

Watergate Bargains: Were They Necessary?

Since the original Watergate break-in trial, only one defendant, Dwight Chapin, has been prosecuted all the way to a guilty verdict (he was convicted of perjury). Meanwhile, one by one, Frederick LaRue, Jeb Magruder, Donald Segretti, John Dean, Egil Krogh, Herbert Porter, Herbert Kalmbach, Richard Kleindienst and Charles Colson have all made bargains with the special prosecutor's office and pleaded guilty to reduced offenses. If nothing else, their pleas have raised doubts among both civil libertarians and law-and-order hard-liners: Were the deals really necessary?

By far the most controversial bargain was the one struck by former Attorney General Kleindienst. He faced a charge of having lied at his Senate confirmation hearing when he denied that he had been subjected to presidential pressure in the ITT case. But instead of being tried for perjury, he was allowed to plead guilty to the misdemeanor of having "refused to answer" certain questions. Many outside legal experts were astonished that Federal Judge George L. Hart Jr. accepted that strained version of Kleindienst's act. They were even more surprised when the judge handed down a soft sentence: the statutory minimum of one month in jail and a \$100 fine (both suspended).

Higher-Ups. Embarrassed prosecutors blame Hart's leniency for most of the uproar which has prompted more and more questions about all Watergate plea bargains. The practice itself is little admired but long established in the U.S. judicial system, where it is used mainly to reduce the number of trials on already crowded court dockets. But this consideration is scarcely relevant to Watergate; federal prosecutors defend their use of bargained pleas on other grounds. For one thing, the bargains have meant sure, final convictions in many cases that might have been shaky in court. Also, the lesser Watergate cases must be settled quickly, prosecutors say, so that evidence developed with cooperative defendants can be used against the higher-ups.

So far, so good. But just how hard has Jaworski's office been bargaining? Both Krogh and Colson were apparently allowed to enter pleas without first telling the prosecutors what they know. Recalling the deals he made as a federal prosecutor, Columbia Law Professor Abraham Sofaer says, "I always made sure what the evidence was. The individual involved has to become an ally of the Government in all respects."

The bargaining has also posed a tactical problem for the Watergate pros-

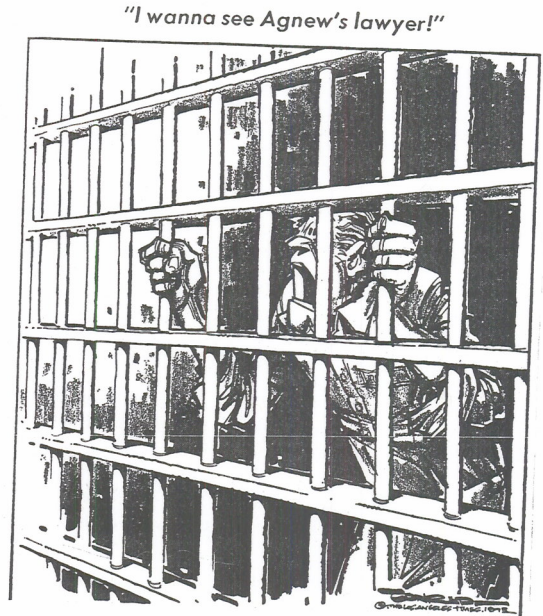
ecutors, as illustrated by the trial of John Mitchell and Maurice Stans in the SEC-Vesco case. While appearing for the prosecution, John Dean admitted that he hoped his testimony would help to hold down his own sentence; the jury consequently discounted most of what he said. Jaworski's office now seems to have decided that it is wiser to have sentences meted out before trying to use a bargained witness. So this week Colson will get his—as much as five years in prison plus up to a \$5,000 fine.

Prosecutorial tactics aside, there is the matter of proportion. The average convicted auto thief can usually expect to serve three years in jail. Even members of the Watergate burglary team who pleaded guilty face as much as a 2½-year minimum stretch behind bars. But thus far the heaviest sentence for those involved in the more direct abuse of the public trust has been Jeb Magruder's ten-month minimum term on a Pennsylvania prison farm. Justice Department officials argue that merely by acknowledging guilt the Watergate defendants pay a heavy human penalty in terms of shattered careers and families. Yet the car thief's future and family life is just as thoroughly devastated—and he still serves a longer term.

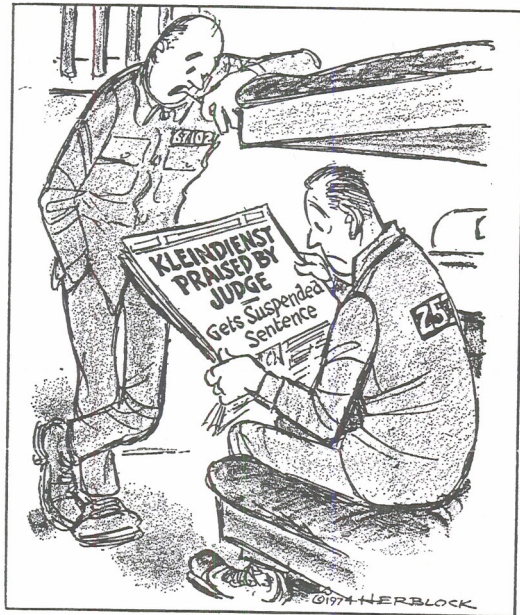
Rightly or wrongly, says Professor David Frohnmayer of the University of Oregon Law School, "a lot of people say that they think the high and mighty have not fallen as they should." That perception began with Spiro Agnew's jail-free plea last October on bribery and tax evasion charges. Says Boston Defense Lawyer Joe Balliro: "I'm constantly exposed to people now who say, in effect, 'Why can't you get me a deal like Agnew got?'" Such attitudes are a reminder of Felix Frankfurter's celebrated caveat: "Justice must satisfy the appearance of justice." For the special prosecutor's office, that may be as tough a problem as actually getting the big Watergate figures to court.



"I'd walk a million miles for a prosecutor's smile, maaaaammmmyyy!"



"I wanna see Agnew's lawyer!"



"You see, he's not a common criminal like us. He was chief law enforcement officer of the U.S."