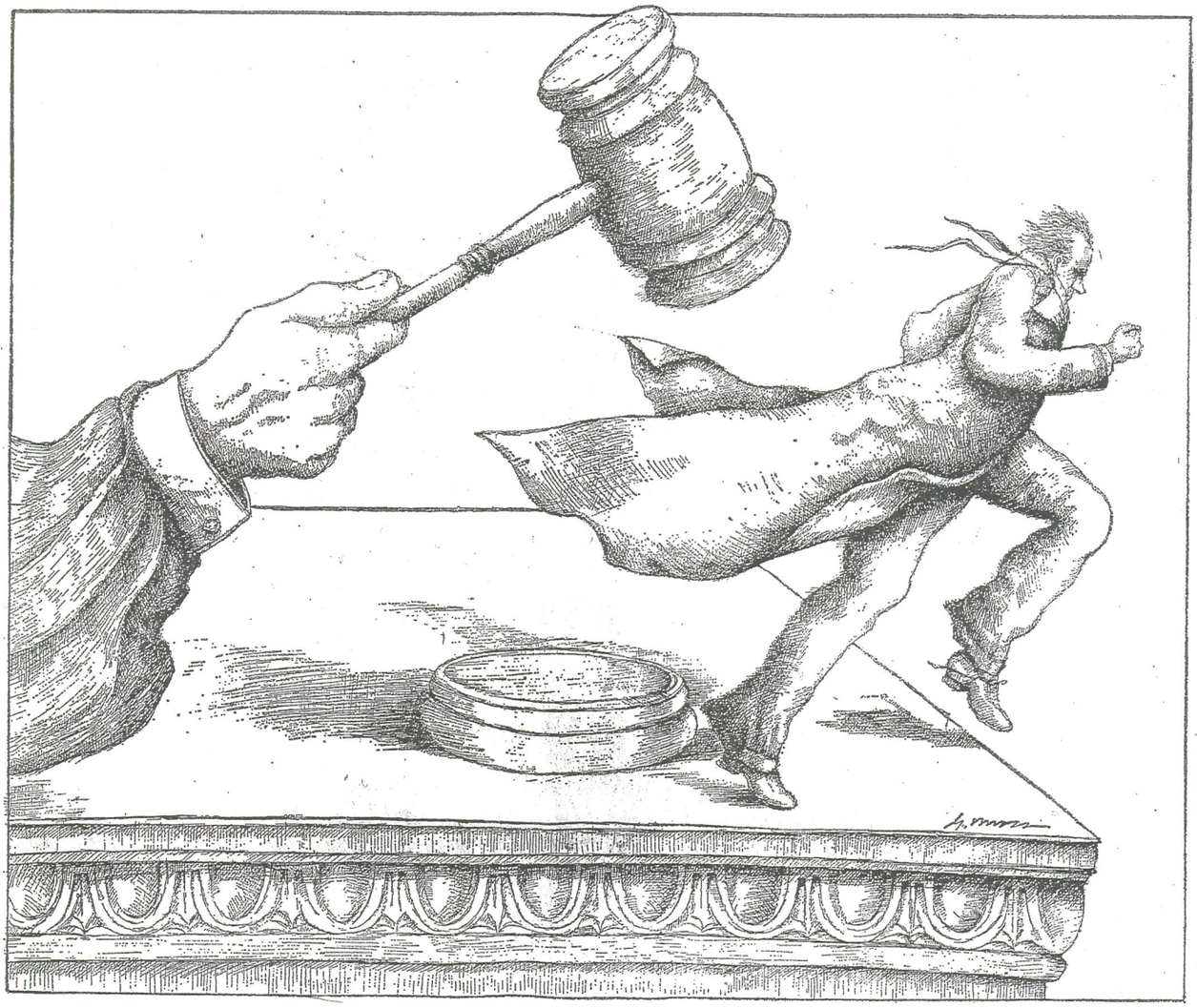


of, Treason, Bribery, or other high Crimes and Misdemeanors.

"The prosecutors, with the gift of hindsight, later calculated that at least 20 witnesses had either lied or withheld information."

The Prosecutors: From To the 'Saturday Night

a 'Third-Rate Burglary' Massacre'

By Lawrence Meyer

HAD IT BEEN almost any other office and any other burglars, the June 17, 1972, break-in would have been the kind of crime a prosecutor and a defense attorney settle over a cup of coffee.

Five men wearing surgical gloves were caught with burglary tools by three metropolitan policemen inside the prestigious Watergate office building. The burglars had made a forced entry. They were on the premises without permission. Open and shut.

But this was no ordinary burglary and these no seedy second-story men despite the mocking refusal two days later of the presidential press secretary to comment on "a third-rate burglary attempt."

The five men had broken into the offices of the Democratic National Committee. One of them was the security chief for President Nixon's re-election committee, James W. McCord Jr. Four had had contact with the Central Intelligence Agency at some point in their lives.

In its initial stages, however, nothing about the case suggested that it was the first chapter in the unfolding of the greatest political cause celebre in American history. Before the investigation had run its full course, the promising careers of men at the pinnacle of power in the American democracy would be devastated, the executive branch of government would be seized by paralysis as the trail led first into the White House and then into the Oval Office where the chief executive himself would be implicated in a massive obstruction of justice.

