



PERSON OF THE YEAR

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1973

Judge John J. Sirica

FROM THE TIME ARCHIVE

Jan. 2, 1974

There was little ennobling in the broad shape of human affairs in 1973. Mankind progressed haltingly, if at all, in its tortuous quest for greater wisdom in the conduct of international relations and greater brotherhood among individuals. The U.S. continued to improve relations with China and clung to a strained detente with the Soviet Union. But political sentiments elsewhere still were expressed in the blood language of terrorist bombs and bullets, from Belfast to Madrid, Rome to Khartoum. Once more men died in battles on the hot sands of the Sinai and in the barren Golan Heights. The first freely elected Marxist leader in the world was killed in a right-wing rebellion in Chile; a changing of the guardians refurbished authoritarian rule in Greece. For Americans, the dying finally ended in the paddyfields and jungles of Viet Nam, but more than 50,000 Vietnamese killed each other after the long-awaited "peace."

Yet more than any other event, it was the multifaceted Watergate affair, the worst political scandal in U.S. history, that dominated the news in 1973. As it gradually unfolded, involving more and more areas of President Richard Nixon's Administration, it revealed a shocking disdain for both the spirit and letter of the law at the highest levels of Government. Ultimately, not only the primacy of the rule of law on which the American system rests but the presidency of Nixon stood challenged, plunging the U.S. into a grave governmental crisis. Fittingly, it was the American legal system, which had trained so many of the malefactors caught in the Watergate web, that came to the rescue.

One judge, stubbornly and doggedly pursuing the truth in his courtroom regardless of its political implications, forced Watergate into the light of investigative day. One judge, insisting that not all the panoply of the presidency entitled Nixon to withhold material evidence from the Watergate prosecutors, brought the White House tapes and documents out of hiding. For these deeds, and as a symbol of the America judiciary's insistence on the priority of law throughout the sordid Watergate saga of 1973, TIME's Man of the Year is Federal Judge John Joseph Sirica.

A Judicial Search for Truth and Justice

Set against the widespread abuse of Executive power exemplified by Watergate, Sirica's performance was particularly reassuring as a testament to the integrity of the institution he represents. Of proudly humble origins and with no pretensions to legal erudition, Sirica, at 69, culminated his career only a year from retirement as chief judge of the U.S. District Court for Washington, D.C. He had from the outset no ambition other than to do his job in the Watergate cases; find the truth, see that justice was done.

Modest and unimposing in speech and stature out of court, the 5-ft. 6-in. jurist towered and glowered from his bench, openly indignant at what he considered evasions and deceptions in testimony before him. He simply did not believe that the seven lowly burglars who had wiretapped Democratic National Committee headquarters at Washington's Watergate complex in June 1972 were a self-starting team working alone. Injudiciously, some have argued, but undeniably in the higher national interest, as others would insist, he applied pressure until he got a scandal-bursting response. Once James W. McCord Jr. began to talk, the White House conspiracy to keep Watergate "a third-rate burglary" came apart at the seams.

Sirica used his same rugged courtroom common sense to cope with the challenge of a historic constitutional clash between branches of Government. Even a President must respond to subpoenas for evidence in criminal cases, Sirica ruled. Judges, not the President, must ultimately decide whether claims of Executive privilege to withhold such evidence are valid. Presidents, in short, are not above the law. The Circuit Court of Appeals for the District of Columbia upheld him; and in the end, Nixon gave up, partly because he feared that the Supreme Court would also see it Sirica's way.

Other characters in the Watergate drama, most notably the President, around whom the whole affair revolved, played major roles. Yet Nixon, to his own detriment, never took

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charge of the scandal, continually reacting to events rather than shaping them. The remarkable Senator Sam Ervin, who rose spectacularly as a national folk hero in chairing the historic Senate Watergate hearings, employed literary allusions and unabashed outrage to effectively belittle the many evasive and amoral Nixon men who came before him.

