

Sirica to Give Panel Grand Jury Report

Appeal Of Ruling Expected

By George Lardner Jr.
Washington Post Staff Writer

U.S. District Court Judge John J. Sirica ruled yesterday that the Watergate grand jury's secret report on President Nixon should be turned over to the House Judiciary Committee.

The judge said he carefully examined the contents of the report and was satisfied "that there are no grounds for their materiality" to the committee's efforts to determine whether Mr. Nixon should be impeached.

Sirica withheld any assessment of the "significance of the evidence" the grand jury compiled concerning the President, but he said he could find no justification for suppressing it. In fact, he said he felt its delivery to the Judiciary Committee was "eminently proper, and indeed obligatory."

"... It should not be forgotten that we deal in a matter of the most critical moment to the nation, an impeachment investigation involving the President of the United States," the judge said in a 22-page opinion. "It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information."



By Harry Naltchayan—The Washington Post

JUDICIAL SWITCH—Judge John J. Sirica, left, receives a chronometer from Judge George L. Hart Jr., who yesterday

succeeded Sirica as chief judge of the federal District Court here. Sirica will continue on the bench. Story on Page C1.

3/19/74 W.P.S.

Despite the ruling, it may be weeks or even several months before the Judiciary Committee can actually get its hands on the grand jury's documents on the issue of Mr. Nixon's involvement in the Watergate scandal. Sirica stayed his order until Wednesday afternoon to permit time for appeals, and attorneys for several of the defendants recently indicted in the Watergate cover-up said they would contest the turnover.

One of the lawyers, John M. Bray, who represents former White House aide Gordon Strachan, said he plans to fight Sirica's ruling all the way to the Supreme Court if necessary.

The Watergate defense lawyers had protested that the grand jury had no right to make the report and that its disclosure would inevitably lead to news leaks and prejudicial publicity for their clients.

See REPORT, A8, Col. 1

REPORT, From A1

Sirica dismissed such speculation as premature and said he regarded the right of the Watergate defendants to contest his ruling as "dubious at best."

"The person on whom the report focuses, the President of the United States, has not objected to its release to the committee," Sirica said. "Other persons are involved only indirectly."

Aside from Mr. Nixon, the judge said, those mentioned in the report who are under indictment will have the opportunity at trial to reply "to any incidental references to them." Those who have not been indicted, Sirica said, "have already been the subject of considerable public testimony and will no doubt be involved in further testimony, quite apart from this report."

The judge's allusions to the grand jury "report" referred not only to a two-page covering letter strongly recommending its submission to the Judiciary Committee, but also to a bulging leather briefcase holding the evidence.

The White House had asked for a chance to inspect, and copy, the grand jury materials in the event that they were to be turned over to the House. But Sirica finessed that request by saying a decision on it was lifted last Friday but it was "more properly" one for the House Judiciary Committee to make.

Watergate prosecutors have hinted that the grand jury report contains not only evidence obtained from the White House but also materials of which Mr. Nixon's lawyers are not yet aware.

Judiciary Committee Chairman Peter W. Rodino Jr. (D-N.J.) told reporters that he doubted the White House request for a look at the secret report would be granted. "This is not an adversary proceeding," he said of the impeachment inquiry.

Sirica carefully avoided any disclosure of the nature of the grand jury evidence, but he

said the entire report was carefully worded and fairly stated, without any of the objectionable features that have led to suppression of other federal grand jury presentations.

"It draws no accusatory conclusions," Sirica said. "It deprives no one of an official forum in which to respond. It is not a substitute for indictments where indictments might properly issue. It contains no recommendations, advice or statements that infringe on the prerogatives of other branches of government.

"Indeed, its only recommendation is to the court," Sirica found, "and rather than injuring separation of powers principles, the jury sustains them by lending its aid to the House in the exercise of that body's constitutional jurisdiction. It renders no moral or social judgments. The report is a simple and straightforward compilation of information gathered by the grand jury, and no more."

Rejecting the contentions of attorneys for former White House aides H.R. (Bob) Halde-man and John D. Ehrlichman that a grand jury must either "indict or ignore," Sirica said its powers range far beyond that, both historically and legally.

As authority for that proposition, the judge cited, among others, the words of James Wilson, a signer of both the Declaration of Independence and the Constitution and later a Supreme Court justice, who said in 1791:

"The grand jury are (sic) a great channel of communication, between those who make and administer the laws, and those for whom the laws are administered. All the operations of government, and of its ministers and officers, are

within the compass of their view and research. They may suggest public (sic) improvements, and the modes of removing publick inconveniences; they may expose to publick inspection, or to publick punishment, publick bad men and publick bad measures."

Sirica pointed out that federal grand jury reports and evidence have been made available in the past not only to bar association committees for disciplinary investigations involving lawyers, but even, in a case involving Chicago policemen, to a city police disciplinary board and to the public.

"... It seems incredible that grand jury matters should lawfully be available to disbarment committees and police disciplinary investigations and yet be unavailable to the House of Representatives in a proceeding of so great import as an impeachment investigation," Sirica said.

