Crime Without Punishment

"The judges know they're going down in history on the Watergate cases. Once they're out of the public eye, they'll put on kid gloves again for the white-collar defendants."

Washington 10/74

By Harvey Katz

In explaining why he pleaded guilty to the misdemeanor charge of "failure to testify fully" before a Senate committee, former Attorney General Richard Kleindienst said he entered his plea "out of respect for the criminal justice system of the United States and the indisputable fact that the system must have equal application to all."

It is not every day that someone who served as the nation's chief law enforcer pleads guilty to a criminal offense, so a statement revealing his motives was certainly owed to the American public. Unfortunately, the statement Kleindienst gave was neither forthright nor accurate.

The criminal charge arose from two facts that were undisputed when Kleindienst entered his guilty plea. First, on April 19, 1971, after receiving a substantial campaign money pledge from ITT, Richard Nixon telephoned then Deputy Attorney General Kleindienst and ordered him to drop a government anti-trust suit against ITT pending before the United States Supreme Court. Second, during his confirmation hearing before the Senate Judiciary Committee in March and April 1972, Kleindienst testified three times that he received no such order from Nixon: "I was not interfered with by anybody at the White House. I was not importuned. I was not directed."

It is absurd to say Kleindienst did not testify fully on this matter. Indeed, the confirmation hearing was reconvened at his suggestion to inquire into this very subject. It was inquired into and Kleindienst responded fully to every question. Had Richard Kleindienst truly respected the justice system, he would not have made it party to this blatantly contrived criminal charge.

It is not difficult to understand why the former Attorney General did accept the misdemeanor charge. The more accurate charge—testifying falsely under oath before a Senate committee—is a felony. Giving such false testimony on three separate occasions is three felonies. Lying under oath in order to hide the fact that a public official took extraordinary action to aid a big campaign contributor seems very close to obstruction of justice and defrauding the US government. Moreover, Kleindienst's invitation to the Judiciary Committee to reconvene the hearing, apparently made with the intention of committing perjury, is the kind of conduct judges view with considerable disfavor in passing sentence.

So in pleading guilty to the misdemeanor charge Kleindienst was avoiding a certain amount of personal unpleasantness, such as going to prison and being barred from the practice of law. It is reasonable to conclude that, contrary to his statement, Kleindienst was not acting out of respect for the justice system, but out of respect for his own hide.

His claim that his guilty plea proves that justice is uniformly applied in our courts is equally untenable. Special Prosecutor Leon Jaworski risked besmirching his otherwise admirable record by bending himself into a pretzel to let Kleindienst off. Two of his assistants resigned in protest over the Kleindienst matter. Chief Judge George Hart of Federal District Court for the District of Columbia, who has not hesitated to throw people in jail for committing misdemeanors like blocking a sidewalk or parading without a permit, refused to let Kleindienst suffer even a moment in confinement. Instead, he praised him for being a wonderful human being and a dedicated public servant. About the same time, Chief Judge Gerard Reilly of the DC Court of Appeals voiced similar praise for Kleindienst in open court, referring to him as an outstanding member of the DC bar.

At this writing, the status of Kleindienst's bar membership remains undecided. However, one is not usually disbarred after two chief judges have strewn roses in one's path. The granting and revocation of bar memberships is a judicial function. Preliminary matters usually are delegated to grievance committees composed of lawyers, but the judges make the final decision. In Kleindienst's case, Judge Reilly will make the ultimate decision. And he has already spoken. Furthermore, the lawyers who sit on grievance committees usually are the well established, wealthy friends of our most powerful judges, and they are not in the habit of ignoring judicial comments on any matter.

I have spoken to a lot of lawyers about the treatment Kleindienst is receiving from the justice system, both as a criminal defendant and as a member of the bar. Many are outraged. They say here is another example of an establishment-oriented justice system protecting one of its own.

"There is only one way that equal justice is a reality in our courts," one lawyer told me. "That's if you look at it through a lot of unwritten rules that most people would find shocking. One of them is that if you share a judge's political philosophy, you'll be treated a lot better than someone who doesn't. It isn't just Kleindienst. Anyone who believes that dissent is tantamount to treason will get special treatment from George Hart. I suppose that's a kind of equal justice."

Another lawyer, a longtime friend of Kleindienst, expressed a different view: "You're the one who keeps saying that judges should be compassionate. Well, that's what Hart was doing in dealing with Kleindienst. He saw a decent guy who may have exercised bad judgment. You don't want someone like that to suffer more than he has already. And don't forget that Kleindienst is a symbol of justice to a lot of Americans. What purpose

would it serve to ridicule those people who believe in him?"