Archibald Cox, the determined Special Prosecutor, refused to accept a unilateral Nixon "compromise" designed to circumvent Sirica's orders regarding the presidential tapes, and publicly protested Nixon's command that he desist from seeking further presidential evidence. Fired by Nixon, Cox bowed out with a Brahmin civility that inspired a fire storm of protest at his dismissal. Former Attorney General Elliot Richardson, too, stood as a staunch symbol of integrity in the celebrated "Saturday Night Massacre" by defying the White House decree that he fire Cox. Richardson resigned instead, further arousing national indignation.

A Trio of Global Actors

The Watergate drama in Washington could not, of course, completely obscure the principal actors elsewhere on the world stage. Three were particularly notable for their roles during 1973. Egypt's President Anwar Sadat skillfully courted alliances among Arab leaders, then launched the coordinated Yom Kippur attack by his armies and those of Syria on Israeli-occupied territories. Although the strike was ultimately successful, the fact that the invading armies were not instantly crushed by the Israelis restored a measure of Arab pride that may help make a Middle East settlement possible. Saudi Arabia's King Feisal responded to the urgings of militant Arab leaders and curtailed oil shipments to nations that the Arabs deemed too friendly with Israel. The immediate impact was devastating. The long-term repercussion could prove beneficial, however, as a grim reminder that industrialized nations have for too long wasted energy and recklessly failed to develop alternate sources of it.

Most important of the three men was Henry Kissinger, the U.S. Secretary of State and presidential advisor. As Nixon was engulfed by Watergate, Kissinger became, in effect, America's president for foreign affairs. He ranged the world in a virtuoso performance of solo diplomacy. He twice toured major capitals of the Middle East, first to help achieve a cease-fire, then to complete arrangements for a Geneva conference seeking a long-range settlement. Twice he flew to Moscow to bolster detente or ease the Middle East crisis. He also undertook two missions to China, building on the diplomacy initiated the year before by Nixon and himself.

Kissinger played a key role, too, in the year's most significant foreign policy achievement; the negotiated withdrawal of U.S. combat forces from the nations' debilitating involvement in the Viet Nam War. However tardy, the settlement allowed 587 American prisoners of war to return home, the draft to be suspended and the domestic strife that had inspired a rebellious counterculture to be eased. It did not, however, achieve a true peace for Viet Nam itself and at year's end fighting continued almost unabated.

Following directly on the shattering U.S. experience in Viet Nam, it was the turbulent U.S. political crisis that made some of the world worry about the stability of America and question its capacity to play a global role. Various disbelieving, saddened, sickened and cynical, many Americans, too, lost faith in leaders who had betrayed their trust. One who had most blatantly done so was Spiro Agnew, an acerbic apostle of righteousness who had thrived as Nixon's Vice President on strident demands for harsh judgements against all who disagreed with his own rigid concepts of acceptable ideology and permissible—but never permissive—behavior. Then, faced with overwhelming evidence of his own criminal corruptness and petty greed in accepting graft from Maryland contractors, Agnew successively claimed innocence, lashed out at his accusers, copped a plea on income tax evasion, and quit.

A Vice President admitting criminal activity was shocking enough. But with the gradual, string-by-string unraveling of Watergate, the resulting revelations indicated an astonishing pervasiveness of corruption among Nixon's political and official associates. Theirs was a lust for the enhancement of their leader carried far beyond acceptable limits. That made it all the more menacing to democracy, if less alarming to those who insisted that, after all, nothing was stolen and no one was killed. No fewer than twelve of Nixon's former aides or the hands they hired were convicted of crimes. Six others, including two Cabinet members, were indicted. At least seven more Nixon officials seem certain to be indicted when the three federal grand juries now at work in Washington complete their tasks. The total of all those charges with crimes could surpass 30.

Later trials may absolve some defendants, but the range of criminal charges against them is appalling. It includes perjury, burglary, illegal wiretapping, obstruction of justice, destruction of evidence, fraud, extortion, solicitation of illegal campaign contributions, violation of campaign funding laws, subornation of perjury, illegal distribution of campaign literature, and various forms of conspiracy to commit illegal acts. No such litany of illegality has ever before been officially leveled against the associates of any U.S. President.

