

White House Challenges Grand Jury Naming of Nixon

By George Lardner Jr.
Washington Post Staff Writer

The White House said yesterday that it will press for a showdown in the Supreme Court over the Watergate grand jury's naming of President Nixon as an unindicted co-conspirator in the Watergate cover-up.

Moving on two fronts, Mr. Nixon's chief defense lawyer, James D. St. Clair, challenged both the constitutionality of the grand jury's action and the adequacy of the evidence on which it was based.

In a motion filed with U.S. District Court Judge John J. Sirica, St. Clair asked for access to all the secret grand jury evidence bearing on the accusations against the President. The White House lawyer also asked that the same evidence be sent to the Supreme Court so that it could make "a factual analysis of the grand jury's action."

"In my opinion," St. Clair said in an accompanying affidavit, "the grand jury was acting outside its authority in naming the President as an unindicted co-conspirator, but even if it were acting properly, the evidence presented was and is totally insufficient to support the action taken and, in fact, contradicts that action."

Meanwhile, in a petition filed with the Supreme Court, St. Clair challenged the grand jury's constitutional authority "to charge an incumbent President as an unindicted co-conspirator in a criminal proceeding."

The President's lawyer maintained that the grand jury's action—and an apparently secret ruling by Judge Sirica upholding it—improperly interfered with the impeachment powers of the House of Representatives.

"If the decision of the District Court on this issue is allowed to stand," St. Clair protested, "we believe it seriously impinges upon the constitutional grant of authority vested" in the House.

The Supreme Court petition actually was filed under seal in typewritten form last Thursday before Judge Sirica lifted his protective order covering legal pleading in the dispute. A White House official said the petition then was printed and resubmitted to the Supreme Court Monday without any announcement. The document was made public yesterday after St. Clair

filed his motion with Judge Sirica.

The issue landed before the Supreme Court in connection with Mr. Nixon's refusal to surrender the tape recordings and other records of 64 White House conversations that have been subpoenaed for the Watergate cover-up trial.

Watergate Special Prosecutor Leon Jaworski disclosed Mr. Nixon's status as an unindicted co-conspirator at secret hearings before Judge Sirica last month in an effort to secure compliance with the subpoena. News of the action later appeared in newspapers, and the White House confirmed it.

The records of those hear-

ings were transmitted to the Supreme Court where they are still under seal, but they apparently do not contain any of the grand jury's actual evidence against Mr. Nixon.

In the legal pleadings he filed with Judge Sirica yesterday, St. Clair said that he learned about some of the evidence while sitting in at the House Judiciary Committee's impeachment inquiry.

He said it included grand jury testimony by former White House chief of staff H. R. (Bob) Haldeman; former White House counsel John W. Dean III; convicted Watergate conspirator E. Howard Hunt Jr.; William O. Bittman, who was Hunt's attorney, and for-

mer Nixon campaign deputy Frederick G. LaRue.

All five men allegedly were involved in the payment of hush money to Hunt that was discussed at a meeting with the President on March 21, 1973.

St. Clair submitted sealed copies of their grand jury testimony to Judge Sirica in asking they be sent to the Supreme Court. He maintained that they "clearly demonstrate that the grand jury was acting outside its authority" and said that the materials "are totally insufficient to impute criminal activity to the President."

The secret grand jury testi-

mony of the five witnesses that St. Clair singled out had been turned over to the House Judiciary Committee earlier this year in the packed briefcase that the grand jury had compiled for the impeachment inquiry.

St. Clair also asked Judge Sirica to send the Supreme Court any other transcripts, tape recordings of presidential conversations and grand jury minutes and exhibits pertaining to the naming of Mr. Nixon as an unindicted co-conspirator.

"It is essential that the record before the Supreme Court be as complete as possible in order to allow a full resolution of the issues," St. Clair said.

St. Clair suggested that Judge Sirica send the grand jury documents to the Supreme Court under seal or whatever method Sirica deems proper.

Sirica said he would withhold any action until Jaworski files his response. Meanwhile, the six former White House aides and campaign advisers facing trial in the cover-up case asked the Supreme Court in a separate communication not to release even those limited records on the issue that the high court already has been furnished.