I am indeed a believer in judicial compassion. But there is a large difference between a judge who is compassionate to all people and a judge who is compassionate only to his friends and soulmates. The lawyers who perpetrated the crimes of Watergate were very nice to their friends and big campaign contributors; they were quite the opposite to their enemies and most of the nation. If the lawyers who control the courtrooms, grievance committees, prosecutors' offices, and the rest of the justice system believe in a similar kind of compassion, Watergate will be with us a very long time.

Consider the case of another lawyer—Philip Hirschkop. He is a public interest lawyer who has several things in common with Richard Kleindienst. They both are members of the DC bar (Hirschkop also is a member of the bar of his home state, Virginia). They both are regarded as decent men by a lot of people. And many Americans look upon Hirschkop, too, as a symbol of justice. He has fought for the rights of just about every disenfranchised or unpopular or persecuted group in the country, representing, often without charge, such diverse types as prisoners, protesters, women, Nazis, blacks, gays, marijuana smokers, and schoolchildren. He is to the human-rights community what Kleindienst is to the law-enforcement community.

There are two basic differences. Unlike Kleindienst, Hirschkop has never been charged with a crime or accused of dishonesty. And very few members of Hirschkop's constituency have risen to positions of power. Of course, these two differences should not lessen Hirschkop's expectation of receiving justice equal to that given Kleindienst. He has not.

Instead of roses, Washington judges have directed a steady barrage of contempt citations and censures at him. These arose not from anything remotely resembling criminal conduct but from what particular judges saw as Hirschkop's insufficient awe for them. It was just such a perception that induced Judge John Pratt of Federal District Court for the District of Columbia to launch a one-man crusade against Hirschkop. Pratt sentenced Hirschkop to 30 days in jail for contempt of court. When that decision was reversed by the US Court of Appeals, Pratt brought a complaint against Hirschkop before a DC grievance committee; it resulted in a censure of Hirschkop from three of Pratt's associates. When Hirschkop publicly questioned whether the censure was less for the sake of justice than for the sake of Judge Pratt, the three judges brought their own complaint to the grievance committee. It eventually was dismissed.

Although they have never disbarred or suspended Hirschkop from practice, grie-

vance committees do not agonize over whether to place his law career in jeopardy. They bedevil him with charges, investigations, and hearings. They institute proceedings against him on the most slender of pretexts. "It's as though all the prosecutors, most of the judges, and all their lawyer friends watch every move Phil makes," says a Hirschkop friend. "And if they think they can show he moved one inch off the line—boom! Another disbarment investigation."

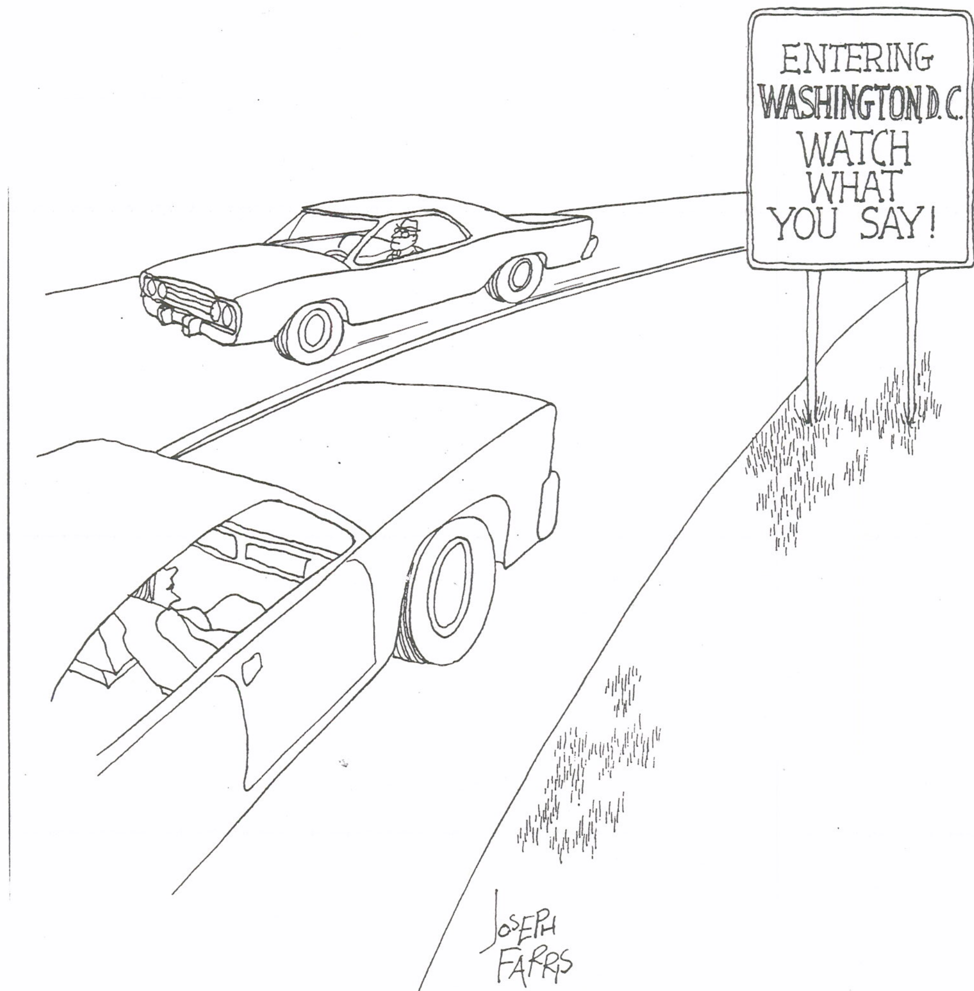
"All I want to do is practice law," Hirschkop told me. "But it seems like I spend half my time defending myself before grievance committees. You know, the people who bring these charges against me and hold the hearings don't have to do anything except write a couple of letters. It's not their right to practice law that's on the line. I have to spend weeks on each one of these things. And they know it."

