

Judge's Decision Appealed

Watergate 5 Refused Bond

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U.S. District Chief Judge John J. Sirica refused yesterday to release five of the original Watergate defendants on bond pending their final sentencing.

The men—E. Howard Hunt, Bernard L. Barker, Frank Sturgis, Eugenie Martinez and Virgil Gonzalez — pleaded guilty during last January's trial into the break-in and bugging of the Democratic National Committee Headquarters. They have motions pending in an attempt to withdraw those pleas and face trial.

They were sentenced to provisional terms of undetermined length by Judge Sirica after their guilty pleas and have spent the last 10 months in jail. Their attorneys contend that they should be allowed out on bond until their final term is imposed, and immediately appealed Judge Sirica's denial of that release yesterday.

In refusing to release the men, Judge Sirica said, "A guilty plea is a conviction of the highest order and challenges thereto are limited." He told defense attorneys that "any potential appeal or attack on the conviction may be unsuccessful," and therefore the men were not entitled to bond at this time.

Sidney Sachs, the attorney who represents Hunt, spent more than an hour yesterday in attempting to persuade Judge Sirica that Hunt should be freed. Sachs referred often to the "appearance of inequality" in that the actual perpetrators of the Watergate break-in are in jail while some of the planners of activities leading to and including the break-in are free.

Specifically, Sachs named Jeb Stuart Magruder, Fred LaRue, James McCord and Donald Segretti. McCord is free on bond pending appeal of his jury conviction in the original case; the other three men have entered guilty pleas since the original trial to charges in connection with the cover-up and other Watergate-related activities.

Judge Sirica said there is a difference in McCord's case and that of the five defendants whose motion was denied yesterday in that McCord has an automatic right to appeal since he was convicted by a jury. By pleading guilty, Sirica said, the five men have no automatic right of appeal.

As to Magruder, LaRue and Segretti, Sirica said he and another judge involved in accepting guilty pleas from those three had agreed to postpone sentencing until the full extent of their involvement in the Watergate scheme could be determined. That would be done, Sirica said, after trials are completed of others who may be indicted in Watergate. They are entitled to remain free on bond until sentenced; sentence as already been assessed against the five.

"He's in jail of his own doing," Sirica said of Hunt at one point. "I didn't break into the Democratic headquarters—he did."

Sirica's exchanges with Sachs often were heated, especially when Sachs pleaded that Hunt was railroaded into pleading guilty.

At one point, the judge said, "He (Hunt) knew what he was doing. We have here a man who is astute and intelligent. He has written 40 books or more. He's a college graduate. We don't have a young man or

a boy who was raised in the ghetto, so to speak, who doesn't know the ways of life."

Sachs claimed throughout the first of yesterday's hearing that Hunt should be released because he is not likely to flee and because he posed no danger to the community—two bond criteria followed when a person is awaiting sentencing. He placed two of Hunt's neighbors, a woman who is taking care of his children and Hunt on the stand to convince the judge that Hunt passed both tests.

"I don't think those statutes have anything to do with this situation," Judge Sirica said when the witnesses had completed their testimony.

Sirica also complained at least twice yesterday that his sentencing of the five men had been misunderstood, and singled out Sen. Herman Talmadge (D-Ga.) as one of the persons creating that misunderstanding. He referred to questioning of Hunt by Talmadge before the Senate Watergate committee in which the senator referred to Hunt's 30-year-jail term.

"I never had any idea of giving any of these men 30 years," Sirica said, as he had earlier in announcing their final sentences would be less but that the maximum was required under the provisional statutes he first applied.

"Congress can repeal that law if they wish, but until they do, Sen. Talmadge can't stop me and nobody in this country can stop me (from using that statute)," he said.

Judge Sirica set Oct. 29 for a hearing on motions connected with the five defendants' attempts to withdraw their original pleas, and Nov. 5 for a full hearing.