

Does 'Tough' Justice Make Sense?

"The only way to attack crime in America," President Nixon told Congress on March 14, "is the way crime attacks our people—without pity."

Mr. Nixon is prescribing strong medicine—the death penalty for some crimes, mandatory minimum sentences and no bail for others—to combat a difficult and serious problem. He is de-

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manding that judges put aside their emotions, disregard the compounded misery and potential for more broken lives that may result from handing out punishment "without pity" to those who break the law.

So consider the case of E. Howard Hunt Jr., a man who worked for Mr. Nixon at one time. Hunt stands guilty, by his own admission, of conspiracy, burglary, illegal wiretapping and eavesdropping—crimes that could bring him a possible maximum sentence of 35 years imprisonment and a \$40,000 fine—for his role in the bugging of the Democratic National Committee's Watergate headquarters.

When Hunt appeared before Chief U.S. District Judge John J. Sirica on March 23, he told the judge that he had already been "destroyed as a man." Four times in the course of speaking to Sirica, Hunt pleaded for "mercy." He lost his job, then his wife in an airplane crash, "both in consequence of my involvement in the Watergate affair," Hunt said.

"What I did was wrong, unquestionably wrong in the eyes of the law and I can accept that," Hunt said. "Your honor, I am the father of four children, the youngest a boy of 9. . . I cannot believe the ends of justice will be served by incarcerating me. To do so would add four more victims, young and innocent victims to the disastrous train of events in which I was involved."

In his defense, Hunt pointed out that "the offenses to which I pleaded guilty even before the trial began were not crimes of violence. To be sure, they were an affront to the state, but not to

the body of a man or to his property."

So Hunt posed two considerations for Sirica—one, that a prison sentence would cause incalculable misery to his four children and, second, that his offense was non-violent, a "white-collar" crime.

Mr. Nixon's own prosecutor, principal Assistant United States Attorney Earl J. Silbert, rejected the idea that the white-collar nature of the crime should result in a more lenient sentence for the convicted leaders of the Watergate conspiracy — G. Gordon Liddy, James W. McCord Jr. and Hunt.

"The adverse effects of the crimes of which the defendants stand convicted are far more harmful to the public interest than even an offense as aggravated as murder, rape or armed robbery," Silbert told Sirica. "What they have done is to generate a fear, whether realistic or not, that this illegal activity—wiretapping, bugging and burglary for political purposes—is both widespread and condoned."

Silbert asked for jail sentences to show "that this kind of conduct will not be tolerated."

The purpose of his tough new legislation, according to President Nixon, is deterrence. "When we fail to make the criminal pay for his crime, we encourage him to think that crime will pay," the President said in his radio speech of March 10. In sentencing Liddy, Sirica said one consideration was "the deterrent effect the sentences might have on other potential offenders."

The judge has not yet imposed a final sentence on Hunt. Should he be "without pity"? Should he disregard the lives of Hunt's children, risk the break-up of a family, compound the psychic damage already undoubtedly done to those four young minds and employ Mr. Nixon's formula to attack crime? Or should Sirica regard Hunt, not in the abstract, but as a human being?

If Judge Sirica is lenient with Hunt—a possibility the judge indicated he might consider if Hunt cooperates in two investigations now under way—will the judge be "soft-headed," as Mr. Nixon described unnamed judges in his radio speech?

And if Judge Sirica allows concern for Hunt's family to influence the final

sentence he imposes, what should be said to the thousands of other first offenders who are shipped off each year to our hopelessly inadequate prisons under the advocated policy of punishment "without pity"? They have families. Their wives and children also will suffer. Is their claim for pity any less pressing than that of Howard Hunt's children?

The question is not whether Howard Hunt should go to jail in order to maintain unflinching policy of punishing crimes, but whether inflexibility makes sense. When a human being stands before a judge for sentencing, should more be considered than some abstract, inflexible policy of "toughness" for the sake of deterrence in punishing crime?

This country draws its spiritual life from 5,000 years of experience with the Judeo-Christian tradition, a tradition Hunt referred to in his plea before Sirica.

"Throughout the civilized world we are renowned for our American system of justice," Hunt said. "Especially honored is our judicial concept of justice tempered with mercy. Mercy, your honor, not vengeance and reprisal as in some lands."

Howard Hunt and thousands of others who stand convicted of serious crimes may deserve jail sentences after all the considerations in each case are weighed. But to disregard concern—call it pity, or mercy, rational judgment—for their condition in making that decision is to disregard a basic element of what we have been proud to call the American way of life.