The men who tried to cover up the truth feared the worst for themselves and their President, and in the end their worst fears were realized.

But all of this was to come later as the investigation first creaked and groaned along, snaring seven unknowns before the sheer weight of the cover-up transformed the probe into an avalanche whose momentum toppled men and institutions from their secure positions.

Washington is a town with two principal industries—politics and government. If the White House could afford to scoff at a "third-rate burglary attempt," the U.S. attorney for the District of Columbia could not.

ON THE FIRST day, principal Assistant U.S. Attorney Earl J. Silbert was assigned to the case. Silbert, a trim, athletic man with olive skin and thinning black hair, is a graduate of Harvard College and Harvard Law School. He had spent his entire profesional career working for the Justice Department, beginning in 1960 when Dwight Eisenhower was preparing to step down from the presidency.

By 1972, Silbert—despite his bookish appearance, formal manner of speech and Ivy League background—had developed a reputation for toughness in the law-and-order mode so admired by the Nixon administration. A protege of Attorney General John N. Mitchell in the Justice Department, Silbert had played a principal role in drafting the Nixon administration's no-nonsense criminal reform bill for the District of Columbia with its provisions for "no-knock" entry by policemen and preventive detention for suspected criminals.

As principal assistant to U.S. Attorney Harold H. Titus Jr., Silbert already had handled some sensitive cases, but none as delicate as the one he was undertaking.

To assist him, Silbert chose two other veteran prosecutors, Seymour Glanzer and Donald E. Campbell.

At 46, Glanzer was the oldest of the three. A nervous, mercurial man with a habit of chewing his fingers while engaged in passionate argument, Glanzer was chief of the office's fraud unit. He had earned a national reputation for his prosecution of white-collar crimes. Although a graduate of the Juilliard School of Music, Glanzer had later decided to attend New York Law School. When he became part of the Watergate prosecution, he had earned the respect of fellow lawyers for thoroughness in preparation and mastery of the law.

Glanzer's participation in the case began as a part-time affair, as Silbert and Campbell first sought his advice in tracking down and securing documentary evidence. As the case progressed, however, Glanzer's time became increasingly tied up with Watergate and by December it was monopolized to the exclusion of all other considerations.

Campbell, 34, was the only local person of the three prosecutors. A native of Lynchburg, Va., Campbell had attended the University of Maryland for his undergraduate work and for law school. Prematurely bald, Campbell had been a member of the major crimes unit assembled in the U.S. attorney's office to fight organized crime in the nation's capital, especially gambling and narcotics. Campbell, the youngest of the three, was also the most easy-going, affable and relaxed in conversation, with an ability to laugh at himself despite the gravity of the task that had been thrust upon him.

On the face of it, the prosecutors did not have a difficult task. The day the crime occurred they already had five suspects—caught in the act—under arrest.

What made the case more than a burglary was the wiretapping and eavesdropping equipment that the men had with them when they were arrested. Since the wiretap operated through a tiny radio transmitter, it was reasonable to assume that a listening post was nearby.

Two days after the burglary, the FBI found the listening post. It was across the street from the Watergate office building in the Howard Johnson motel. A motel clerk, seeing McCord's photograph in the Sunday paper, had called the FBI to say that McCord had rented rooms in the motel for the past several weeks.

The trail led the FBI from the Howard Johnson's to Alfred C. Baldwin III, a chunky former FBI agent who had been hired by McCord as a bodyguard for Martha Mitchell, whose husband had resigned as Attorney General in March, 1972, to direct President Nixon's bid for re-election.

TWO NOTEBOOKS found while searching two hotel rooms used by the burglars in the Watergate Hotel adjacent to the offices that housed the Democratic headquarters—turned out to belong to two of the men under arrest—Bernard L. Barker and Eugenio Martinez, both of Miami.

The address book contained two entries of special interest to the investigators—one for a Howard Hunt, with the notation "W. House," and the other for a "George," with a phone number that turned out to be George Gordon Liddy's number at the Finance Committee to Re-elect the President, where Liddy was employed as general counsel.

With assistance from Baldwin, who had a promise from the prosecutors that charges would not be pressed against him if he cooperated, the investigation had taken shape. Using photographs, Baldwin had identified Hunt and Liddy as two men introduced to him by McCord who had been part of the scheme to bug the Democratic headquarters.

By mid-July, the FBI had traced $114,000 that had passed through Barker's Miami bank account to the Nixon re-election committee. Of that sum, $89,000 had been "laundered" through Mexico in an elaborate attempt to conceal the source of the funds.

But when the prosecutors tried to go beyond Hunt and Liddy to higher officials in the campaign structure and the White House, they ran into a stone wall.

From the day they began their investigation, the prosecutors knew that the case was a no-win proposition. If they turned up no conspirators above Hunt and Liddy, they would be condemned for not presssing hard enough. If they pressed harder, but turned up nothing, they would be condemned for headhunting by the administration. If they went further and struck paydirt, they

would be heroes, but the risks—personal and professional—were great.

From the outset, though they did not discuss it, the prosecutors followed some basic rules. None of them ever interviewed anyone without another member of the team present. They wanted to hear everything first hand. But more important they harbored a concern that sooner or later someone would apply pressure on them, and they wanted two witnesses to every interview for corroboration.

