

Nixon Asks Court Ruling On Co-Conspirator Issue

NYTimes

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Special to The New York Times

WASHINGTON, June 11—President Nixon wants the Supreme Court to decide whether he should have been named an unindicted co-conspirator in the Watergate cover-up, his lawyers disclosed today.

The lawyers said the President had already asked the court to decide the legal question of whether a grand jury has the right, "under the Constitution," to "charge an incumbent President as an unindicted co-conspirator in a criminal proceeding."

In a petition to the Court filed last week but made known today, the President argued that to allow a grand jury to take this kind of action against an incumbent President "seriously impinges upon the constitutional grant of authority" of the House of Representatives, which has sole power of impeachment of the President.

"The prejudicial nature and irreparable effect of such a grand jury finding cannot be seriously questioned," the Nixon petition said.

Mr. Nixon will go beyond the constitutional issue once the proceedings begin, his lawyers also said, and will argue that

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the evidence on which the Watergate grand jury acted was "totally insufficient" to name the President as a co-conspirator.

The disclosures came initially in legal papers filed today by James D. St. Clair, the President's Watergate attorney, at the Federal District Court here.

In those papers, Mr. St. Clair asked Judge John J. Sirica of the Federal District Court to provide the President and his lawyers with large amounts of material from the grand jury that named Mr. Nixon. The material consists of tape recordings, minutes, exhibits and testimony by five persons, including John W. Dean 3d, the President's former Counsel, and H.R. Haldeman, the former White House chief of staff and one of the defendants in the cover-up case.

Authority Questioned

Mr. St. Clair said he believed that, as a result of what he had learned while sitting in on the secret House Judiciary Committee's impeachment hearings, these materials would demonstrate that the grand jury acted without authority and that the materials before it were "totally insufficient" to impute criminal activity to the President.

Mr. St. Clair asked Judge Sirica to send the materials to the Supreme Court as part of the record in its pending hearing of the dispute between Mr. Nixon and Leon Jaworski, the special Watergate prosecutor, over the latest prosecution subpoena of Presidential tape recordings.

The prosecution has said that

it needs the tapes for use in the forthcoming trial of the cover-up case.

According to Mr. St. Clair, the high court must analyze the grand jury's action in naming Mr. Nixon before it can decide the subpoena letter.

Complications Seen

The White House attempt to win a Supreme Court ruling on the issue presents complications for the ongoing impeachment proceedings, for, according to Mr. St. Clair, the material on which the grand jury based its action is the same material that the House impeachment inquiry has been studying.

Judiciary Committee members generally reacted to the news of the grand jury action by saying that they would make their own judgment. However, a Supreme Court ruling based on the sufficiency of the evidence is not likely to be ignored by the committee.

Some observers also suggested another implication: Mr. St. Clair had been admitted to the Judiciary Committee proceedings on the understanding that he would honor the secrecy imposed by the committee; but he told Judge Sirica of various evidence he had heard at the closed committee hearings.

Representative Peter R. Rodino Jr., chairman of the committee, said this afternoon that he had not known of Mr. St. Clair's request to Judge Sirica, and thus would have no comment.

All Relevant Material

Mr. St. Clair asked today for all material that pertains in any way to the grand jury's action in naming Mr. Nixon or in authorizing Mr. Jaworski to identify the President as one of the unindicted co-conspirators. Mr. St. Clair's motion appears to recommend that the material be withheld from the public, at least to some extent.

Both Mr. St. Clair and Mr. Jaworski have already asked the Supreme Court to make public other previously sealed

court records bearing on the naming of Mr. Nixon as a co-conspirator. However, these records were merely proceedings before Judge Sirica, which were originally sealed only because the papers disclosed the grand jury action. Mr. St. Clair and Mr. Jaworski asked for public release of the papers because news reports of the jury action made further secrecy unnecessary.

However, the six defendants in the cover-up case asked the Court today not to make these records public. They have resisted publication consistently on the ground that it would lead to prejudicial pre-trial publicity.

Other Developments

The developments regarding the Supreme Court occurred as Judge Sirica held his second day of pretrial hearings in the cover-up case. The following development occurred during the hearings:

¶ Judge Sirica denied motions by each defendant for a separate trial, ruling that all six must be tried together.

¶ The judge told James F. Neal, the prosecutor in charge of the trial, to provide defense counsel with a full list of co-conspirators by July 1.

¶ The judge said that if the Senate appeared likely to hold an impeachment trial in September, he would change the trial date from Sept. 9 to Sept. 3 to pick a jury and have it sequestered, so that the jurors would not hear or read of the evidence at the impeachment trial.

¶ Andrew C. Hall, counsel for John D. Ehrlichman, the President's former adviser on domestic affairs and a defendant in the cover-up case, raised the possibility that the case would encounter the same problems of White House resistance to defense requests that have marked the "plumbers" trial a few doors down the courthouse hall and that resulted today in Judge Gerhard A. Gesell's granting of a separate trial for Mr. Ehrlichman.