

The Argument of 'Acting Under Orders' Doesn't Work

Lessons of Watergate Never Seem to Be Over

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By ANTHONY LEWIS

How have the mighty fallen: That was the immediate drama in the jury's verdict, the news that made headlines and even interrupted New Year's Day football on television. H. R. Haldeman and John Ehrlichman, John Mitchell and Robert Mariani, whose names once made strong men tremble, stood convicted of Federal crimes. Unless the verdict was upset on appeal they would probably go to prison.

But a country that has seen a President fall is not likely to be moved for long by the fate of individuals who served him, however high their rank. The question is whether the judgment in the Watergate cover-up case will be seen, over time, as having a deeper significance. Some who were involved in the law-enforcement effort leading to this trial believe it will. They see in it a profound message for government officials everywhere. It is that they are responsible for their own actions—responsible under law. And the law will not accept the excuse that they were only following orders.

The last is, in shorthand, a Nuremberg point. At the Nuremberg trials after World War II, leaders of Nazi Germany were found guilty of war crimes. The court rejected the defense that they had followed the orders of their superior, Adolf Hitler, who escaped justice by suicide. The Nuremberg precedent has always troubled some because the war victors defined the "crimes" after the fact. There is no such

element in the Watergate case. The crimes of which these defendants were convicted—obstruction of justice, conspiracy, perjury—were all defined in the statute books. Obviously the crimes are not to be compared, what was the same was the rejection of the defense of superior orders.

The point actually emerged more strongly from the Watergate trial because former President Nixon was not there. His pardon might have been taken as a reason to excuse what his aides had done, but Judge John Sirica instructed the jury to pay no attention to the pardon; as a matter of law, the others were still responsible for any crimes they committed. The jury itself rejected an even broader appeal to its sympathy. In different ways, counsel for the convicted defendants had argued that the blame for whatever happened lay with Mr. Nixon. The jury found otherwise.

Individual responsibility is a fundamental premise of law, at least in Western thought. Even in military organizations, disciplined and hierarchical as they are, soldiers and officers are supposed to refuse illegal orders. The importance of that rule is evident to Americans after the My Lai massacre.

The Watergate judgment emphasizes that hierarchies of power are no more of an excuse in political life than in the military. Even though an official be a creature of the President, appointed by him and responsible to him, the official is bound to refuse unlawful orders. Putting it another way, he too is a part of the democratic process, though not elected.

Democracy depends not only on elected office-holders' respect for opinion but on every official's respect for law.

The Watergate special prosecution force was in a sense created to make that point, to teach the importance of official commitment to law. The first special prosecutor, Prof. Archibald Cox, certainly saw his duty in those large terms. Nor have his successors, Leon Jaworski and now Henry S. Ruth, ever regarded their office as directed narrowly at the person of Richard Nixon. They have all thought of their function in terms of restoring a process.

The theme of individual obligation to law has run through much of the special prosecutor's work. One high point before the cover-up case was the trial and conviction of Mr. Ehrlichman and others for the break-in to the office of Daniel Ellsberg's psychiatrist. In that case Judge Gerhard Gesell explicitly rejected the defense that officials were entitled to violate the law in the interest of national security as defined by the President.

The Watergate jury verdict is a reminder of the extraordinary role that the special prosecution force has played. About 60 men and companies have now been convicted of, or pleaded guilty to, charges brought by the office. There are some disagreements about particular decisions made by the special prosecutor. But few informed persons would doubt that the record as a whole is a substantial one.

There are still investigations pending. For one, the office may well seek to prosecute those in the Nixon White House responsible for doctoring the tape transcripts given to Congress. There are some who would like to see a permanent special prosecutor to keep fresh the theme of official obedience to law. But Henry Ruth hopes to wind up the Watergate force by June, leaving the permanent responsibility with the Justice Department.

Anthony Lewis is a columnist for The New York Times.