The Allegations Against the President

But as the scandal ballooned well beyond a political burglary and its cover-up, wide-ranging allegations against Nixon himself became part of the sordid affair. They included

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contentions that Nixon had: 1) intervened in an antitrust action against ITT in return for political contributions; 2) raised milk support prices and reduced dairy imports for similar considerations; 3) issued orders leading to the burglary of the office of Daniel Ellsberg's psychiatrist; 4) offered to appoint the judge in the Ellsberg case FBI director, as a means of influencing his decision in the case; 5) ordered or condoned illegal wiretapping and other "White House horrors" perpetrated by his self-appointed "plumbers"; 6) obstructed justice by firing Prosecutor Cox; 7) directed or knew about the solicitation of illegal campaign contributions from corporations; 8) misused public funds in improving his residences in Key Biscayne and San Clemente; 9) failed to pay his proper share of federal and California income taxes; 10) had altered or disposed of some presidential Watergate tapes.

Richard Nixon's culpability is not yet clear, although the president of almost anything else would have been quickly forced to resign by a scandal which infected so much of his organization. Moreover, the strange oscillations in White House attitudes toward the various investigations raised grave doubts about Nixon's innocence. First there were blanket denials, lavish claims of Executive privilege and invocations of national security. Then came repeated clarifications, previous statements declared "inoperative," and multiple promises of full disclosure. Subpoenas were resisted. The persistent Special Prosecutor was fired. Next a sudden yielding to the courts, followed by an Operation Candor that was far from candid, claims that crucial tapes were "nonexistent" and the revelation of a mysterious flaw in one recording. Observes TIME Washington Bureau Chief Hugh Sidey: "It all falls into place, it all makes sense, if one makes a very simple assumption: Nixon is guilty—he knew what his men were doing and, indeed, directed them." Otherwise, it was all irrational behavior—and that, too would be frightening in a President. As a result, Nixon, who began the year as the most decisively re-elected President in U.S. history, ended it facing demands for his resignation and an impeachment inquiry by the Judiciary Committee of the House of Representatives.

As 1973 began, the Watergate wiretapping was widely regarded as a mysterious political operation, its origins unknown and its seriousness unappreciated. Candidate George McGovern had been unable to stir much interest in it as a campaign issue. Except for dogged digging by a small segment of the U.S. press, most notably the Washington Post and TIME, the entire matter might have faded from public view.

While the news stories traced some links between the White House and the electronic eavesdropping on the Democrats, the Justice Department prepared to handle the case routinely. Henry Petersen, head of the department's criminal division, assigned a team of bright but junior prosecutors, including Earl J. Silbert, Seymour Glanzer and Donald Campbell, to the task. At Petersen's direction, they showed little zeal for tracing the source of the funds used by the men arrested at the Watergate or determining who had authorized the politically motivated crime.

The case of the seven original defendants did not look all that ordinary to Judge Sirica, who had been reading the newspapers and later told some reporters: "I was only asking myself the same questions you were." As chief judge of the District Court, he had the duty to assign the case to one of 15 judges—and he took it himself. That was partly because he had a relatively light docket at the time, but also because he felt that if he as a Republican judge handled the matter, and did so fairly and aggressively, no charges could be leveled that partisanship had entered the judicial process.

The Appearance of Justice Must Prevail

Thus on Jan. 11, ten days before Nixon was inaugurated for his second term in a mood of festive partying and high spirits, Sirica presided solemnly in his fifth-floor courtroom in the beige U.S. Court House and served notice that he regarded the Watergate burglary as a far from simple matter. E. Howard Hunt Jr., sometime White House consultant, CIA agent and mystery novelist, offered to plead guilty to three of the six charges against him as one of the seven men arrested for the Watergate wiretapping-burglary. In this case, answered Sirica, the public would have to be assured that not only "the substance of justice" but also "the appearance of justice" was preserved. Also, because "of the apparent strength of the Government's case" against him, Hunt would have to plead guilty to all six counts or go to trial for each, Hunt admitted his guilt on all of them.

