members of his innermost circle could perpetrate a massive obstruction of justice without his knowledge, the sources reported.

The prosecutors' theory of the case holds that the Watergate coverup was undertaken by the White House to prevent disclosure of a covert program of illegal activities conducted by the Nixon administration, the sources

said, including the break-in at the office of Daniel Ellsberg's psychiatrist in 1971.

Evidence presented to the grand jury of a coverup, hearsay testimony involving the President at the Senate's Watergate hearings and additional evidence — details of which could not be learned — all raise legal questions about the President's role, according to Justice Department sources.

"There is no bombshell tucked away," one department source stressed. Rather, he said, "there is an evidentiary pattern" that rais-

See Back Page

From Page 1

es questions about the President's role. "No document does it," the source said.

"The President should be given an opportunity to explain himself," another knowledgeable source said.

The sources said that if it were any person other than the President, that person would have been subpoenaed to testify before the grand jury.

COX

The problem of how to proceed with the investigation of the President's role has been discussed in meetings with the new special

prosecutor in the case, former U.S. Solicitor General Archibald Cox, according to high-level Justice Department sources. It is now his decision on how to proceed, the sources said.

After researching the constitutional question the prosecutors and other Justice Department officials believe that only the House of Representatives, which is charged with deciding if the President should be impeached, can undertake a full-scale investigation of the President that would compel his questioning under oath.

The term "impeachment" refers to the presentation of charges against the President by the House. Following impeachment by the House, a President is tried by the Senate, with the chief justice of the U.S. Supreme Court presiding.

INDICT

The prosecutors in the Watergate case have also informed superiors in the Justice Department that there is sufficient evidence to indict President Nixon's former principal deputies, including H. R. Haldeman,

More Watergate news
on Page 11, 13 and 15

John D. Ehrlichman, John W. Dean III and John N. Mitchell, the sources reported.

Until special prosecutor Cox entered the case last week, the three-man team of assistant U.S. attorneys in charge of the investigation had intended to issue a comprehensive indictment in the case within 60 to 90 days.

The proposed indictment, as outlined by the prosecutors to superiors in the Justice Department, would have strongly indicated by its content and wording that the President should be the subject of further investigation, according to one high-level source.

SECURITY

President Nixon said last week that he placed restrictions on the initial Watergate investigation because of "national security."

The prosecutors and other Justice Department officials express some skepticism about the legitimacy of this claim, according to department sources.

"The minute we heard what the President had to say about 'national security,'" one Justice source said, "we recognized that it was intended for the grand jury. It gives everybody, including the President, a cover."

Under the law, Justice Department sources said, the President is generally empowered to decide what government activities should be kept secret because of national security. The grand jury could be effectively stopped from probing potentially illegal activities by the Nixon administration if presidential aides called before it are successful in citing national security grounds for refusing to answer questions, the sources said.