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Equal Justice in the Agnew Case?

AT FIRST GLANCE, there does seem to be something inherently unfair about the prison terms imposed on two Maryland businessmen last week in the aftermath of the Agnew case. The two—I. H. Hammerman II and Alan I. Green—have been sentenced to prison for 18 months and 12 months respectively while Mr. Agnew escaped imprisonment even though all three men were involved in the same “arrangement.” On its face, that is not fair. The lesser figures who admitted guilt and provided the government with crucial information about the situation are being punished more severely than the major figure who fought off the prosecutors as long as he could. And yet the matter is not as simple as that. There are other factors which have to be considered before you can conclude categorically that the judicial disposition of this matter has been unfair—or, putting it another way, that it could easily have been done more equitably.

In considering these other factors, it is necessary to begin with the day Mr. Agnew resigned as Vice President and appeared in court to plead *nolo contendere* to a charge of income tax evasion. In a statement submitted that day by U.S. Attorney George Beall, the arrangement between Messrs. Agnew, Hammerman and Green was laid bare. According to that statement, Mr. Agnew told Mr. Hammerman in 1967 that it was customary in Maryland for engineers to make substantial cash payments in return for state engineering contracts; Mr. Hammerman then arranged with seven engineering firms for these kickbacks of which Mr. Agnew got half and Mr. Hammerman and Jerome B. Wolff split the other half; at about the same time, Mr. Agnew and Mr. Green reached an understanding under which Mr. Green delivered \$2,000 or \$3,000 in cash to Mr. Agnew six to nine times a year; the frequency of the payments decreased somewhat after Mr. Agnew became Vice President; these payments were to ensure that Mr. Green's engineering firm got as much state work as possible. In his statement that day, Mr. Agnew did not discuss the details of this account of what happened. He did concede that he received \$29,500 in 1967 from persons who were awarded state contracts and deliberately failed to report it on his tax return. But he denied doing any other illegal acts, denied that the payments influenced his official actions, insisted contracts never went to incompetent engineers, and contended that his “acceptance of contributions was part of a long-established pattern of political fund raising in the state.”

If you believe the version of Mr. Hammerman and Mr. Green, who provided much of the information in the government's statement, this was a matter, to put it bluntly, of Mr. Agnew being willing to sell and the engineers being willing to buy. If you accept Mr. Agnew's version, these payments were political kickbacks in keeping with his old Maryland traditions. In either version, the arrangement was evil. If it was illegal as the prosecutors believe, and apparently as Messrs. Hammerman and

Green concede, those who participated in it deserved to be punished sufficiently to deter any such conduct in the future. Indeed, it can be argued that the punishment needed to be severe for the very reason that the practices to be deterred had become a way of life in Maryland politics.

Put in that context, it seems to us that Messrs. Agnew, Hammerman and Green *all* got off easy. Mr. Agnew escaped imprisonment because he had a bargaining position: he was Vice President, and the primary need at the time was to get him out of an office for which he was demonstrably unfit as quickly as possible. For their part, Messrs. Hammerman and Green were not prosecuted on the major charges that could have been brought against them because they cooperated so fully with the government. That, of course, does not remove the essential unfairness of the various dispositions of the case, just as there will be no way to square the sentences of various Watergate figures with the pardon of Mr. Nixon. The only thing the courts can do in all of these post-Agnew and post-Nixon cases is to treat the two principals as necessary exception to the ordinary judicial process; by the very uniqueness of the situation, these cases are unlikely to establish precedents. To insist on literal, equal justice would require the courts to let off all the lesser figures in both cases and to feed the belief in some sectors of our society that prisons are for the poor and weak, not the rich and strong. This, we believe, was a major factor in the decision of the judges to send Messrs. Hammerman and Green to jail despite the powerful plea of the U.S. Attorney for leniency.

This argument, of course, does not dispose of Mr. Beall's contention that prison terms for these two men will make it less likely that other conspirators in crimes of this kind will cooperate with the government in the future. But there are at least three answers to that. The first is that Messrs. Hammerman and Green told their story to the prosecutors without being assured of escaping prison and without even being assured that Mr. Beall would recommend probation for them. The second is that they might have fared far worse if they had not cooperated. The third is, as we have seen both in Maryland and in Watergate, that when the prosecutors are really digging hard and beginning to get close to the truth, someone almost always finds it in his interest to cooperate.

Thus, it seems to us that the sentences imposed on the two secondary figures in the Agnew case are just about as fair as they could have been expected to be under the extraordinary circumstances that prevailed. They are severe enough to make future participants think twice before engaging in political kickbacks of this sort. And they are a step back toward restoration of some part of the faith in the concept of equal justice under law that was lost by the special treatment, under unique conditions, that was afforded both Mr. Nixon and Mr. Agnew.