IN THOSE EARLY months, however, the prosecutors felt little pressure. One exception occurred when they subpoenaed former Commerce Secretary Maurice H. Stans, finance director of the Nixon campaign, to appear before the federal grand jury. Stans informed President Nixon's top domestic affairs adviser, John D. Ehrlichman, who made an irate phone call to Assistant Attorney General Henry E. Petersen to demand that Stans be accommodated. In the end, Stans was allowed to give a deposition at the Justice Department away from the prying eyes of the reporters who lurked around the grand jury room in the federal courthouse, according to Silbert's justification of the decision.

But the investigation stalled at Hunt and Liddy. Liddy, the prosecutors were told, had been given almost $200,000 to fashion an intelligence gathering apparatus designed to infiltrate radical groups as a means of monitoring plans for violence at the 1972 Republican National Convention. The story, given initially to the prosecutors by deputy Nixon campaign director Jeb Stuart Magruder, was corroborated by Herbert L. Porter, scheduling director of the Nixon campaign.

The prosecutors were also told by Hugh W. Sloan Jr., who had resigned mysteriously from the Nixon campaign in July with the public excuse that his wife was pregnant, that Magruder had tried to convince him to perjure himself by misrepresenting the amount of money Liddy had been given. When confronted by the prosecutors with Sloan's charge, Magruder denied it and a lie detector test sustained him.

In a memo to the Justice Department, the prosecutors stated their doubts about Magruder, which were shared by the grand jury. But Magruder's story held together, supported as it was by Porter and by Mitchell, who made a convincing witness before the grand jury.

The doublts persisted. As Assistant Attorney General Petersen later testified before the Senate Watergate committee, he told Attorney General Richard G. Kleindienst, "Nobody acts inno-

cent." The problem was, Petersen said, "We couldn't translate that." The prosecutors lacked proof. "There were a lot of things the three of us heard that we didn't believe," one of the prosecutors recalled later, "but we had to think in terms of things we could prove."

As the investigation progressed, the prosecutors kept Petersen, their supervisor in the Justice Department, briefed on developments. What the prosecutors did not know was that Petersen was, in turn, briefing White House counsel John W. Dean III. And Petersen apparently did not know that Dean was briefing Magruder, Mitchell, Ehrlichman and White House chief of staff H. R. (Bob) Haldeman. This pipeline from the grand jury was an invaluable aid to the participants in the cover-up being conducted without the knowledge of the prosecutors.

The cover-up was pervasive. The prosecutors, with the gift of hindsight, later calculated that at least 20 witnesses who appeared before the grand jury had either lied or withheld information.

Dean stalled FBI agents who appeared at the White House for routine interviews, keeping them waiting for hours until in frustration they called Silbert who called Petersen who called Dean to prod him into giving the FBI agents access to the persons they wanted to question.

The prosecutors were vaguely suspicious of Dean but still ignorant of the cover-up. "I never dreamed it," one prosecutor said later. His suspicions of persons possibly implicated stopped with Magruder. "Would Mitchell be involved?" he asked rhetorically. "An Attorney General of the United States?"

If they had presented a theory to their superiors suggesting that higher-ups were involved, he said, "We would have been hung in a public square."

As the investigation continued through the long wilting Washington summer, the public clamor for indictments grew. One Justice Department lawyer later defended Silbert's conduct of the inquiry. "Earl was under the most intense pressure to return indictments ... before the election—quick indictments and the fullest investigation in history. That's impossible, first off.

"Next they [the prosecutors] offered all the conspirators a deal to talk before the election, but none took it. All the evidence about a wider conspiracy was bits and pieces—nothing any sane prosecutor would dare go into court with."

THE INDICTMENTS were returned Sept. 15, 1972, charging seven men—the five caught inside the Democratic headquarters and Hunt and Liddy—with conspiracy, burglary, illegal wiretapping and eavesdropping.

U.S. District Court Chief Judge John J. Sirica, a crusty, blunt-spoken jurist who at 68 was nearing the end of an undistinguished career on the bench, took advantage of court rules to assign the case to himself.

Privately, the prosecutors bemoaned Sirica's decision. Frequently reversed by the U.S. Circuit Court of Appeals, Sirica showed a predilection for the prosecution that had earned him the nickname "Maximum John." The prosecutors wanted a trial free of judicial error, and with Sirica's shoot-from-the-hip manner of ruling, they feared they would not get it.

Sirica, son of an Italian immigrant, was hard-working and perservering. He had pulled himself up by his bootstraps, through law school into a successful law practice and finally to the federal bench. He was a deep believer in the American dream and was offended by the political pollution that the Watergate break-in symbolized.

AS CAREER PUBLIC servants confronted with a dilemma, the prosecutors decided to chart a cautious course. However sound their decision might have been from a legal point of view, it would raise suspicions about their judgment and conduct that they would never be able to explain to the complete satisfaction of their critics.

Whatever doubts they may have entertained privately, in public they gave the impression that they had the case well in hand, that nothing of significance remained to be uncovered.

