

SIRICA WILL RULE TODAY ON REPORT

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To Announce Whether Jury
Data Will Go to House
Impeachment Panel
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WASHINGTON, March 17—Federal Judge John J. Sirica will file a written opinion tomorrow announcing what is to be done with the material given to him by the Watergate grand jury for forwarding to the House impeachment inquiry.

If he follows through what he told lawyers in the case during a bench conference on March 6, the day he heard arguments on the issue, Judge Sirica will rule that at least the grand jury's two-page "transmittal letter" be made public.

"I think the two pages ought to be made public," he said then. "I have read it."

The other material transmitted by the grand jury to him is believed to include a report and evidence bearing on President Nixon's Watergate-related actions.

Judge Sirica has a number of options, ranging from giving the report to the House Judiciary Committee to suppressing it. His actions to date in attempting to uncover the facts of the Watergate affair and the identities of all participants, however, indicate that is he unlikely to prevent the committee from ever seeing any of the Grand Jury's information.

Judge Sirica will be making his ruling tomorrow, though, not only from the standpoint of the Judge who supervises and assists a Grand Jury but also as the Judge who must assure a fair trial for the seven men indicted by the Jury in the cover-up of the break-in at the Democratic National Committee offices in June, 1972.

At the hearing on March 6 nearly all of the lawyers for the seven defendants argued that disclosure of the grand jury's report would lead to publicity that would prejudice the defendants' right to a fair trial.

The President's lawyer, James D. St. Clair, said that Mr. Nixon was taking no position on the matter, but he pointedly told the judge that "you are the person charged with the responsibility of treating fairly the parties who stand trial before you."

Judge Sirica, for his part, made clear he was concerned about the impact that could be

caused by publicity on the jury's findings, saying at one point, "There is a very important issue before the American people—the question of a fair trial."

And so, while Judge Sirica may base his ruling on other grounds, such as the ability or inability of grand juries to issue such reports, his ruling is expected to reflect publicity to the grand jurors' wishes regarding the transfer of its information to the House committee.

The law, essentially, provides that a defendant has the right to be tried by a jury that has not been "prejudiced" by publicity about his case. The Supreme Court has described ways in which courts can prevent prejudice, such as postponing a trial, changing the location ("venue") of the trial, careful inquiring into possible bias during jury selection, and then, once the jury is chosen, sequestering it.

The Supreme Court has overturned convictions in which courts have not taken such steps.

Courts, however, have often rejected defense lawyers' assertions that their clients were prejudiced by pretrial publicity.

A motion to dismiss charges on the ground that publicity has made it impossible to impanel an unbiased jury, for instance, is almost always futile.

Requests for a change of venue of publicity grounds are also often rejected.

The reasons, lawyers say, stem from several factors. For one thing, the Supreme Court does not require the impaneling of jurors who have heard nothing of the case. The Court requires only that jurors be chosen who can lay aside whatever impressions they have and decide the question of guilt solely on the basis of the evidence introduced at the trial.

Second, as Philip A. Lacovara of the special Watergate prosecution staff argued before Judge Sirica at the hearing, not all publicity is prejudicial. The case in which the Supreme Court described its rules on publicity most specifically—reversing the conviction of Dr. Samuel Sheppard, in the murder of his wife, because of prejudicial publicity—involved massive publicity that implied the doctor's guilt. Release of the grand jury report regarding Mr. Nixon would not necessarily prejudice the seven men.

A third factor is the general rule that the time to contend that publicity has prejudiced the selection of an impartial jury comes when the jury is picked. This rule is not all-encompassing, however, and it is that fact, some lawyers suggest, that may have caused Judge Sirica to take so much time on his opinion.

In the Sheppard case, the Supreme Court remarked that

"the courts must take such steps that will protect their processes from prejudicial outside interferences." This can be interpreted as suggesting that even prior to jury selection the court has a duty to try to prevent prejudice. The practice of imposing "gag rules" prohibiting lawyers involved in a case from making out-of-court statements—a practice Judge Sirica has already followed in the cover-up case—supports this interpretation.

The defense lawyers who argued against release of the grand jury report did so in part to put their objections on the record. As one of the lawyers, John J. Wilson, state, "we are making a record that if this does leak and it does prejudice us, the trial judge was warned of this the moment it could have been avoided."