

An Interim Judgment on the Judge

"Outrageous," declares Harvard Law Professor Alan M. Dershowitz. "Stupid," says Boston Criminal Lawyer Joseph Oteri. "The third Watergate crime," charges New York *Times* Columnist William Safire.

Such pointed criticism of particular aspects of Federal Judge John J. Sirica's handling of the Watergate conspiracy trial has been growing. Yet most legal experts consulted by *TIME* correspondents consider any overall negative judgment premature. With few exceptions, they feel that the outspoken Sirica has not as yet committed any serious errors that could lead to a reversal of any convictions in the case. At worst, they contend, the judge has been guilty of making gratuitous comments that needlessly reinforce a longstanding claim by the defense that he is too personally concerned about the trial to preside impartially over it. That could be a cause for reversal, they say, only if a continued pattern of far more prejudicial statements by Sirica develops.

So far, the controversy has centered mainly on three comments by Sirica: 1) that as Attorney General, Defendant John Mitchell should have ordered the Watergate conspirators out of his office when they discussed plans to bug Democratic national headquarters; 2) that the defense lawyers had done "a pretty good job" of trying to show that Conspirator John Dean had been a "liar" when he was trying to cover up the Watergate crimes; and 3) that, in order that the "T-R-U-T-H" could emerge in the

trial, he was not going to adhere to "strict rules of evidence."

Noting that Sirica's comment on Mitchell was not said in front of the jury, most of the experts see little harm done. That may have been "a dumb thing to do," observes Columbia Law School Dean Michael Sovern, but Sirica's remark does not constitute the "provable

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deep prejudice" required for reversal. As for Sirica's praise of defense attorneys in grilling Dean, Yale Law Dean Abraham S. Goldstein views it as "a jocular remark" by a tired judge who let himself "be seduced into this spirit of courtroom camaraderie." Said in the presence of the jury, it was, if anything, helpful to the defense.

Clearly more troublesome was Sirica's declaration that he would pursue truth rather than follow tight rules. What most critics failed to note was that the remark came in favor of the defense, as Sirica upheld the wide-ranging manner in which Mitchell's attorney, William Hundley, was quizzing Dean despite objections raised by the chief prosecutor, James Neal. Sirica has, in fact, frequently ignored objections by both sides in giving all attorneys great latitude in their questioning. Massachusetts Trial Lawyer Richard K. Donahue observes that Sirica has "broadened the ability of the defense to cross-examine beyond anything to which they'd been accustomed. He may be thinking that if he is evenhanded, then nobody can accuse him of being prejudicial."

Legal scholars disagree on whether a trial is a search for truth, but there is no disputing that the rules of evidence are designed to protect defendants against unfair tactics of prosecutors and judges. No one has accused the prosecution of such tactics yet; only the judge has been so attacked. Sirica may turn out to be vulnerable to the charge, unless he resists rising to the bait laid out by the defense attorneys. They apparently see tempting the judge as the best chance of saving their clients.