At the same time, Petersen fed suspicion about the diligence of the investigation with a speech before an assembly of U.S. attorneys in September, 1972, only nine days after the indictments were returned. In answer to a question, Petersen said that "the jail doors will close" behind the Watergate defendants before they would ever reveal further details about why they had broken into the Democratic headquarters.

In private conversation with reporters, the public impression was reinforced. The prosecutors gave no indication at all that they were suspicious or that they thought the conspiracy went beyond Hunt and Liddy.

The prosecutors turned aside suggestions that the trial could be a vehicle for revealing more about the Watergate affair than had already been made public by the Justice Department. They were confined by rules of evidence to prove the charges in the indictment, nothing more, they argued. But they were responsible for framing the indictment and whatever limitations it imposed on them were limitations that they had played a crucial role in drawing.

At the same time that the prosecutors were leaving the impression that they had traced the conspiracy as far as it went, press reports were suggesting that the Watergate break-in was part of a far more extensive strategy involving high officials both in the Nixon campaign and in the White House.

Throughout the summer and fall, The Washington Post followed the trail of money from the burglars back to the Nixon re-election committee and into the White House. Despite repeated denials from both the White House and the Nixon re-election committee concerning their involvement in the Watergate break-in, questions were being raised.

A month before the trial began, Sirica let the prosecutors know that he was not satisfied with the narrow course they seemed intent on following. "This jury," Sirica told the prosecutors, "is going to want to know what did those men go into that headquarters for? Was their sole purpose political espionage? Were they paid? Was there financial gain? Who hired them? Who started this?"

IT BECAME a litany with Sirica and in time he came to symbolize the anger, frustration and determination of Americans concerned about the Watergate affair to know the truth about it.

But if Sirica expected the trial of the seven men to produce answers about Watergate, his expectations were misplaced. As the trial began in January, 1973, Hunt—whose wife had been killed in an airplane crash while on a mysterious mission to Chicago—pleaded guilty. Hunt admitted his guilt, but under questioning by Sirica, denied any knowledge pointing to the involvement of others in the Watergate affair.

Five days later, the four men from Miami stepped forward to plead guilty as well. Like Hunt, they professed ignorance about anyone else's involvement. And so the trial—with only Liddy and McCord remaining as defendants—droned on for the rest of the month, through the inauguration of Richard M. Nixon, who had won a stunning landslide re-election victory. Magruder, whom the prosecutors were reluctant to put on the witness stand, appeared as a government witness after the prosecutors decided they had to explain the purported purpose for which Liddy had received Nixon campaign funds.

Silbert, who had been dropping broad hints in public that the conspiracy went no higher than Liddy, told the jury that Liddy and McCord "were off on an enterprise of their own, diverting that money for their own uses."

Summoning up the righteous scorn that a prosecutor reserves for a lawyer who breaks the law, Silbert hammered away at Liddy in the final argument to the jury. Liddy, Silbert told the jury, was "the boss ... the man in charge, the money man, the supervisor, the organizer, the administrator. That was Mr. Liddy, organizing and directing this enterprise right from the start ..."

When the jury retired to consider its verdict, it had heard 60 witnesses in 16 days of testimony. After less than 90 minutes, the jury was back with a verdict—guilty on all counts.

SIRICA, who had been so eager for answers that he had taken over the questioning of some prosecution witnesses, was still intent on his mission. Three days after the trial, he told the prosecutors during a post-trial hearing, "I have not been satisfied and I am still not satisfied that all the pertinent facts that might be available—I say might be available—have been produced before an American jury."

Silbert announced his intention to call all seven defendants before the grand jury as soon as they had been sentenced by Sirica.

In the next seven weeks, the focus shifted away from the U.S. courthouse to the Capitol, a half-mile away, to the Senate Watergate committee. If answers were to be found, it was likely that they would be produced there.

A relative quiet settled on the courthouse. The scores of reporters who had crowded in for the trial departed, as did the photographers and television cameramen who had camped outside the courthouse doors.

Silbert turned to administrative problems that had piled up while he had conducted the investigation and prepared for the trial.

Glanzer returned to the fraud unit and to less spectacular white-collar crime.

Campbell, bored but amused with the irony of his situation after participating in a trial of national importance, was assigned to the pool of assistant U.S. attorneys, and given an armed robbery to prosecute. After the excitement of the Watergate trial, Campbell had difficulty getting interested in his work.

In private conversation, Glanzer was dejected about the effect of the trial on the careers of the prosecutors. "We're frozen," he told a visitor. "If they promote us, it will look like a payoff. If they demote us, it will look like punishment. So we're just like frozen."

When drawn into conversation about the trial, Glanzer railed against any suggestion that the trial had been a disappointment in its failure to throw

more light on the conspiracy behind the break-in. We don't have any proof, he would reply heatedly. In a matter of weeks, the trial began fading from public memory.

When criticisms were raised in public about the quality of the Watergate investigation, Justice Department officials were ready with a battery of statistics apparently designed to over-

While the White House Three Prosecutors Began Scoffed, Then Denied, Their Probe

"The evening of the 'Saturday Night Massacre' was one of the moments when one could feel the palpable presence of history."

whelm critics with the magnitude of the effort.

