

Odd Watergate Plea Over a 'News Leak'

Washington

Attorneys for three Nixon administration officials convicted in the Watergate coverup asked the Supreme Court yesterday for a chance to show that a recent "news leak" about the case may influence the outcome of their appeals.

The attorneys filed a petition with the court, asking for ten days to submit a memorandum in behalf of former Attorney General John N. Mitchell and former White House aides John D. Ehrlichman and H. R. Haldeman.

The petition said the memorandum would be "addressed to the impact on petitioners' rights before this court of the publicly disclosed circumstances" of the justices' consideration of the case.

Last week, a report by National Public Radio said that the justices, in their closed weekly conference, had voted 5 to 3 not to hear the appeals of Mitchell, Ehrlichman and Haldeman. Four affirmative votes are required to win court review of a case.

The report by Nina Totenberg said further that three Nixon appointees — Chief Justice Warren Burger and Justices Lewis Powell and Harry Blackmun — had voted to hear the case and that Burger

had "delayed" announcement of the decision in the hope of later obtaining a fourth vote for review.

The petition did not indicate what impact the lawyers would contend the report had on the justices' consideration of the case.

But it is believed the attorneys will argue that the publicity about the reported vote — with its potential political overtones — might now influence the justices to decide against reviewing the case.

One lawyer involved in the case compared what happened to a leak out of a jury deliberating a criminal case. Such a report would be grounds for a mistrial, he noted.

"If it leaked out that a jury, for example, had tentatively voted 9 to 3 for conviction, that would be grounds for a mistrial," the attorney said. "We think we have a similar situation here."

The attorneys may also contend — if they get the chance — that the publicity surrounding the report might cause the justices to prematurely cut short their deliberations of the appeals, thus affecting the rights of the three aides.

"Leaks" from the justices' closed conferences are rare. The lawyers acknowledged they knew of no precedent for raising this

issue on an appeal pending before the court.

The three Nixon officials were convicted of conspiracy in the coverup case and sentenced to 30 months to eight years in prison. Mitchell and Haldeman are free pending appeal. Ehrlichman, also convicted of conspiracy in the Ellsberg burglary case, is currently in prison.

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