

The Sentences in the Cover-Up Case

Post 2/25/75

FOR MOST JUDGES, an especially troubling part of the job is determining the sentences to be imposed on the criminals who stand before them. For, in large part, the future of these people and their families rests in the judge's hands. The various factors that judges talk about weighing in reaching an appropriate sentence—punishment, deterrence, rehabilitation, and protection of society—often conflict with one another in a particular case. And dangers are always present: imposing a sentence so light it serves none of those objectives or of imposing a sentence so heavy it destroys any existing hope in the defendant for a meaningful life after prison. To select the "right" sentence in any criminal case, a judge needs both wisdom and the ability to predict accurately the reaction a particular sentence will create in the defendant, in other criminals, in would-be criminals, and in the society as a whole. Since no judge can have those abilities to perfection, sentencing is an inexact art, subject to more second-guessing and criticism than any other part of the criminal justice system.

Thus, it is inevitable that there will be much second-guessing, and criticism, of the sentences that Judge Sirica imposed Friday on the four principal defendants in the Watergate cover-up case. Some—among them the four men who were sentenced to prison—believe those sentences are too harsh: 30 months in prison is a long time to be separated from family and friends. Others believe the sentences are too lenient: they regard the crimes involved as much more threatening to the country's well-being than those crimes of violence which often bring down similar (or heavier) sentences on their perpetrators. To us at least, the sentences seem about right—sufficiently tough to demonstrate the magnitude of the crime without being so tough as to be unreasonable or vindictive.

The fundamental problem in evaluating the wisdom of these sentences proceeds from the truth which Mr. Haldeman's lawyer stated so bluntly last Friday, "that whatever Bob Haldeman did, so did Richard Nixon" but "Nixon has been freed of judicial punishment. . . ." As in the Agnew case, in which the former Vice President avoided prison while men who said they bribed him

face imprisonment, there is an element of unfairness here. Yet an insistence on literally equal justice for all participants would have required the courts to let off all the lesser figures in both cases—and to do this would be to nourish the idea that prisons are for the poor and the weak, not the rich and strong. This latter kind of unfairness is more dangerous to the society as a whole. In addition, there is ample precedent for what Judge Sirica (and Judge Gesell) have felt obliged to do: judges have not hesitated to send to prison the members of criminal gangs, like the Mafia or the Capone gang, believing that ultimate responsibility for their crimes rested also on leaders who went unpunished by the courts.

We do not know how Judge Sirica evaluated in this case all the factors normally considered by judges in setting sentences. How do you weigh those—punishment, deterrence, rehabilitation, and protection—when the men who stand before you were, three years ago, the Attorney General and the two top aides to the President and an Assistant Attorney General? Prison will not "rehabilitate" them for that is something they must accomplish themselves. Prison is not needed to protect society from them for they will never be in a position to repeat their offenses. So it is the interaction of the needs to punish and deter with the responsibilities of the jobs these men once held that must be the critical measure. Two of the four after all—Messrs. Mitchell and Mardian—were once directly charged with enforcing the law, yet soon thereafter—a jury has decided—they engaged in conspiring to obstruct the law. The other two—Messrs. Haldeman and Ehrlichman—held great power in the executive branch of government, which is charged with seeing that the law is properly executed yet they, too, conspired to obstruct the enforcement of the law. That point, more than any other, seems to us to explain the sentences imposed by Judge Sirica. They are adequate to warn future officeholders that the nation does not take lightly such misconduct by those to whom great power is given. And they are a sufficient reproach to the four men themselves for the disservice they did to the laws they once swore to uphold.