The most recent disbarment charges filed against him in Virginia are typical. They accuse Hirschkop of "unprofessional conduct" in two respects: publishing a statement about a case in which he was involved, and conflict of interest. The conflict of interest charge arose from Hirschkop's agreement to represent a Virginia prison official, Dennis Gallagher, who was indicted in January by a grand jury for misconduct in office (the indictment has been dismissed). At the time Hirschkop also was representing a group of prisoners who were suing the state and seeking certain prison reforms. The grievance committee charged that representing Gallagher would adversely affect Hirschkop's judgment in the prisoners' suit.

The charge may appear reasonable on the surface. But even a cursory investigation would have revealed what the grievance committee probably knew anyway: Hirschkop is director of an institute for prison reform and he has been fighting for prisoners' rights for as long as anyone can remember. It is silly to presume Hirschkop would not pursue any prison-reform suit with his usual zealousness. Dennis Gallagher was not a party to the prison-reform action. Moreover, in its indictment, the grand jury did not charge Gallagher with any abuse of prisoners, but with being too lenient to prisoners. Gallagher is regarded as one prison official who works for reform.

The other charge against Hirschkop came after a reporter stopped him outside court and asked why he was defending a prison official after fighting all these years for prisoners' rights. "These are the good guys," Hirschkop said. Apparently, the grievance committee objected to the statement as improper pre-trial publicity.

This charge is not reasonable even on the surface. How can a judge and jury be unduly influenced by knowing that a de-



fense attorney believes his client to be a decent person who is innocent of the charges brought against him? The canons of legal ethics expressly provide that a defense lawyer can, and may even have a duty to, proclaim his client's innocence.

The situation in the Gallagher case was particularly compelling in this regard: Dennis Gallagher was not the first person to learn of his own indictment. The grand jury that indicted him held a televised press conference first, announcing to the Commonwealth of Virginia that Gallagher and others had been indicted and giving the reasons why. This extraordinary event, contrary to court procedures and ethical considerations, had been approved in advance by a Virginia judge. And a prosecuting attorney advised the grand jury how to conduct the press conference.

What was Hirschkop supposed to do? He was required by the canons of ethics to "represent a client zealously." The questionable press conference already had gone a long way toward influencing potential jurors against his client. Should he have remained silent in face of an inquiry from the press, and cast more shadows on the innocence of his client? Of course not. But after the fact, and without so much as a reprimand directed at the judges and prosecutors, this is what the grievance committee claimed Hirschkop should have done.

The prohibition against pre-trial publicity usually is given little more than lip service by courts and grievance committees. They realize that journalists covering our courts will dig out the good stories—most of it is part of the public record anyway. And it seems preferable to have prosecutors and defense lawyers confer with the often-inexperienced reporters who cover the courts, to make sure the stories are accurate. More important, there are good reasons for letting police—really agents of the prosecutors—cooperate with the press in these matters. If you let the police do it, you should let the defense lawyers do it too.

