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Watergate Sentences

As convicted Watergate defendants pass each other entering and leaving the cushier of the federal prison system's East and West Coast facilities, some public commentators and private observers are beginning to wonder about the gentleness of their sentences. Is the establishment going easy on its own outcast members? Is there a double standard afoot in the criminal justice system? Is this a time of new sentiment and compassion in the courts or is something more cynical happening?

The issue, bluntly put, is this: are there fair and valid reasons for courts to entertain special considerations in sentencing defendants in cases like these? Should a person's privileged or exemplary background relieve him from responsibility when he once errs;

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or does that background make his offense all the more blameworthy? Does the absence of personal violence in these kinds of cases eliminate the need for imprisonment? Are the social and personal costs these defendants endure punishment enough; or is that consideration an unacceptable elitist rationalization?

Some observers, including but not limited to ex-convicts in this town who are now leading exemplary lives, are outraged by the special considerations both in sentencing and otherwise (decorous departures from court instead of walking in shackles, for example) given by courts to white, establishment figures in trouble. They view the cases of people like Heidi Fletcher, John Dowdy, and especially the Watergate defendants with bitter cynicism. They know of examples of comparable situations involving poor blacks where the defendants got the book, not the breaks.

Rudolph Yates, the vice president of Efforts from Ex-Convicts (EPEC), has done time and now works helping offenders; he is a very savvy criminal justice expert whose advice I often seek because it comes from unique experiences and an especially bright mind. "All the guys down at Lorton doing 10, 20 and 30 years can't see no justice in the world. The judge who sentenced them didn't let them have two weeks to take care of their business like middle-class bourgeois people get. They get sentenced and, while they are

being taken back to the cage, they can wave to their family. The reason is that they don't have money to get a good attorney with the staff and legal ability to negotiate a misdemeanor which didn't even exist on the books; they don't have the cash money to go out of the country like Vesco and

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laugh at the system. Poor people don't have those avenues available to them.

"I see and hear from people every day who are serving long sentences. Their judges didn't give them or their families any mercy. Colson says he is all right with the Lord, but he ain't told us yet what we need to know. For him, one to three ain't enough.

"Black people aren't in a position to do some of the things that the Watergate people did," Yates continues, "like stealing an election, selling ambassadorships or raising milk parities. But when blacks steal, in effect they are doing the same thing as whites; going to great lengths for the acquisition of paper—money. But when black people get convicted, judges give them a bushel-basket full of time and go home and sleep without any ulcers because

they feel they are keeping the community safe."

How would you sentence a Colson, a Krogh, a Kleindienst, an Agnew or a Kalmbach? The question has been asked of me often in recent weeks, less because of my sympathy for these defendants or demonstrated judicial capacities, I should guess, than in view of my pleas for correctional reform generally and my outspokenness in favor of non-institutional treatment of offenders. I know how I would have handled these cases and, for what it is worth, here is what I would have done. In my courtroom, the following transcript of a sentencing hearing might be recorded:

"Mr. —, this court is impressed with your previous long exemplary, non-criminal career and is pleased to note the contrition you have expressed. I have no doubt that imprison-

ment would serve only the purpose of punishing you. While a prison sentence might deter others in similar situations, that is speculative at best and that same purpose might already be served by the example of your tragic fall from grace. I have never believed imprisoning a man rehabilitated him. So, I am impelled to seek alternatives.

"The court has decided to fine you the maximum permitted by law, to sentence you to the maximum term of imprisonment permitted by the statute under which you stand convicted — years. However, the court is prepared to suspend this latter part of your sentence and allow a special probation. I will give you one month to establish a program with your probation officer to present to this court for its approval in

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lieu of serving this — years sentence in prison. The only limitations I will insist on are: a) that your work be for a charitable or community public-interest organization, and b) that you work a minimum of 48 hours a week, 51 weeks per year, for a salary not to exceed the statutory minimum wage.

"It is the hope of this court that this sentence will provide a basis for you to continue your resocialization and your dedication to the public welfare which you have described. This sentence will allow you to contribute something to your community, to continue your life with your family, and it will relieve the taxpayers of the fruitless burdens and wasteful costs of incarceration.

"I hope you will succeed and that your success may prompt my brethren to employ this sentencing technique to others in this community with different social backgrounds who also present no physical danger to the community and who could as well serve sentences in socially utilitarian ways such as this."

A tangential, but in the long run, important result of these Watergate criminal trials could result from the sentences. How the courts treat these upper-class, establishmentarian Watergate defendants will tell the community a lot about its system of justice. If the message is favoritism and a double standard, existing public cynicism will be heightened; faith in the system will not be restored.

What is needed now is not revenge, but a precedent for equal and fair treatment of all offenders. If an example is set—not of equal evil, but of across-the-board opportunity for new correctional techniques which are strict but sensible, punitive but regenerative, economic and humane, a worthwhile dividend will have come from the costly debacle of Watergate.