Thus, when acting FBI Director L. Patrick Gray III appeared before the Senate Judiciary Committee which was holding hearings on his nomination to be permanent director, he called the FBI's investigation a "major special" and "a full court press." According to Gray, the FBI investigation involved 56 of the bureau's 59 field offices, four legal attaches' offices in American embassies abroad, 2,698 leads were covered, 2,347 interviews were conducted, 22,403 agent man-hours and 5,492 clerical hours were expended.

This defense of the Watergate investigation, however, was about to be rendered obsolete by events.

On March 23, 1973, almost two months after the trial concluded, Sirica's courtroom was again packed with reporters and spectators for the sentencing of the seven defendants. Encountering a reporter in the hall shortly before he went into court, Sirica said, "I think there will be something you'll find interesting." He did not elaborate.

Sirica entered the courtroom with his customary dour expression, nodding to his clerk, James Capitanio, as he trudged up the steps to his seat. Before pronouncing sentence, he told the courtroom, he had two letters to read into the record—both from McCord.

The first letter was addressed to New York Times reporter Walter Rugaber, complaining about some minor details in a story Rugaber had written.

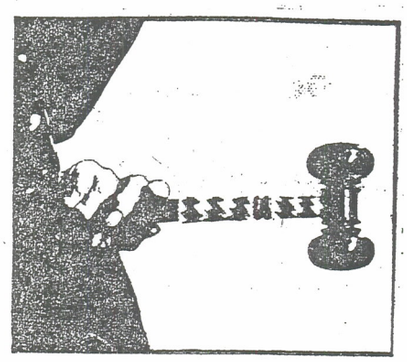
THE SPECTATORS listened impatiently. The second letter was addressed to Sirica, who had received it three days earlier.

Perjury had been committed by government witnesses during the trial, McCord wrote. "There was political pressure applied to the defendants to plead guilty and remain silent." Others involved in the Watergate operation had not been identified during the trial, "when they could have been by those testifying."

By the time Sirica finished reading the letter, the courtroom was in an uproar. Reporters jumped from their seats and ran to the doors, brushing aside U.S. marshals who tried to stop them. Sirica declared a short recess, not to restore order but because he had a terrible stomach ache.

After half an hour, Sirica returned to pronounce sentence, ordering Liddy to serve at least six years and eight months in prison and fining him $40,000. Hunt and the four men from Miami were given provisional sentences of 35 years. Sirica told the five men that he would weigh in his final determination of sentences how fully they cooperated with the grand jury and the Senate Watergate committee.

The next day McCord began talking to the Senate committee. Committee chief counsel Samuel Dash called an



extraordinary Sunday press conference to tell reporters that McCord was "naming names." That night, the Los Angeles Times reported two of the names McCord had given the committee—Dean and Magruder.

The next day, Silbert reconvened the grand jury and brought Liddy before the panel for questioning. As expected, Liddy refused to answer questions that day or in any of his subsequent visits.

The prosecutors, however, developed a strategy they hoped would flush out their quarry. Leaving the door to the corridor open, so that reporters could see the doors to the grand jury room and a small anteroom, the prosecutors periodically led Liddy from the grand jury room to the anteroom where they simply shot the breeze with Liddy and his lawyer before taking him back into the grand jury room.

At one point, the prosecutors asked Liddy's lawyer, Peter Maroulis, to tell reporters that Liddy was cooperating. Maroulis, indignant at the suggestion, refused.

As the prosecutors hoped, Maroulis did just the opposite. He insisted to reporters that Liddy was not cooperating no matter what the reporters might suspect from the movement back and forth from grand jury room to anteroom.

WITHIN TWO WEEKS, Dean had approached the prosecutors through his lawyers. A tedious process of negotiations began, with Dean's lawyers seeking immunity from prosecution for their client in return for his testimony. The prosecutors insisted on hearing what Dean had to say before making a decision.

When Dean finally talked to the prosecutors himself, in early April, he indicated that he thought Liddy had already told them much of what he was relating. The prosecutors took some quiet satisfaction that their ruse had worked.

But Dean's narration, during which the prosecutors were not allowed by Dean's lawyers to ask questions, was a rambling, disjointed account. Glanzer finally told Dean that before he left the White House, he should get his hands on every document he could to support his story.

On Thursday, April 12, Magruder's lawyers began negotiations with the prosecutors. Magruder, feeling himself under unbearable pressure, drinking, taking tranquilizers, told his lawyers he wanted to get the ordeal behind him.

On April 13, the prosecutors met with Magruder and his lawyers to hear Magruder's story. That night an agreement was struck—Magruder would plead guilty to one felony count.

The next day, meeting again in the offices of his lawyers, Magruder gave the prosecutors a full account of what he had done. Realizing that more than any other man he had blocked the prosecutors from uncovering the truth the summer before, Magruder apologized to Silbert. Silbert, taking no chances with Magruder this second time around, scheduled two days of lie detector tests to determine if Magruder was telling the truth. Magruder passed.

By the afternoon of April 14, the prosecutors felt that they had cracked the case. Magruder's testimony meshed with Dean's. The time had come, they believed, to let President Nixon know that three of his top aides were implicated in an obstruction of justice.

WHAT THE prosecutors knew about the case at that point did not implicate President Nixon. Dean had told them that he met with Mr. Nixon on March 21, had tried to make him understand what was happening but could not.