A few days after Hirschkop was advised that he was in danger of being disbarred over this seemingly small matter, he read a newspaper article in which several prominent Virginia lawyers made statements relating to a case they were trying. Hirschkop sent the article to the grievance committee along with a letter that said in part: "You will notice in the article that the State Bar President James Howard, the Chairman of a Richmond Bar Association Committee, James Minor, and Stuart Dunn, an Assistant Attorney General, all made statements to the press about matters that are the subject of pending litigation with which they are directly involved. These comments were apparently made for publication. I believe these comments are constitutionally pro-

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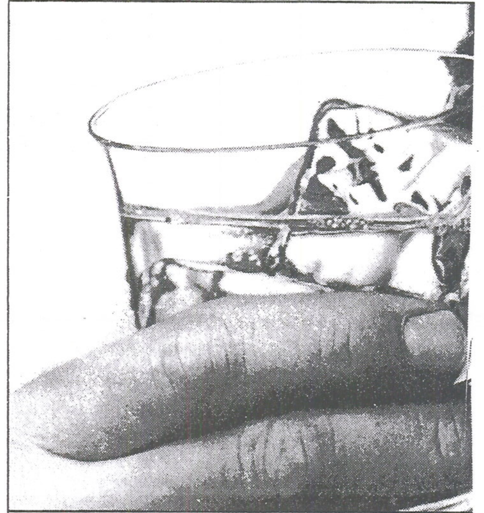

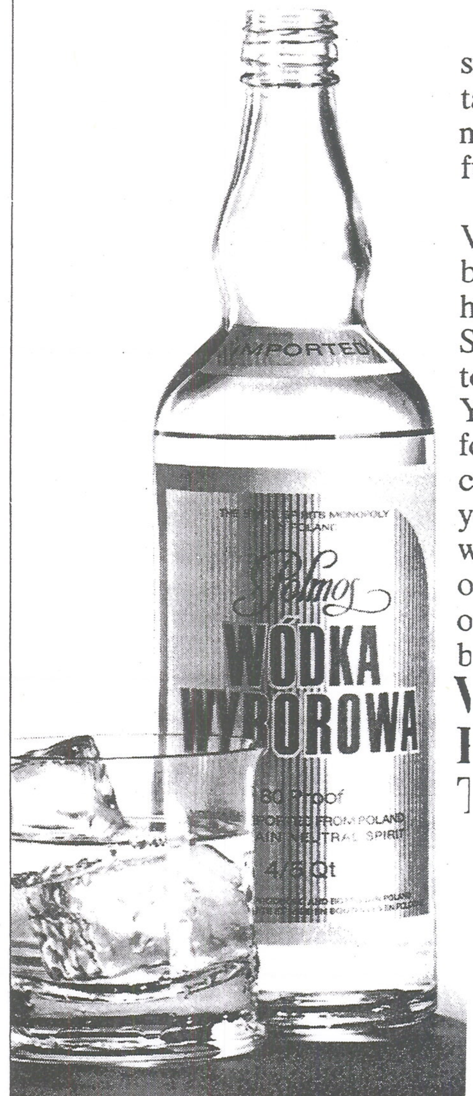

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tected, as were my comments in the *Gallagher* case. If, however, I am wrong about my comments in *Gallagher*, then I assume you will also file charges against these gentlemen, if you are going to apply the law fairly and not discriminate against me personally.''

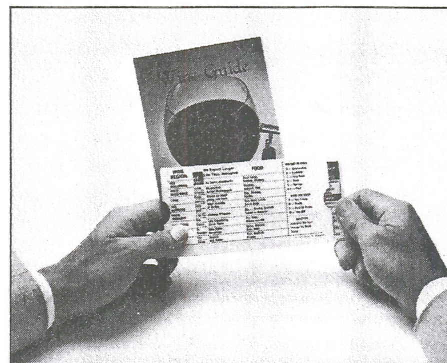
Three weeks later, Hirschkop received a reply from Alexander Wellford, head of the grievance committee: ''A careful reading of the ethical considerations and disciplinary rules under Canon 7 of the Virginia Code of Professional Responsibility reveals nothing which, in the Third District Committee's opinion, prohibits the comments made with respect to the decision of an appellate court. Consequently, the Committee has voted to dismiss your complaint.''

