

The Watergate Trial Jury

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JUST BEFORE noon on Friday, as he swore in 12 jurors, Judge John Sirica provided his answer to those who said that the Watergate cover-up defendants could not receive a fair trial before a District of Columbia jury. His answer, after eight days of questioning prospective jurors, was that an impartial jury had been selected. Whether he is right or not may eventually be tested in a higher court, but it is sufficient for the moment to assume he is right and to reflect on the tasks and the burdens that have been assigned those 12 jurors and six alternates.

The tasks are monumental. They must listen to weeks of testimony including, presumably, hours of tape recordings and determine, when it is all over, whether the prosecution has proved beyond a reasonable doubt that the five men on trial conspired to obstruct the administration of justice. Along the way, of course, they will have other decisions to make: whether certain defendants committed perjury; whether certain defendants actually did obstruct justice in addition to conspiring to do so—or without conspiring to do so; and, above all, whom and what to believe.

That would be a difficult assignment in any trial. It is made particularly difficult in this one because of the stature of the defendants, the magnitude of the crimes with which they are charged, the repercussions that have already been caused by the events on which these criminal charges are based, and because of the widespread knowledge of what the facts are or what they are believed to be concerning those events.

It is this last point, of course, that has made the selection of the jury in this case so controversial and so tedious. Because the news media have reported so fully on all the steps leading up to this trial, almost everybody knows about the Watergate cover-up. From that fact, some observers promptly concluded that an impartial jury could never be found. What was wrong with this conclusion was that it is based on a misreading of the Constitution. The Constitution does not require jurors who have never heard about the case they are to decide; it requires only jurors who do not have a fixed opinion about the guilt or innocence of the defendants. Indeed, if the Constitution required all jurors to know nothing in advance about the case before them, major criminal trials could never be held in the small towns of this country where everybody knows about serious crimes soon after they occur and people have been arraigned for them.

What Judge Sirica has been doing in the last two weeks (at least, what we presume he has been doing, since he has done it in secret) is to eliminate prospective jurors who had a fixed opinion about the outcome of the trial. From what little has become known, it appears that the problem of eliminating jurors who were predisposed toward acquittal was at least as great, and perhaps greater, as eliminating those who were predisposed toward conviction. The pardon of Mr. Nixon seems to have persuaded many that the five defendants in this case should not be punished even if they are guilty. That turn of events is particularly ironic in light of the complaints last summer by Nixon White House aides that any jury in the District of Columbia would be totally anti-Nixon and pro-prosecution because the city is predominantly black and Democratic.

This is not to suggest that Judge Sirica has found 18 persons (12 jurors and six alternates) so oblivious of their surroundings as to have had no thoughts about the Watergate cover-up or about the pardon of Mr. Nixon. It is to suggest that Judge Sirica has found 18 persons who will do their best to set those thoughts aside and decide this case on the basis of what they see and hear in the weeks ahead. In the long run, of course, the jurors may end up arguing about matters not directly before them—the impact of the pardon, the findings of other bodies, and so on. If they do, they will not be the first jurors to do so because a jury is not a machine into which facts are punched and from which an answer automatically appears. A jury, after all, is there to exercise the common sense and good judgment of the society it represents.

One thing should be said about the personal burden these 18 jurors and their families are being asked to bear. The jurors have already disappeared behind locked doors and will be there for three or four months or longer. They will spend Thanksgiving together, away from their families. They may spend Christmas and New Year's together. They will spend many hours just waiting—for the lawyers to argue points of law out of their presence, for the next day's session of court to begin. Their impartiality was maligned by high officials even before they were selected and their verdict, whatever it may be, will be criticized. Their only reward will come in the knowledge that they have done their duty as citizens and that they have shared the ultimate responsibility in one of the most important criminal trials of our times.