At 9 p.m. on April 14, the three prosecutors and U.S. Attorney Titus met with Petersen at his Justice Department office and outlined to him what they had learned. The four men discussed how to approach the President, debating whether Attorney General Kleindienst could be trusted. Finally they decided that with the evidence they had they were in control and had to proceed.

In the early morning hours of April 15, Petersen, Silbert and Titus briefed Kleindienst. Later that day, Kleindienst went to President Nixon, who already knew much of what he was told that day about the cover-up.

At the same time, the prosecutors continued their discussions with Dean, who informed Silbert about Hunt and Liddy's activities in connection with the Ellsberg break-in. Silbert wrote Petersen a memo about what Dean had told him. Petersen, in turn, informed President Nixon who directed Petersen to "stay out" of the Ellsberg matter on the grounds that it involved national security.

Petersen relayed the message to Silbert and the Ellsberg matter was dropped—for the moment at least. Dean's conversations with the prosecutors, however, revealed that Petersen had been giving him information during the previous summer and fall.

The Ellsberg break-in continued to bother Petersen. Finally, he said, he went to see Kleindienst and told him, " 'Look, you are out of the Watergate but you are not out of Ellsberg. I need some help.' " Petersen said he and Kleindienst discussed the matter and decided that the judge presiding over Ellsberg's trial had to be informed about the 1971 break-in of Ellsberg's psychiatrist's office. If President Nixon disagreed, Petersen said, he and Kleindienst agreed that they would resign.

Kleindienst took the matter up again with President Nixon on April 25. After "a moment's hesitation," Kleindienst testified before the Senate committee, Mr. Nixon agreed.

On April 27, U.S. District Court Judge W. Matt Byrne Jr., the presiding judge in the Ellsberg Pentagon Papers trial, added a new dimension to the Watergate affair by disclosing the Ellsberg break-in.

An additional motive for the cover-up had emerged.

THE PROSECUTORS had determined that Dean was a principal actor in the cover-up and could not be given the immunity he was seeking. As a result, if Dean were indicted, Petersen would be a likely witness. Therefore, the prosecutors told Petersen, he would have to get out of the case. Petersen refused, arguing that if he took himself out of the case, he would have to resign as assistant attorney general and then he would be attacked by the press.

In the first meeting, Petersen prevailed. But two nights later, in a nasty argument, the prosecutors told Petersen that they would have nothing more to do with him as far as the case was concerned. "I think if Henry could have gotten his hand on a gun that night," one of the prosecutors recalled later, "he would have killed all three of us."

Dean's lawyers began to raise the stakes, telling the prosecutors that Dean had more information to give if the prosecutors had the stomach to hear it. The lawyers played a cat-and-mouse game with the prosecutors, tantalizing them without actually producing hard information.

Finally, the prosecutors agreed to hear what Dean had to say. Dean told them that President Nixon had discussed raising $1 million to pay the Watergate defendants to remain silent and that he approved the payment of "hush money." The meeting lasted from 11 p.m. until 3 a.m. the next morning.

The three prosecutors left the meeting lonely and adrift with a terrible burden to carry. Their contacts with Petersen were severed. Kleindienst had removed himself from the case. "We were three assistant U.S. D.A.s who were very low on the totem pole," one of them recalled. "We just didn't know who the hell to turn to. That was a very tough time for all three of us."

They discussed their alternatives, considered going to various senators to tell them what they had been told. The problem was, in the Byzantine maze of congressional politics, whom could they trust?

On April 30, the inevitable flow of events solved their problem. Kleindienst resigned, along with Haldeman and Ehrlichman. Dean was fired. Secretary of Defense Elliot L. Richardson was nominated by President Nixon to be Attorney General.

WITHIN A MATTER of days, the prosecutors knew their time was running out. Pressure was increasing on Richardson to name a special prosecutor. "We knew exactly where we stood at that time," Campbell said later. "We knew the special prosecutor was going to come in."

The prosecutors could not savor their triumph in having opened the case. Under attack by the public and the press, the prosecutors also were under suspicion by the Senate Watergate committee which was considering investigating the investigators.

On May 18, the second day of the Senate Watergate hearings, Attorney General-designate Richardson picked former Solicitor General Archibald Cox to be Watergate special prosecutor. Cox was picked by Richardson after he dickered for almost two weeks with the Senate Judiciary Committee, which was holding up Richardson's confirmation until agreement was reached over the degree of independence the special prosecutor would have.

Richardson's final offer gave the special prosecutor wide latitude to investigate criminal activity and to make public statements. Richardson sealed the agreement with a promise that was to take on critical importance five months later. He promised not to countermand or interfere with the special prosecutor's decisions and not to fire the special prosecutor "except for extraordinary improprieties on his part." Richardson was confirmed May 23.