Now, Mr. Wellford, you must be giving the canons a very careful reading, because there isn't anything in writing that distinguishes appellate and non-appellate matters. Isn't a case on appeal still in the litigation process, and isn't there a chance that it will be reversed and tried again? I suspect that you were relying on one of those unwritten rules, Mr. Wellford, but not the one you stated. Try this: ''Nothing in the Third District Committee's opinion prohibits comments made by bar association presidents, prosecuting attorneys, or judges.''

To further show how selective the harassment can be: In an article in the September 1973 *Washingtonian*, I pointed out that Chief Judge Arthur W. Sinclair of Fairfax Circuit Court had, in the case of *Commonwealth* v. *Geddes*, admitted in open court that he had conferred privately with the prosecuting attorney in the case. And I quoted Disciplinary Rule 7-110 of the American Bar Association (ABA) Code of Professional Responsibility, which clearly declares such conduct unethical. As far as I can determine, neither the judge nor the prosecuting attorney has been investigated by a grievance committee in regard to this matter. There certainly has been no public censure or formal proceeding. Indeed, there were only three disbarment proceedings instituted in Virginia this year. One against Hirschkop. One against a lawyer who defended Hirschkop in an earlier disbarment matter. And the third against a Black Muslim attorney in Richmond.

It would be nice to believe that the way the justice system has discriminated against Philip Hirschkop and in favor of Richard Kleindienst is an aberration. It is not. The same principle applies to most defendants charged with crimes. The more you resemble a Richard Kleindienst the greater the odds in your favor.

In recent issues of the *Washington Post*, both Carl T. Rowan and Ronald Goldfarb expressed concern over the light sentences meted out to Watergate defendants. Rowan and Goldfarb apparently



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have not been paying much attention to how our courts have been treating other white-collar criminals (see charts). From 1970 through 1972, 82 persons were sentenced by Federal District Court judges in the District after being convicted of serious white-collar crimes. Of these, 43 received suspended or probated sentences; eight received sentences of up to six months in jail; 13 received sentences of up to three years; and 20 were sentenced to more than three years. None of the defendants sentenced to more than a year has had to serve more than a third of the sentence.

"Compared to what white-collar criminals usually get, the Watergate defendants are having the book thrown at them," a prosecutor told me. "The reason is simple. These judges know they're going down in history on the Watergate cases. So they've been handing down reasonable sentences. Once they're out of the public eye, they'll put on the kid gloves again for the white-collar defendants."

Compare how Judge Gerhard Gesell handled John Ehrlichman with how he handled Max Zerkin. Zerkin pleaded guilty to charges arising from his conspiracy with Joel Kline, the celebrated fraud who, after receiving a grant of immunity, publicly stated that he had committed just about every white-collar crime on the books.

In 1969, Zerkin, a Bethesda stockbroker, entered into an arrangement with Kline to inflate the prices of stock of several companies Kline owned. To accomplish this, Zerkin falsified reports and quotations to create the illusion that there was heavy trading in the Kline stock at prices far above its true market value. Kline and Zerkin then split the inflated commissions Zerkin got from investors as a result of the inflated stock prices.

There was another motive for this fraud. The stock manipulation enabled Kline to hide the fact that his financial empire was crumbling, and thus continue to engage in other fraudulent schemes. A prosecutor involved in the Kline case says, "Zerkin was undoubtedly Kline's chief conspirator. Judge Gesell had to overlook a lot of crimes and a lot of victims in giving him a probated sentence."

A recent example of judicial leniency toward business crooks is *United States* v. *Sycoff, et al*. In 1968, Jerome and Alan Sycoff, brothers and co-owners of JAG Chemical Company in New York City, entered into an arrangement with Frank Pearsall, director of building services for Cafritz Memorial Hospital in the District. The Sycoffs set up a dummy corporation from which Pearsall ostensibly bought cleaning supplies for the hospital. But these purchases existed only on paper. Pearsall would verify that the supplies had been received and the hospital would pay the Sycoffs, through the dummy corpora-