"Don't pull any punches—you give me straight answers," warned Sirica when the four Cuban Americans arrested at the Watergate pleaded guilty four days later. If anyone else was involved, Sirica added, "I want to know it and the grand jury wants to know it." The four insisted that the conspiracy stopped at the low levels of their arrested leaders: Hunt, G. Gordon Liddy, another former White House consultant and counsel for Nixon's 1972 re-election finance committee; and James W. McCord Jr., a former CIA electronic-eavesdropping expert and security chief for Nixon's re-election committee. Where did they get the money to carry out their operation? They did not know. Snapped Sirica: "Well, I'm sorry, but I don't believe you."

Sirica was still skeptical when the Government's main witness, Former FBI Agent Alfred C. Baldwin, admitted at the trial of Liddy and McCord that he had monitored many of the conversations of Democrats on a radio receiver in the Howard Johnson's motel across the street from the Watergate. But Baldwin also insisted that he could not recall to whom at the

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Nixon re-election committee he had delivered records of the intercepted talks. "Here you are an FBI agent and you want the court and jury to believe that you gave [them] to some guard you hardly knew? Is that your testimony?" asked Sirica. It was indeed.

With the jury out of the courtroom, Sirica dismissed as "ridiculous, frankly" the claim by McCord's attorney, Gerald Alch, that McCord had helped bug the Democrats in hopes of detecting plans of radicals for acts of violence against Republicans during the campaign. If McCord really believed that, Sirica suggested, he should have called police, the FBI or the Secret Service. Well, could McCord's defense be based on the claim that he had no criminal intent? "You may argue it," Sirica told Alch. "Whether the jury will believe you is another story."

The jury did not, finding both McCord and Liddy guilty on Jan. 30 of burglary, wiretapping and attempted bugging. At a bail hearing for the two conspirators, Sirica urged the Government's prosecutors to put certain Nixon officials "under oath in the grand jury room." At least one, former Commerce Secretary Maurice Stans, had been permitted by the prosecution to submit a sworn statement to the grand jury in lieu of testifying. "I am still not satisfied that all of the pertinent facts have been produced before an American jury," Sirica declared. He reminded the prosecutors of a list of persons he wanted them to question again.

Following judicial routine, Sirica ordered presentencing investigations for all seven defendants. But going beyond normal procedure, he let the convicted men know that the severity of sentences would depend heavily on the degree to which they cooperated with probation officers and investigators still probing the Watergate crimes. One potential truth-bearing forum looming ahead at the time was that of Sam Ervin's Senate Select Committee. Sirica welcomed the hearings despite the fact that they could complicate some criminal prosecutions. "Not only as a judge but as one of millions of Americans who are looking for certain answers," Sirica said, he hoped the Ervin committee could "get to the bottom of what happened in this case."

The combination of the impending hearings, twinges of conscience, and Sirica's not very veiled hints at severe sentences was too much for one of the previously uncommunicative conspirators. On March 20 Sirica stepped out of his chambers and into his office reception area to find James McCord standing there with a letter in his hand. A clerk told the startled judge that McCord wanted to see him privately. Sirica, who never allows a defendant or convicted individual to approach him privately before sentencing, quickly retreated into his chambers and ordered McCord to leave. He said McCord would have to hand any communication to his probation officer on a lower floor.

For Sirica, it was an awkward situation. Perhaps McCord was offering incriminating information on others. But what if the envelope contained money, and some sinister plot to frame the judge was under way? Should he have any private dealings at all with McCord, if only to accept a letter? Should he just turn the envelope over to Government prosecutors and let them open it? But what if it contained something McCord did not even want the prosecutors to know?

Sirica resolved the matter instinctively, reverting to a career-long tendency to get everything possible on the official record. He summoned two law clerks, a court reporter, a bailiff, and the probation officer with the letter. Sirica would open it only in their presence, and he would read it immediately into the record. As he did so, the implications of McCord's message immediately hit Sirica. "I knew this might throw light on things we suspected but didn't know," he explained later. "It convinced me I'd done exactly the right thing in asking all those questions."

