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Jury's Report: Legal Questions Baffling

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WASHINGTON, March 5—By 10 A.M. tomorrow, Judge John J. Sirica's courtroom will be filled with lawyers eager to speak definitively about what the judge should do with the secret report that the Watergate grand jury gave him last week for forwarding to the House impeachment inquiry.

News Analysis

However, the legal principles and precedents that they are expected to recite are so contradictory in some cases, and so unformed in others, that legal experts interview today could not even agree on the question of whether Judge Sirica has any options in the matter—much less what those options may be.

Many legal experts predicted today that the secret report—reportedly describing President Nixon's relationship to the Watergate cover-up — would eventually be forwarded to the House Judiciary Committee.

Decline to Predict

But they declined to predict whether Judge Sirica would try to impose any conditions on the transfer of the report, such as a requirement that it be withheld from the public, or to say whether he could enforce any conditions.

They also declined to predict the effect that the transfer of the report would have on the prosecution of the seven men indicted last Friday for their alleged part in the conspiracy to cover up the Watergate break-in.

"The answer is that there is no answer," said Philip Kurland of the University of Chicago Law School, one of the country's most respected experts on constitutional law, when asked what Judge Sirica was legally required to do.

For the three basic issues are intertwined in this latest of Judge Sirica's Watergate-based legal quagmires—the role of the grand jury, the power of the House of Representatives in impeachment proceedings and the rights of defendants in criminal trials.

And while they have been considered before, to varying degrees, in the courts or the statutes or in legal writings, they have not been considered together; no balance of the three has been worked out.

Thus, in the area of defendants' rights, it is well settled by now that the courts must protect defendants against prejudicial pretrial publicity. This does not mean that the courts must or even may ban publicity about cases; it does mean, however, that a defendant must be tried by jurors who have not been prejudiced by publicity.

So, the courts must take certain steps when faced with a celebrated case. For example, it must tell the prosecutors and defense counsel not to make out-of-court statements and perhaps change the place of trial or postpone it until the public uproar dims. And if the court is still unable to find an unbiased jury, it must dismiss the charges.

Damaging Information

The secret grand jury report may contain damaging information about one or more of the seven men indicted last week. If Judge Sirica made it public, there would be widespread publicity.

And so, according to Mr. Kurland, Judge Sirica may well decide—particularly if requested by defense counsel—to keep the report secret on the ground that its release would be so prejudicial as to preclude a fair trial for the seven indicted men.

Judge Sirica may of course decide that there are other ways to protect the defendants' rights. Prof. Yale Kamisar of the University of Michigan, for instance, contends that the defendants' remedy against prejudice is to wait until the trial is to begin and then to make motions asking for a change of venue, a postponement or dismissal.

But even is the problem of prejudicial publicity can be handled in some other way, there is a second issue to be resolved: the right of the grand jury to make its secret report in the first place.

John J. Wilson, lawyer for two of the seven men indicted last week, John D. Ehrlichman and H. R. Haldeman, contended in a letter to Judge Sirica today that the grand jury had no such right. The jury's power, he said, is either "to indict or to ignore." The Federal rule mandating secrecy of grand jury proceedings — Rule 6 (E) of the Federal Rules of Criminal Procedure, Mr. Wilson said — forbids the jury from disclosing the report.

And, indeed, the law is less than clear on the power of a Federal grand jury to issue reports describing alleged misdeeds of individuals. Judges have ruled that such reports are unfair to the individuals named. At the same time, however, they have also allowed grand juries to transmit their findings to other groups for further action.

Example Is Given

In one such case, a Federal grand jury investigated a lawyer. It found sufficient evidence to make it believe that there was cause to indict. The statute of limitations for such crimes had passed, however, so it could not indict him. The United States Court of Appeals for the Second Circuit ruled in 1957 that the minutes from this jury could be given to the grievance committee of the local bar association so the committee could bring disciplinary action against the lawyer.

To Leon Friedman, a lawyer with the American Civil Liberties Union and an expert on the law about grand juries, this case—called Doe V. Rosenberry—is as good a precedent as can be found to the situation confronting Judge Sirica.

In the present case, for example, the grand jury may have decided not to indict Mr. Nixon only because the Watergate prosecutor informed the jurors that there was substantial question about whether indictment of a sitting President was constitutional.

And, as in the Rosenberry case, there is another forum—here, the House Judiciary Committee—which is empowered to bring proceedings of its own.

So, the Rosenberry case may well give Judge Sirica a basis for carrying out the grand jury's reported request to forward its information to the House committee.

Yet, to some lawyers, it does not matter whether is is a good precedent or not. They say, too, that it may also be irrelevant that the release of the report might so prejudice the cases against the seven men indicted last week that the charges against them may have to be dismissed.

It is at least "arguable," some constitutional experts said today, that the only relevant law is the constitutional provision on impeachment—Article I, Section two, Line Five, which says that the House has the "Sole power of impeachment."