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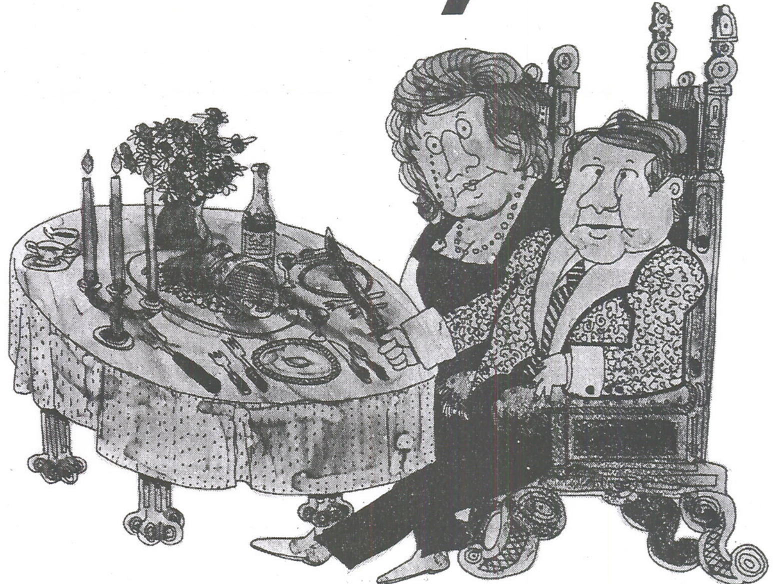

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tion, for nonexistent equipment, supplies, and services. Over a five-year period, the hospital was defrauded out of $154,000. The Sycoffs kept $145,000 of this and gave the rest to Pearsall. The money was pure profit for all three.

The three conspirators were indicted in Federal District Court for the District on fraud charges. They all pleaded guilty and last year Judge Charles Richey handed down a three-year sentence to each. It seemed an appropriate punishment for people who had spent the previous five years defrauding a nonprofit hospital. But the defense lawyers then made a motion to reduce the sentences and Judge Richey did reduce them. Pearsall's final sentence was three months in jail. Jerome Sycoff was ordered to spend 30 days in jail and his brother 60 days. And as part of his sentencing order, Judge Richey directed that the Sycoffs serve their sentences only during non-working hours and at the New York Detention Center, so that the two convicted felons could continue running the JAG Chemical Company while in "confinement."

I am not trying to single out Gesell or Richey. There is a pattern of leniency that runs through the entire judiciary when it comes to sentencing white-collar criminals—it's not restricted to a particular judge or court. It arises from the nature of the criminal and the nature of his crime. The criminal almost always has money or access to it. And the business crook knows how to use the money to get better treatment from the justice system. He can make himself more sympathetic to a judge by wearing the right clothes and hiring a lawyer who happens to belong to the same country club as the judge. He can set up various businesses to give an air of respectability to his criminal activity. He comes before the judge as a businessman who may have exercised some bad judgment, but only for the sake of supporting his family. He donates some of his money to charities and religious organizations, thus obtaining the loyalty of several esteemed citizens who will attest to his character. By every indication, he will return, not to the streets, but to suburbia and the business world, sadder and wiser for the experience.

To the typical judge, the typical white-collar criminal looks much like himself and his friends. And it is difficult to put your friends in jail or prison—especially when it is so generally agreed that our correctional institutions fail to rehabilitate anyone. It is equally difficult for a typical judge to regard white-collar crime in all its ugliness. After all, most of our judges grow up in a world where there is a fine line between cheating a customer and a sharp business practice. So we find not only a reluctance from the bench to jail crooked businessmen, but also a very strong inclination to reduce sentences and make sure that this type of criminal suffers a minimum of discomfort in paying his debt to society.

In cases involving white-collar defendants, the judge will inevitably tack onto any sentence a recommendation that the criminal be confined in a "minimum security facility." Typically, this is a farm in which the prisoners are assigned a few chores and given a great deal of freedom. Egil Krogh served his six-month sentence on a prison farm in Allenwood, Pennsylvania. As things turned out, Krogh's punishment consisted of not being required to work 18 hours a day at the White House and having much more time for his favorite pastime, jogging. He left Allenwood looking much more tanned and robust than he had before. One wonders how long a Krogh or Magruder or Mitchell would survive at Lorton, where most blacks from the District are sent.

The justice system not only gives gentler treatment to white-collar criminals than it does to purse-snatchers and other street criminals, it also treats some white-collar criminals much better than others.