Three days later, Sirica acted on another of his habits; when in doubt, make matters public. He read the McCord letter to a crowded courtroom. McCord had written that he feared "retaliatory measures against me, my family and my friends," said he did not trust the regular investigatory agencies enough to give them the information but felt he must disclose that: 1) political pressures from high officials had been "applied to the defendants to plead guilty and remain silent"; 2) perjury masking the motivations of the defendants had occurred during the McCord-Liddy trial; and 3) "others involved in the Watergate operation were not identified during the trial, when they could have been by those testifying." After he had read the letter and watched newsmen rush for telephones, the import struck Sirica again, almost like a physical blow. He felt pains in his chest, ordered a recess in the proceedings and retired to his chambers to rest.

When McCord again detailed his charges to Government and Senate investigators, he claimed he had been told that former Attorney General John Mitchell had approved the Watergate wiretapping plans, that all the defendants had been given regular installments of payoff money to keep quiet, that he and others had been promised Executive clemency in return for their silence after serving short prison terms, and that this offer came from the White House. McCord's sources of information were Liddy and Hunt, making his own testimony hearsay and this legally inconclusive in a criminal case. But the fact that McCord was talking broke the conspiracy of silence—and blew open the whole scandal.

Sirica then deferred sentencing McCord. But in the most controversial act in his entire

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handling of the Watergate affair, he also kept the pressure on the other convicted conspirators to talk too by giving them harsh provisional sentences ranging up to 40 years. He called their crimes "sordid, despicable and thoroughly reprehensible." He promised to review the sentences later and said that the final sentencing "would depend on your full cooperation with the grand jury and the Senate Select Committee." Sirica's expressed purpose: "Some good can and should come from a revelation of sinister conduct whenever and wherever such conduct exists."

Solid evidence that the extreme sentences would not be finally imposed came when Sirica sentenced Liddy, the one conspirator who apparently intended to live up to the omerta training of a clandestine agent by stubbornly remaining silent. Liddy was given a term of from six years and eight months to 20 years. When he was granted immunity against further prosecution and recalled before the grand jury for questioning about other conspirators, he still balked—so Sirica on April 3 gave him an additional prison term for contempt of court. Frankly conceding that he was wielding a judicial club, Sirica said that the aim was "to give meaning and coercive impact to the court's contempt powers."

At a higher level, the cover-up was now crumbling. White House Counsel John Dean had warned Nixon on March 21 that "there was a cancer growing on the presidency." Dean spirited documents from his own files out of the White House, put them in a bank safe-deposit box and gave the keys to Sirica. When the White House on May 14 asked Sirica to return the Dean documents, the judge refused. He would keep the originals and give copies to new Watergate Special Prosecutor Archibald Cox and the Ervin committee staff.

Sirica complied with a Senate committee request by giving limited immunity against prosecution to Dean and another suddenly talkative witness, Jeb Stuart Magruder, deputy director of Nixon's re-election committee. They could still be prosecuted, but not on the basis of evidence gleaned solely from their televised testimony. Sirica also flashed a judicial green light for the hearings to proceed as planned by rejecting a Cox motion that television and radio coverage of Dean's and Magruder's testimony be banned. Cox had argued that the wide publicity could jeopardize future criminal cases against individuals.

The Parade Before the Ervin Committee

Throughout much of the summer, the nation's attention shifted from courtroom to caucus room as the familiar Watergate names turned into unforgettable images on America's television screens. This was television's greatest contribution yet to public understanding of a historic and confusing event in American political history. More than all of the news accounts, more than the proceedings in Judge Sirica's courtroom, the Senate Watergate hearings dramatized the issues and personalities, permitting millions of Americans to make up their own minds about whom to believe and whom to doubt.

Some of the once faceless Nixon operatives readily admitted their own guilty roles in the several Watergate conspiracies. Others unconvincingly denied any participation by themselves or anyone at the White House. But only the relatively powerless John Dean, tainted but nevertheless courageous in his turncoat testimony, made grave accusations of the President's participation in the cover-up. His chilling tale, conveyed in a lifeless baritone, was sharply denied by such far more influential and shrewd Nixon intimates as H.R. Haldeman, John Ehrlichman and John Mitchell.

