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Sirica Must Decide

Precedents Varied On Grand Jury Data

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There are plenty of judicial precedents for the decision U.S. District Court Judge John J. Sirica must make over what to do with the grand jury's mysterious sealed envelope and bulging, locked satchel.

The trouble is, the precedents point in all directions.

There are decisions that hold with defense attorney John J. Wilson that the grand jury must "indict or ignore," and not issue reports implicating individuals in misconduct short of an indictable crime.

There are decisions in the past holding that a federal grand jury may issue so-called "presentments," or reports, but not publicly. More recently there have been rulings that the question of release to another government agency, to a court or to the public is within the discretion of the presiding judge.

The unprecedented feature of the Watergate grand jury dispute is the potential recipient of the secret material—a House Judiciary Committee considering nothing less than the impeachment of a President.

In two previous cases, both in New York, judges have weighed such values as the desire of a grand jury to send evidence of labor racketeering to federal labor officials, or the desire to report a lawyer's unethical conduct to a bar grievance committee, when no indictment could be returned. (The labor report was blocked and the unethical conduct report was permitted.)

President Nixon's Justice Department, with John N. Mitchell as Attorney General, took the position in 1970 that a federal grand jury in Chicago had the right to publish a 250-page report severely criticizing police for "unprofessional" but not criminal conduct in the raid in which two Black Panther leaders were killed.

That report also criticized surviving Panthers for failing to cooperate with the federal investigation. When some of them sought to suppress the report, the courts upheld disclosure.

The Justice Department was neutral in another 1970 case when individuals mentioned in a Baltimore grand jury presentment sought to block its public release. The report concerned alleged influence-peddling and corruption in the construction of the garage under the Rayburn House Office Building. Judge Roszel C. Thomsen released an edited report after asserting the right to "regulate the amount of disclosure."

The central issue in such disputes is one of fairness to the target of the grand jury's criticism. President Nixon is not claiming potential prejudice, but the newly indicted Watergate defendants are charging that their right to a fair trial will be compromised.

Defense counsel contend that the 1970 organized crime act, which permits special Mafia - investigating grand juries to issue reports criticizing officials for misconduct or neglect, indicates that ordinary grand juries such as the Watergate panel lack such authority.

This argument was rejected yesterday by a principal draftsman of the 1970 law, Cornell law professor G. Robert Blakey. He said Congress carefully avoided doing anything to change the existing power of regular grand juries. Like other experts, he acknowledged that this power is far from clear.

A judge would not be out of line, Blakey suggested, if he used some of the 1970 law's safeguards, such as giving the target of grand jury criticism a chance to respond, while permitting the jury to issue its presentment —or whatever it is that's inside the enevelope and the satchel.