Take the case of Joel Kline. By his own admission, Kline may be the biggest white-collar crook who ever operated in the Washington area. There is no way to know how many people he victimized along the way. One measure of his involvement in criminal activity is that he is probably the most knowledgeable person in the area on corruption in state and local government. It was because of this knowledge that he was given a grant of immunity in exchange for his testimony against

Comparative Sentencings
United States District Court for the District of Columbia
1973-74 Felonies

Defendant	Charge	Disposition	Sentence	Judge
Gwendolyn Campbell	Embezzling funds from OEO project	Guilty plea	Suspended	Hart
Albert J. Forte	Income tax evasion, fraud	Guilty plea	Suspended	Hart
Janice Wilson	Selling one tablet phenmetrazine	Guilty plea	One year in jail	Hart
Henry Johnson	Theft of government property	Guilty plea	2-6 years	Hart
John Jackson	Sale of narcotic substance	Guilty plea	2-7 years	Hart
Hollie Roberson	Forgery	Guilty plea	Probation	Pratt
Eldrena Steward	Harboring a fugitive	Guilty plea	Five years	Pratt
Clyde Haven	Investment officer defrauding union	Guilty plea	Suspended	Parker
John O'Rourke	Income tax evasion, fraudulent scheme to secrete $400,000 in income via aliases	Guilty plea	Suspended	Parker
Milton Perry	Scheme to defraud ROTC by supply sergeant	Guilty plea	Suspended	Parker
Leroy Kearney	Robbery of credit union	Guilty plea	3-10 years	Parker
Max Zerkin	Stock fraud	Guilty plea	Suspended	Gesell
Edward Wilder	Transporting stolen securities	Guilty plea	Suspended	Gesell
Larry Jenkins	Selling 25 grams of cocaine	Guilty plea	6 years	Gesell
Barbara Randolph	Scheme to fraudulently obtain auto loans	Guilty plea	Probation	Richey
Olive Street	Embezzlement by bank cashier	Guilty plea	Suspended	Richey
Jerome Sycoff	Defrauding hospital out of $154,000	Guilty plea	30 days	Richey
Alan Sycoff	,, ,, ,,	Guilty plea	60 days	Richey
Wilhetta Monroe	Possession of narcotics with intent to sell	Guilty plea	5 years	Richey
Brenda Chappelle	Forgery	Guilty plea	6 months in halfway house	Corcoran
Joseph Paige	Scheme to defraud OEO and Federal City College out of more than $500,000	Guilty plea	7 years	Corcoran[1]
Alexander Wilbanks	Bank robbery	Conviction	5-15 years	Corcoran
Frederick Jackson	Bank robbery	Conviction	6-20 years	Corcoran
Donald Givens	Fraud, bank loan-officer demanding kickbacks	Guilty plea	Probation	Smith
Cong. J. Irving Whalley	Defrauding US via false payroll vouchers, secret expense funds, kickbacks from employees; obstruction of justice; false statements to FBI	Guilty plea	Suspended	Smith[2]
Gilbert Franey	Possession of methanphetamine	Guilty plea	1-3 years	Smith
Sandra Humphrey	Embezzlement	Guilty plea	Probation	Sirica[3]

[1] This is considered an extraordinary case and one of the toughest white-collar sentences ever handed down by a Washington judge.
[2] The Whalley scheme extended over a 13-year period. When the FBI and a Congressional committee began investigating, Whalley conspired with one of his employees to submit a false affidavit to Congress and he made false statements to FBI agents. He threatened one employee with retribution if she told the truth to the FBI. Compare his treatment with that given the Watergate defendants.
[3] Compare with Watergate sentences.

Watergate Sentencings
United States District Court for the District of Columbia

Defendant	Charge	Disposition	Sentence	Judge
Bernard Barker	DNC break-in	Guilty plea	18 mos.-3 years	Sirica
Dwight Chapin	Perjury (two counts)	Convicted	10-30 mos.	Bryan
Charles Colson	Obstruction of justice	Guilty plea	1-3 years	Gesell
John Dean	Obstruction of justice	Guilty plea	1-4 years	Sirica
John Ehrlichman	Perjury, obstruction of justice	Convicted	20 mos.-5 years	Gesell
E. Howard Hunt	DNC break-in	Guilty plea	30 mos.-8 years	Sirica
Herbert Kalmbach	Illegal fundraising	Guilty plea	6-18 mos.	Sirica
Richard Kleindienst	Failure to testify fully	Guilty plea	No sentence	Hart
Egil Krogh	Conspiracy to violate civil rights of Dr. Lewis Fielding	Guilty plea	6 mos.	Gesell
G. Gordon Liddy	DNC break-in	Guilty plea	6⅔ years to 20 years + $40,000	Sirica
Jeb Magruder	Obstructing justice	Guilty plea	10 mos.-4 years	Sirica
Eugenio Martinez and Frank Sturgis	DNC break-in	Guilty plea	1-4 years	Sirica
James McCord	DNC break-in	Guilty plea	1-5 years	Sirica
Herbert Porter	False statement to FBI	Guilty plea	30 days	Bryan
Donald Segretti	Violation of civil rights	Guilty plea	6 mos.	Gesell

Maryland public officials.

