

NYTimes MAR 2 1974
Charges of Nixon Misconduct Inferred
By Lawyers Analyzing Action of Jury

By WARREN WEAVER Jr.

Special to The New York Times

WASHINGTON, March 1 —

Federal grand juries issue reports rather than indictments so rarely that today's action by the Watergate grand jury prompted widespread discussion among lawyers and politicians of its potential meaning for President Nixon.

Unlike grand juries operating under the supervision of state courts, Federal grand juries generally observe the broad stricture to "indict or shut up" and thus do not issue the general statements on deplorable conditions that are technically known as presentments.

As a result, legal authorities concluded today that the Watergate report probably contained specific charges of misconduct that might constitute crime but were not handed up in the form of indictments for one of two legal reasons.

First, if the report includes charges against the President that might ordinarily form the basis for one or more indictments, the grand jurors may have chosen this mechanism because of their belief that the President is immune from prosecution for crime while in office.

Agreement on Law

Virtually all criminal law authorities agree that the President is not subject to legal process while in office, cannot be compelled to appear in court and is for all practical purposes not triable. Thus any attempt to indict him would be doomed from the start.

Second, if the report contains charges that would not ordinarily support a criminal indictment, the grand jury may have used the document as a vehicle to convey the information to the investigating body empowered to consider this kind of accusation, the House Judiciary Committee.

A pitched debate is under way as to whether the House committee can properly recommend impeachment of the President on the basis of in-

formation that would not support a criminal indictment in court.

The White House maintains that only accusations of crime are valid grounds while the committee staff and a majority of its members argue that impeachment can be voted on the basis of serious misconduct in office that does not necessarily constitute a crime.

The Department of Justice, in a report issued earlier this week, held that it was an open question, not clearly resolved by statute or precedent

Some legal authorities questioned today whether a regular grand jury, such as the Watergate panel, had authority to issue a report. The Federal Criminal Code gives such power to special grand juries, empanelled with the approval of the Justice Department, but is silent as to regular grand juries.

Other lawyers, however, said that grand jury reports, while relatively rare, were issued before the 1970 statute creating special grand juries was passed, and that there were thus a number of precedents for today's action.

Judge John J. Sirica has a number of alternate courses in dealing with the grand jury report. In the first place, he may strike all or part of it from the record if he finds some charges unsubstantiated or scandalously unfair. Such portions would be automatically and permanently sealed.

Under the Federal Criminal Code, the judge must compare the report with the grand jury minutes. If he concludes that the subject matter was within the grand jury's jurisdiction and the conclusions are supported by the "preponderance of the evidence," he issues an order accepting the report.

He must also first be assured that anyone named by the grand jury in the report has been given the opportunity to testify on his own behalf. This, presumably, was the reason President Nixon was requested to appear by the grand jury

a month ago. He refused, as he reported in his news conference this week.

It is possible that the House Judiciary Committee could claim to be such an agency with respect to the President. In the light of its current impeachment study, the law, in the absence of specific statute or precedent, is unclear.

The criminal code also provides that any person named in a report has the right to submit an answer, stating his defense to the charges, which then becomes an appendix to the report and is made public with it.

The presentment, another name for a grand jury report, goes back to the reign of William the Conqueror (1066 to 1087), who charged a grand jury with determining who owned what land in England after the Norman invasion and then used its report to displace property owners in favor of his lords.

Historically thereafter, the presentment was the grand jury's record of its accusations written in Anglo-Saxon, which the prosecutor then translated into Latin, whereupon it became an indictment.

Later the term presentment was restricted to reports by grand juries that stopped short of accusing any individual of a crime. That mechanism is used in a number of states in which grand juries regularly issue reports criticizing conditions in the jails and operation of other public agencies.

Public Phone Is for 'Free'

LONDON (AP)—A blown fuse in telephone exchange equipment permitted callers from booths at London's Heathrow Airport to phone without paying, an official reported. A witness said at least one of the free calls was to New York.

Counterfeit Bill Pays Fine

NEWMARKET, Ontario (AP)—The police in this town near Toronto found a counterfeit \$50 bill among money collected in fines.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOHN N. MITCHELL, HARRY R.
BALDEMAN, JOHN D. EHRLICHMAN,
CHARLES W. COLSON, ROBERT C.
HARDIAN, KENNETH W. PARKINSON,
and GORDON STRACHAN,

Defendants.

Criminal No.

Violation of 18 U.S.C.
§§ 371, 1001, 1503, 1621,
and 1623 (conspiracy,
false statements to a
government agency, ob-
struction of justice,
perjury and false
declarations.)

INDICTMENT

The Grand Jury charges:

Introduction

1. On or about June 17, 1972, Bernard L. Barker,
Virgilio R. Gonzalez, Eugenio R. Martinez, James W. McCord,
Jr. and Frank L. Sturgis were arrested in the offices of
the Democratic National Committee, located in the Water-
gate office building, Washington, D. C., while attempting
to photograph documents and repair a surreptitious elec-

Part of the first page of the indictment handed up yesterday in Washington