Nixon stood on his earlier claims that he had known nothing of the wiretapping in advance, never approved clemency for the defendants, was unaware of the payoffs to them and played no part in the conspiracy to conceal. Then, dramatically, a means to break the testimonial impasse was revealed: Alexander Butterfield, a former White House aide (now head of the F.A.A.), told the Ervin committee that most of the President's White House meetings and telephone calls had been secretly recorded. The Senate committee and Prosecutor Cox promptly issued subpoenas for key tapes.

That brought Judge Sirica back on center stage in an unfamiliar and challenging role. In 16 years on the federal bench, Sirica had handled a wide gamut of criminal trials and civil suits, including highly complex antitrust cases. But now he was being asked to rule on an unprecedented claim by the Executive Branch that a President is immune from subpoenas because the courts have no power to enforce any order against him; that only the impeachment process of Congress can touch him. Moreover, argued Nixon's legal consultant, University of Texas Law Professor Charles Alan Wright, Nixon's tapes were protected by the unwritten doctrine of Executive privilege. Only the President had the power to decide which of his documents were so privileged or which might also endanger national security if made public. At issue, contended Wright, was "nothing less than the continued existence of the presidency as a functioning institution."

Sirica did not agree. In an opinion praised by some legal scholars as unexpectedly erudite, he wrote that he was "extremely reluctant to finally stand against a declaration of the President of the United States on any but the strongest possible evidence." Nonetheless, he would have to examine the tapes himself in order to determine whether the President's case for not yielding them was valid. "In all candor," Sirica said, "the court fails to perceive any reason for suspending the power of courts to get evidence and rule on questions of privilege in criminal matters simply because it is the President of the United States who holds the

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evidence" Asked Sirica rhetorically: "What distinctive quality of the presidency permits its incumbent to withhold evidence? To argue that the need for presidential privacy justifies it is not persuasive." As for impeachment, that could be "the final remedy" in "the most excessive cases," but "the courts have always enjoyed the good faith of the Executive Branch." Sirica, in short, would not expect Nixon to ignore a court order.

White House Turnabout on Giving Up Tapes

Sirica had the satisfaction of seeing his opinion essentially upheld by the Circuit Court of Appeals, which observed: "Though the President is elected by nationwide ballot and is often said to represent all the people, he does not embody the nation's sovereignty. He is not above the law's commands.

On Oct. 19 Nixon announced that he would not appeal the case to the Supreme Court. Instead, he would make available a summary of each of the subpoenaed tapes and would allow Senator John Stennis of Mississippi to listen to the tapes to see if the summary was accurate. There was no reason for Prosecutor Cox to accept that unilateral arrangement, since he had a far better chance of getting the tapes themselves under Sirica's order. So Cox objected—and was fired by Nixon. Declared Cox after he was ousted: "Whether ours shall continue to be a government of laws and not of men is now for Congress and ultimately the American People to decide."

The clamor of public protest that followed the Cox dismissal and the virtually simultaneous resignations of Attorney General Elliot Richardson and Deputy Attorney General William Ruckelshaus shocked the White House. At first Counselor Wright, on the following Tuesday, Oct. 23, was prepared to argue before Sirica that the Stennis compromise met the thrust of the Court of Appeals' suggestion that an out-of-court solution to the tapes impasse be found. But clearly it did not meet Sirica's order to produce the tapes. Although Sirica will not say what he intended to do about it, he does admit that he "was prepared to act." Other judicial sources expected him eventually to cite the President for contempt of court. Suddenly, however Nixon changed his mind, ordered Wright to tell Sirica that he would "fully comply" with the subpoenas for the tapes. When Wright did so, astonishing almost everyone in Sirica's courtroom, the clearly incredulous judge smiled broadly and said, "Mr. Wright, the court is very happy the President has reached this decision."

The court was not at all happy, however, when another White House counsel, J. Fred Buzhardt, informed Sirica on Oct. 30 that two of the nine subpoenaed tapes were "nonexistent" because they had never been made. Sirica scowled even more sternly on Nov. 21 when Buzhardt sheepishly revealed another problem with the tapes: 18 minutes of a Nixon conversation with Chief of Staff Haldeman—the only part of the recording about Watergate—had been obliterated by a mysterious overriding hum. Again, Sirica ordered public hearings on this curious dwindling of the taped evidence.