It happens all the time. The perpetrators of the Monarch Home Improvement scheme, in which hundreds of DC homeowners were defrauded out of property they had worked lifetimes to acquire, got off the hook because the crooks happened to bribe former Congressman John Dowdy along the way. And then there is the long list of shady deals involving former White House aide Jake Jacobsen.

After leaving the service of Lyndon Johnson, Jacobsen acquired control of several Texas banks and savings-and-loan associations. During 1970, Jacobsen used money other people had deposited to aid his own business enterprises and those of his friends. Most of it was done in a conspiracy with Houston promoter Frank Sharp, whose financial empire was on the brink of ruin and who later admitted to bribing several state officials in an attempt to save himself by obtaining a special bill from the Texas legislature.

Sharp loaned Jacobsen and his businesses nearly ten million dollars. In exchange, Jacobsen did several things for Sharp, like paying two million dollars for worthless paper held by one Sharp company and making a secret $1.5 million loan to Sharp through a dummy corporation. All of this was done with money entrusted to Sharp and Jacobsen by innocent depositors, many of whom took losses when most of the financial institutions involved crumbled.

Two years after I investigated these and other questionable Jacobsen schemes for my book, *Shadow on the Alamo*, I learned he had been indicted in Texas for bank fraud. ''Justice has finally been done,'' I said. But Jacobsen has been granted immunity in exchange for his testimony against John Connally. Frank Sharp was granted immunity two years ago after he told Richard Kleindienst he had damning information against some big Texas Democrats. Sharp actually had very little information about anybody except Will Wilson, then Assistant Attorney General in charge of the criminal division, and once Sharp's attorney. Wilson resigned from the Justice Department and Kleindienst told columnist Jack Anderson he had been duped by Frank Sharp.

Where does the public interest lie in this type of situation? It does seem grossly unjust to let a criminal off just because he committed an additional crime of bribery and can nail the public official involved. On the other hand, crooked office-holders don't usually tape record their conspiracies. Bribes and similar dealings are hidden behind the most complex and innocent-looking business transactions, or conducted at airports with black briefcases. Unless the law enforcers are lucky, the only way to crack open a bribery case is through testimony purchased with a grant of immunity. And unless a corrupt politician is stopped this way, he may

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someday become President of the United States.

Still, one can't help feeling more than a little sorry for G. Gordon Liddy. He did have a little something to sell, but he wasn't selling. This was his constitutional right, of course. But it was Liddy's misfortune to draw Judge John Sirica, who is in the habit of viewing such things in personal terms, and he hit Liddy with a surprising sentence—six-and-two-thirds to 20 years for an unarmed burglary. Sirica has sentenced armed stick-up men to half that, and he is regarded as a very hard sentencer in street-crime cases.

It demonstrates that even white-collar types can be ground up by the system. But there is no comfort in this. Rather than indicating an awareness of the seriousness of white collar crime, it shows that there are lines which even well dressed defendants must not cross. And they are not lines set out in the Constitution. In Liddy's case, it was refusing to bend to the will of a powerful judge.

We should be able to say that justice is applied fairly and equally in our courts, that the justice system is the one institution that bears no culpability in Watergate. It would be comforting to know that the perpetrators of the cover-ups and the perjuries and the political vendettas were not spurred into criminal conduct by the belief that they would become a special kind of criminal, pampered by just about everyone who controls the justice system. It would be comforting to know that we do not have to become as much like Richard Kleindienst as possible to avoid being victimized by what is supposed to be our most noble institution. But this is not the situation.

The truth has been most succinctly stated by Robert Ogren, Deputy Chief of the Fraud Section in the US Attorney's Office for the District of Columbia. Ogren writes in a recent issue of the *American Criminal Law Review* (Volume 11): "Separate standards of justice exist for street crime and commercial crime, leading to an understandable decay in the public's confidence that the criminal justice system is dispensing equal justice. . . . Deterrence has not been realized, rehabilitation has been ignored, repeat offenders have not been removed from society and victims have not been compensated."

Yes, this is the same system that has been receiving so much praise from the editorial writers and politicians because a few once-powerful defendants got reasonable sentences from Washington judges and a President was forced to resign under the weight of his own actions. The truth of the matter is that these were the aberrations. The way the system handled Kleindienst is business as usual. And that, by any name, is Watergate—again and again. □

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