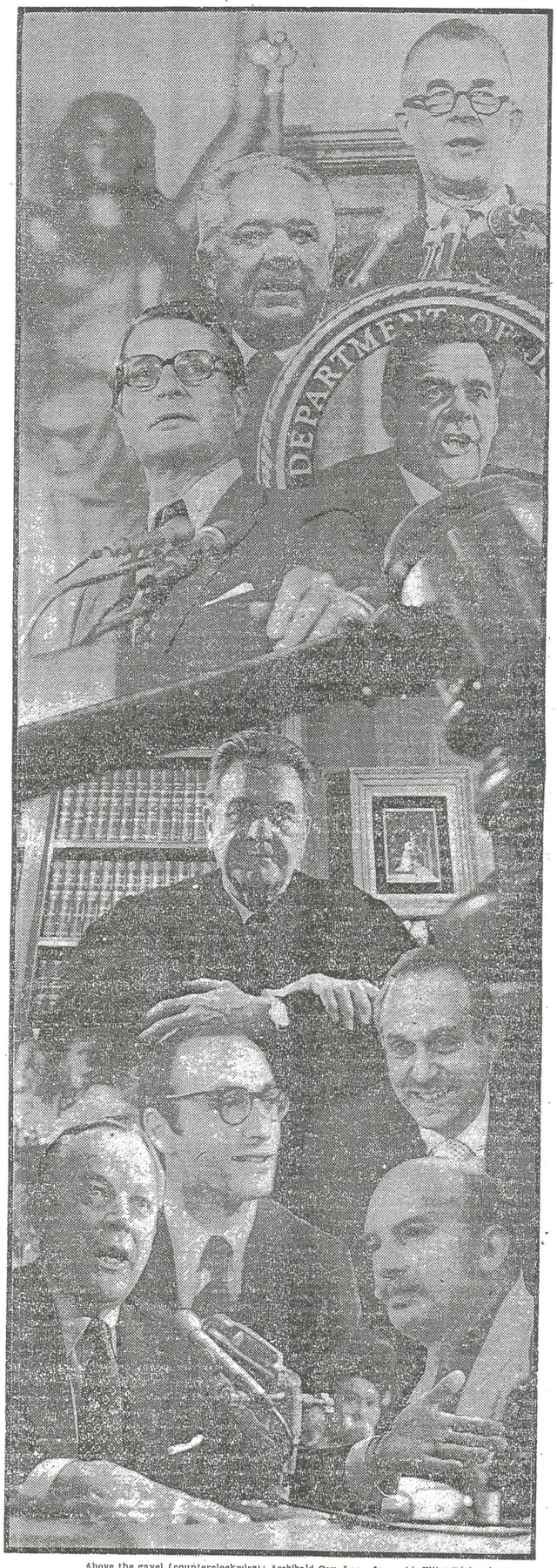
Two weeks earlier, speaking to a Republican fund-raising dinner in Washington, President Nixon had pledged that Richardson "and the special prosecutor that he will appoint in this case will have the total cooperation of the executive branch of this government."

The changing of the guard—from the three prosecutors to Cox—was a painful ordeal for Silbert, Glanzer and Campbell. They found Cox stiff, aloof and insensitive to what they had been through. Cox, still unfamiliar with the case and wary lest his maneuvering room should be limited by commitments to the three, kept them first at arm's length and then insisted that they work under his supervision.

For the three prosecutors it was a bitter pill to swallow. They believed that they had broken the case, only to find the public, the press and Congress dubious not only of their ability but of their integrity as well.

PETERSEN, testifying in August, 1973, before the Senate Watergate committee, summed up the bitterness the prosecutors felt in an emotional outburst.

"I resent the appointment of a special prosecutor," he told the committee. "Damn it, I think it is a reflection on me and the Department of Justice. We would have broken that case wide



Above the gavel (counterclockwise): Archibald Cox, Leon Jaworski, Elliot Richardson, Henry Petersen. Below the gavel (center): Judge John Sirica. Below him (counterclockwise): Seymour Glanzer Earl Silbert, Richard Kleindienst, Donald Campbell.

open, and we would have done it in the most difficult circumstances.

"And do you know what happened? That case was snatched out from under us when we had it 90 per cent complete with a recognition of the Senate of the United States that we can't trust those guys down there, and we would have made that case and maybe you would have made it different, but I would have made it my way and Silbert would have made it his way and we would have convicted those people and immunized them and we would have gotten a breakthrough.

"I am not minimizing what you have done or the press or anyone else, but the Department of Justice had that case going and it was snatched away from us, and I don't think it fair to criticize us because at that point we didn't have the evidence to go forward."

For the three prosecutors, the experience was especially difficult. On the one hand, Cox criticized the way they had handled the case in the early stages. On the other hand, Cox was also critical of the tactics that they had employed in dealing with the White House when the cover-up began to unravel.

Ironically, one of the criticisms Cox voiced of the three prosecutors arose when they told him that they had subpoenaed tape recordings from the White House that Dean, Haldeman and Ehrlichman had made. That was not the way to deal with the White House, Cox told them, stating his intention to negotiate with the White House to obtain the tapes.

Five months later, Cox would learn all too well that he could not deal with the White House on gentlemanly terms.

On June 29, a month after an abortive attempt to resign, the three prosecutors left Cox's staff to resume their normal duties.

In accepting the resignations of the three prosecutors, Cox wrote Silbert that "I am aware of various criticisms of your earlier conduct of the investigation and prosecution of seven defendants. Lawyers often differ on questions of judgment, and there are points on which my judgment might have varied from yours. Thus far in the investigation, however, none of us has seen anything to show that you did not pursue your professional duties according to your honest judgment and in complete good faith."