Those unusual fact-finding proceedings produced the bizarre testimony of Rose Mary Woods, Nixon's longtime personal secretary. She said she had inadvertently kept her left foot on the pedal of a tape recorder while stretching behind her to answer a telephone call, at the same time mistakenly pushing the "record" button on the machine—and thereby erasing perhaps five minutes (but not 18) of the taped conversation. Asked in Perry Mason-style by Jill Wine Volner, an Assistant Special Prosecutor, to re-enact this, Miss Woods reached for an imaginary phone—and lifted her left foot. Sirica ordered all the tapes to be examined by a panel of technical experts for "any evidence of tampering."

While the technicians continued their studies—an undertaking Sirica described as potentially "most important and conclusive"—he and his young law clerk, Todd Christofferson, listened to the tapes through headphones in a jury room. Sirica upheld claims of Executive privilege or irrelevance on all or parts of three tapes, turning five over to the new Special Prosecutor, Leon Jaworski, and the grand jury. Although constricted, the tapes still were expected to be helpful in determining who had been more truthful, Nixon or Dean.

Convinced that legal processes were well in motion to get at Watergate truths, Sirica sentenced the long-jailed burglars to relatively light terms; the minimums ranged from one year to 30 months, much of the time already served. Said Sirica: "I've given you the lowest minimum I thought justified."

The Argument Over Sirica's Tactics and Conduct

Despite that outcome, Sirica has been severely criticized by some legal authorities for using the provisional-sentencing procedure as a device to get the defendants to cooperate with investigators. "We must be concerned about a federal judge—no matter how worthy his motives or how much we may applaud his results—using the criminal-sentencing process as a means and tool for further criminal investigation of others," contends Chesterfield Smith, president of the American Bar Association. The association's president-elect, James Fellers of Oklahoma City, much admires Sirica and his Watergate role but likens the sentencing tactic to "the torture rack and the Spanish Inquisition." Argues Law Dean Monroe Freedman of Hofstra University: "Sirica deserves to be censured for becoming the prosecutor himself." The University of Chicago's Law Professor Philip Kurland considers the harsh original sentences "a form of extortion."

cited in *Murphy v. USA*, No. 05-3965 archived on August 16, 2010

Sirica defends his action on grounds that no one seriously expected those severe sentences to be made final and that the law makes it mandatory that any provisional sentence must be the maximum possible; he did not have discretion to make it lower. Moreover, it could be argued that Sirica's efforts to determine the true motives and origins of the crime were relevant to his decision on how severely finally to punish the defendants. Yet it is also true that the men had every legal right to remain silent and that this particular use of provisional sentencing, while technically lawful, could infringe on their civil rights. Sirica, not much given to mulling over law theory, is unrepentant. To critics of his actions, including his persistent questioning of defendants from the bench, he has replied: "I'm glad I did it. If I had to do it over, I would do the same—and that's the end of that."

Many of Sirica's colleagues on benches around the country seem to agree with him. More broadly, his handling of the Watergate cases is widely seen as a vindication of the legal system at a time of great stress, Chief Judge David Bazelon, who heads the U.S. Circuit Court of Appeals for the District of Columbia, which has sometimes reversed Sirica rulings, contends that Sirica became enraged not because he believed he was being lied to personally, but because he thought the court was being lied to. He has humility, which is not a universal virtue among judges." Former A.B.A. President Bernard Segal calls Sirica "a shining light. He's shown firmness, understanding and great integrity." Declares a former partner of Sirica's in the Washington law firm of Hogan & Hartson: "He was the worst judge the Administration could have had on this case. He's a deep-dyed Republican who is genuinely outraged at what's happening in the party that put him on the bench."

