

COURT OF APPEALS SAYS JURY REPORT CAN GO TO HOUSE

Lawyers for Defense Given
Till 5 P.M. Monday to Take
Case to Supreme Court

FURTHER PLEA IN DOUBT

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Haldeman Counsel Terms
Ruling on the Nixon Data
'the End of the Line'

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WASHINGTON, March 21—
The United States Court of Appeals here refused today to prevent a secret grand jury report on President Nixon from going to a House impeachment inquiry.

The six-member court, with one judge partly dissenting, said, "We think it of significance that the President of the United States, who is described by all parties as the focus of the report and who presumably would have the greatest interest in its disposition, has interposed no objection."

The court gave defense lawyers until 5 P.M. Monday to apply to the Supreme Court "for such relief as they may deem advisable." (28 MAR)

There were indications tonight, however, that the defense attorneys might not appeal the ruling. If they do not, the grand jury material could thus go to the House as early as Monday evening.

Lawyers Comment

Frank H. Strickler, one of two lawyers representing H. R. Haldeman, the former White House chief of staff, said following the court's ruling:

"This is the end of the line as far as taking any action on judicial review. We've exhausted all available avenues."

John M. Bray, the lawyer for Gordon C. Strachan, a former aide to Mr. Haldeman, said that the matter of appeal was "worthy of considered review," but he gave no indication what action he might take.

John J. Wilson, also representing Mr. Haldeman, agreed with Mr. Strickler, but added, "If we take any action, it won't be before Monday."

The report's contents are

believed to bear on Mr. Nixon's possible role in a White House cover-up of the burglary of the Democratic National Headquarters at the Watergate office building on June 17, 1972.

Philip A. Lacovara, counsel for the Watergate special prosecutor, Leon Jaworski, called the contents of the report "evidence" that "deals with the President of the United States."

The Court of Appeals, with three members declining to

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take part in today's hearing for unexplained reasons, supported Mr. Lacovara's position that transmitting the material to the House Judiciary Committee was not likely to interfere with a fair trial of defendants in Watergate criminal cases.

The court said that Judge John J. Sirica of the United States District Court had not abused his discretion in turning over the material.

The dissent was by Judge George B. MacKinnon, who said, "I would expunge the entire grand jury report and permit the House Judiciary Committee, on request to the district court, to have access not only to the limited testimony accompanying the report . . . but to the entire grand jury proceedings."

His position was that material possibly bearing on the President's innocence might not necessarily be included in the grand jury report.

Mr. Wilson and Mr. Bray had argued that turning over the report to the committee might generate harmful pretrial publicity for their clients.

'Sheer Speculation'

Mr. Lacovara called their position "sheer speculation in the classic sense."

Chief Judge David L. Bazelon questioned him closely on the point. He asked if Mr. Lacovara had considered that releasing the report might lead to dismissal of the charges against the seven indicted March 1.

"We've considered that possibility," Mr. Lacovara said, stressing that he thought its publicity would be light and could be dealt with at the time of jury selection. The trial is scheduled for Sept. 9.

"You recognize a risk?" Judge Bazelon asked.

"We're aware of that risk," Mr. Lacovara replied.

"And you've made the determination to assume it?" the judge asked.

"Yes, your honor," Mr. Lacovara replied.

The documents—a sealed envelope and a briefcase heavy with papers—were delivered to the Court of Appeals after 5 P.M. yesterday while the judges were meeting. The documents had been kept by Judge John

J. Sirica of the United States District Court until that time.

It is not known if the appeals judges looked inside the briefcase and reviewed the contents. They made no reference to it during today's hour-and-a-half hearing.

President Nixon had not opposed turning over the documents, and his lawyer, James D. St. Clair, did not appear in the Court of Appeals today.

Letter From Rodino

The House Judiciary Committee did not appear either, but its chairman, Representative Peter W. Rodino Jr. of New Jersey, delivered a letter this morning to Judge Bazelon.

The letter restated the committee's desire to obtain grand jury material without putting the committee in the position of being subject to the jurisdiction of the court. The committee has maintained that the interests of impeachment override all other interests.

Mr. Rodino's letter urged haste.

"A delay in obtaining this grand jury material would threaten to impede the committee and the House in carrying forward the impeachment inquiry," Mr. Rodino wrote.

"Were the House to act in this impeachment inquiry without having had the opportunity to take this grand jury material into account, I fear that each House member and in fact the entire country would experience an enormous lack of confidence in our constitutional system of government."

The substance of the arguments was little changed from the arguments March 6 before Judge Sirica. He ruled Monday that the documents should go to the house committee.

Mr. Wilson saw the turning over of the report as causing harm to his client's right to a fair trial.

Wilson Sees 'Abuse'

Mr. Wilson said that Judge Sirica's order was an "abuse" of the judge's discretion. He said that although grand juries in other circuits of the Federal court system had produced such reports, it had never been done in the District.

"The rights of our clients should not be sacrificed," he said. "It is a moral certainty that the material will be made public."

Mr. Bray indicated that the court should read the documents before making any decision.

"What do you suggest we do about it?" Judge Bazelon asked, leaning forward.

Mr. Bray suggested that the court "review it," as Judge Sirica had done.

Mr. Lacovara, under questioning by Judge George B. MacKinnon, gave the most extensive description thus far of the secret report. He said that the investigation that led to the

cover-up indictments had brought the grand jury's attention to "matters" bearing on

the House impeachment investigation.

Mr. Lacovara said that the grand jury was "not going to pass on the significance of that evidence" but that "the evidence deals with the President of the United States. He is the focus of that report."

He said there was a two-

page letter of transmittal and an "index of events" along with material relating "to each of these events, including grand jury testimony and grand jury exhibits."

He said that "incidental references do relate to petitioners before the court this morning" but that they are "not the focus of this report."

Mr. Lacovara also maintained that President Nixon was "entitled to due process" under the law like any other American.

That remark suggested to Mr. Wilson, who mentioned it to the court, that the special prosecutor was taking the position that an impeachment might be subject to review by the courts.