WHATEVER HOPES Cox may have been harboring for White House cooperation in the Watergate investigation began to fade on July 16 when former White House aide Alexander P. Butterfield testified before the Senate committee that since 1971 President Nixon had been automatically and routinely tape recording conversations in the White House Oval Office, his Executive Office Building suite and over several telephones.

President Nixon refused a request by both Cox and the committee to turn over certain tapes. On July 23, for the first time in 166 years, the President of the United States was subpoenaed. Two of the subpoenas came from the committee and one from Cox. On July 26, in separate letters to Sirica and the committee, President Nixon refused to comply with the subpoenas. In his letter to Sirica, Mr. Nixon said he was adhering to the precedent established by his predecessors "that the President is not subject to compulsory process from the courts."

The issue was joined.

On Aug. 29, Sirica ordered President Nixon to turn the tapes over to him so that Sirica could determine how much the grand jury should hear. The White House immediately responded that President Nixon "will not comply with the order" and that his lawyers were considering an appeal or an alternative way "to sustain" his legal position.

On Sept. 6, the White House appealed Sirica's decision to the U.S. Circuit Court of Appeals. A memorandum issued by the appellate court a week later urged an out-of-court settlement of the matter. On Sept. 20, the

court was told that no agreement could be reached after three days of discussions between Cox and White House lawyers.

On Oct. 12, the Court of Appeals upheld Sirica's decision and ordered President Nixon to surrender the tapes to Sirica for use by the grand jury. On Oct. 19, the deadline imposed by the appellate court for the White House to appeal the ruling to the Supreme Court, President Nixon announced that he would turn over a written summary of the tapes to Cox and to the Senate Watergate committee.

The week beginning Monday, Oct. 15, was critical for both Cox and the presidency of Richard Nixon. By the end of the week, Cox was out of a job —along with Attorney General Richardson and Deputy Attorney General William D. Ruckelshaus—and impeachment proceedings against President Nixon began to be pushed in earnest.

Throughout the week, President Nixon's lawyers and his chief of staff, Alexander M. Haig Jr., negotiated with Richardson about a way to satisfy Cox without fully complying with the court order to produce the tapes.

Periodically, the White House suggested to Richardson that he should fire Cox, but Richardson resisted. Cox and Charles Alan Wright, a University of Texas law professor retained by President Nixon, exchanged correspondence about the tapes. Ultimately, Cox and Wright were unable to come to terms among indications that the White House wanted to force the issue in order to fire Cox.

ON OCT. 19, President Nixon announced his decision to release written summaries of the tapes, to be verified by Sen. John C. Stennis (D-Miss.). Mr. Nixon noted that Cox had not accepted the proposal, but Mr. Nixon said he was ordering Cox, "as an employee of the executive branch," to cease his attempts to obtain the tapes through the judicial process.

The next morning, Cox called a press conference to announce that he would not obey President Nixon's order and that he would instead continue his fight in court to obtain the tapes.

The night of Oct. 20 was one of the moments when one could feel the palpable presence of history. One observer, confined throughout the evening to a downtown office building, remarked later, "I kept thinking I should go to a window to see if tanks were in the streets."

Persons out for the evening might have received the first news of day's extraordinary events when they turned on their televisions to watch what was to have been an NBC special on Cox's morning news conference. Instead, they saw John Chancellor announce, simply but dramatically:

"Good evening. The country tonight is in the midst of what may be the most serious constitutional crisis in its history. The President has fired . . . the special Watergate prosecutor, Archibald Cox, and he has sent FBI agents to the office of the special prosecution staff and to the Attorney General and the deputy attorney general and the President ordered the FBI to seal off those offices. Because of the President's action, the Attorney General has resigned.

"Elliot Richardson, who was appointed Attorney General only last May in the midst of the Watergate scandal, has quit saying he cannot carry out Mr. Nixon's instructions. Richardson's deputy, William Ruckelshaus, has been fired. Ruckelshaus refused in a moment of constitutional drama to obey a presidential order to fire the special Watergate prosecutor. The President has abolished special Watergate prosecutor Cox's office and duties and turned the prosecution of Watergate crimes over to the Justice Department."

It was a "stunning development," Chancellor said, "and nothing even remotely like it has happened in all of our history."

Chancellor, who had been a newsman more than 25 years, concluded the program by saying, "In my career as a correspondent, I never thought I'd be announcing these things."

Whatever reaction the White House had expected, it apparently did not bank on the shock, confusion and outrage that immediately swept the country. Two days after the "Saturday Night Massacre," as it was immediately called, Haig referred to the reaction as a "firestorm."

Was it all a horrible miscalculation —the removal of Cox—or a desperate attempt to stop the investigation before it encircled President Nixon? The cost to President Nixon was immediate —the House Judiciary Committee, which had been discussing the matter in the most tentative of terms, began serious preparations for impeachment proceedings against the President for only the second time in U.S. history.

And on Nov. 1, yielding to public and congressional pressure, President Nixon approved the appointment of a successor to Cox, Watergate Special Prosecutor Leon Jaworski. And the Watergate investigation continued.

Meyer, a metropolitan reporter for The Washington Post, covered the Watergate trial and Senate Watergate hearings.