Exposure of wrongdoing is, of course, the first requisite in achieving justice—and Sirica deserves the prime credit for taking those vital initial steps. Whether justice and law in the end will prevail still depends on the investigation by Prosecutor Jaworski and his determined staff, the outcome of numerous individual trials, and what may still be learned—and done about—the President's actions in the many Watergate-related improprieties. Sirica will continue to play a role in that process since he intends to remain an active judge on the bench even after he retires as chief judge in March. Early this year he will issue his ruling on whether the tapes were tampered with. He may well assign himself one or more of the major impending Watergate trials.

The future criminal cases, however, may not answer a key question: How could so much have suddenly gone so wrong? Certainly a longtime trend toward an increasingly dominant U.S. presidency was a factor. In a development beginning with Franklin Roosevelt, vastly enhanced by the romantic Camelot atmosphere surrounding John Kennedy, too much authority has been given by Americans to their Presidents and too much has been expected of them. Harvard Divinity Professor Harvey Cox goes so far as to contend that the U.S. public surrounds the Oval Office with a mystique that approaches "a national quasi-religious cultism."

Yet there is something unique in the Nixon character and the men he chose to aid him that spawned Watergate. Despite his intention of "returning power to the people," Nixon drew authority about him like a blanket of insulation—and waved it over domineering aides responsible only to himself. Unchecked by the accountability of Cabinet officers, who must look to the traditions of their office, answer to congressional committees and worry about legalities and public opinion, these apparatchik White House guardians cherished secrecy and told Nixon only what he wanted to hear.

The President in turn seemed at ease solely with such automatic yes men and relatively anonymous associates, but apparently confided fully not even in them. Yet he shared powerful prejudices with them, most dangerously a siege mentality in which so many other vague classifications of Americans—liberals, antiwar radicals, academic intellectuals, Eastern sophisticates, the press—were seen as enemies, akin to unfriendly foreign powers. They were to be subverted, subjected to surveillance and eavesdropping, and "screwed" by agencies of Government. Nixon's re-election campaign became a crusade in which any means were seen as justified to keep all those fearful foes out of power. National security was equated with Nixon security.

But how could so many attorneys, trained in concepts of justice and the rule of law, become involved? Orville H. Schell Jr., president of the New York City Bar Association, blames this on a tendency of many lawyers today to forgo their critical independence and to serve as in-house counsels for corporations, foundations and Government. Their powerful clients thus become their bosses; the lawyer's aim is to please, not to advise that what the boss wants done may be wrong. One law school dean is less charitable in faulting such a broad trend. He blames Nixon for hiring "legal midgets—underclass lawyers. That's why he was so surprised by the really classy guys like Cox, Richardson and Ruckleshaus."

Yet it is the legal profession that has, however belatedly and at first by a narrow edge, finally become most aroused about the transgressions against law and the Constitution that make up the dismal scandal. While the profession has moved forcefully through such men as Sirica, Cox and Richardson to acquit itself, it is still on trial, and whether justice will finally prevail is still in doubt.

No Single Outcome Can Please Everyone

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"We don't have a victory of good, we just have an exposure of evil," observes Professor Kurland. "Nothing has been triumphant but cynicism." Stanford Law Professor Anthony Amsterdam worries whether justice can possibly be done when the criminal evidence has been held up for so long by those who might be guilty. "It is as if in a bank robbery all evidence were given to the robber to hold for two years before trial."

Certainly if justice is not seen as prevailing by most Americans in the many trials still to emerge from the affair, a deepening cynicism and a rootless everybody-does-it syndrome of irresponsibility for individual acts may be Watergate's more lasting legacy. Whatever the outcome—most crucially including the fairness and thoroughness with which the President's political fate is resolved—millions of Americans will still consider the result wrong. Watergate thus is bound to leave a lingering bitterness among at least a minority of Americans.

Yet the nation may well be poised in a fateful fulcrum that will either tip predominant sentiment toward a new faith in its fundamental institutions—including Congress, the Constitution and the courts—or send it into a trough of public despair and anomie. The direction will depend to a large degree upon how many members of Congress, Government prosecutors, judges, jurors—and, indeed, the vast public jury—try to emulate the nonpartisan determination and faith of Judge John Sirica, who insists with simple sincerity that "if the truth just came out, we'll all be all right."

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