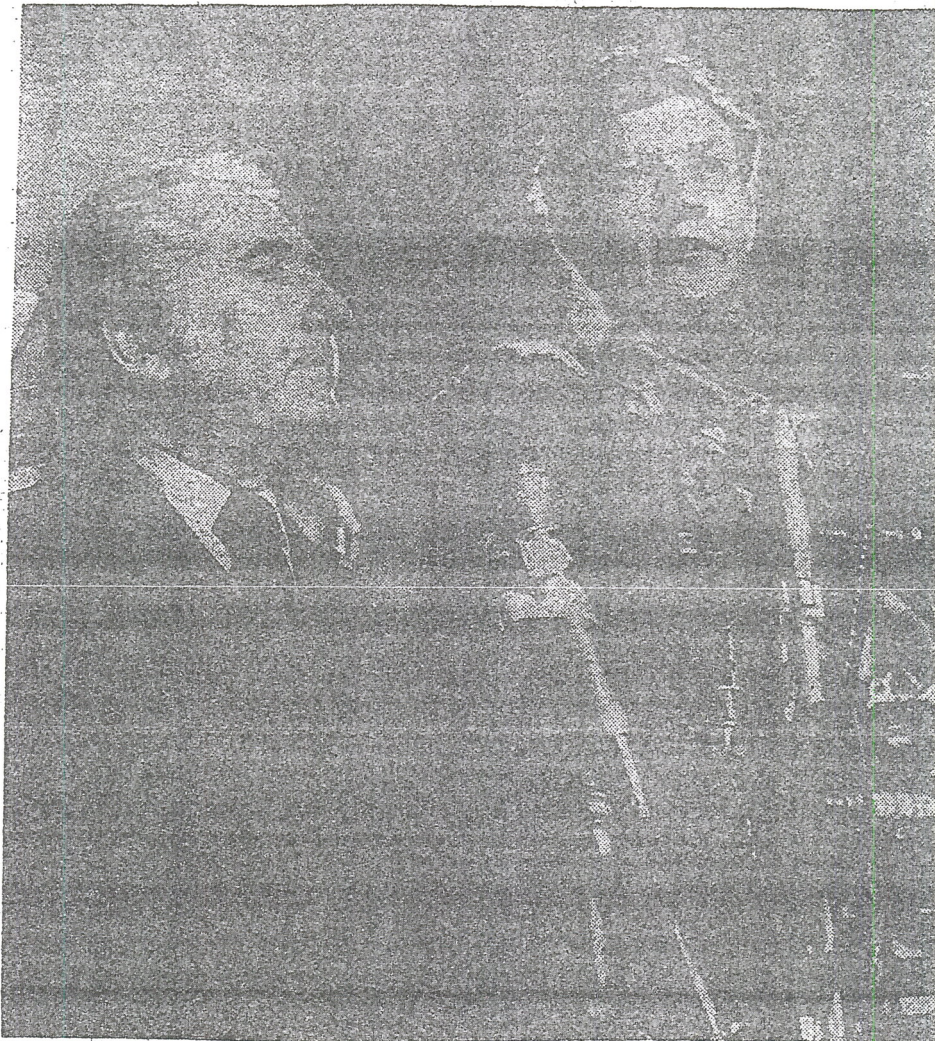
Going back as far as 1811, the judge said, there was also convincing common-law precedent for his ruling. In the 1811 case, the presentment of a county grand jury in the Mississippi Territory setting forth charges against a U.S. territorial judge, was sent to the House for an impeachment inquiry. (The House conducted a committee investigation and found the evidence against the judge inadequate.)

Several federal court decisions have resulted in the suppression of grand jury reports, but Sirica said they were inapplicable. In a 1952 case, a federal grand jury in New York wanted to send evidence of labor racketeering to federal labor officials. Its report was expunged because it was laced with accusatory pronouncements and gratuitous recommendations for the National Labor Relations Board.

By contrast, Sirica said the Watergate grand jury had "obviously taken care to assure that its report contains no objectionable features, and has throughout acted in the interests of fairness." He said the report was "clearly within the bounds of propriety."

"The grand jury having thus respected its own limitations and the rights of others," the judge held, "the court ought to respect the jury's exercise of its prerogatives."

Turning to the question of



By Charles Del Vecchio—The Washington Post

House Judiciary Committee Chairman Peter W. Rodino, left, and committee counsel John Doar brief reporters after Judge Sirica's decision to release grand jury report.

the report's disclosure, Sirica pointed out that the grand jury has recommended "not public dissemination, but delivery to the House Judiciary Committee with a request that the report be used with due regard for the constitutional rights of persons under indictment."

As for Mr. Nixon himself, the ruling stated, "the report's subject is referred to in his public capacity, and, on balance with the public interest, any prejudice to his legal rights caused by disclosure to the committee would be minimal . . . The report is not an indictment, and the President would not be left without a forum in which to adjudicate any charges against him that might employ report materials."

Sirica said "the only significant objection" to sending the report to the House committee was the claim—made by law-

yers for Haldeman and Ehrlichman—that it was prohibited by the Federal Rules of Criminal Procedure.

Those rules permit disclosure of grand jury matters only by court order "preliminarily to or in connection with a judicial proceeding." John J. Wilson, chief attorney here for Haldeman and Ehrlichman, had contended that the House impeachment inquiry cannot be considered "a judicial proceeding."

Sirica said the rules are far from clear on that point, but held they could hardly have been meant to dictate "that in this situation, disclosure to the Judiciary Committee be withheld." In addition, he said, the traditional reasons for preserving the secrecy of any grand jury's work — such as preventing the flight of those about to be indicted and protecting witnesses — have dissipated in the Watergate case.

Emphasizing the importance of the House impeachment investigation, Sirica said even public disclosure of the grand jury's report might well be justified. But in any event, he said, there is "certainly ample basis for disclosure to a body that in this setting simply acts as another grand jury."

Sirica concluded his decision on the secret report with an explicit request that the Judiciary Committee use it "with due regard for avoiding any unnecessary interference with the court's ability to conduct fair trials of persons under indictment."

But he also noted that the committee has already taken "elaborate precautions to insure against unnecessary and inappropriate disclosure of these materials" and said he could not justify withholding the report "on the basis of speculation that leaks will occur."