

By William Safire

## ESSAY

WASHINGTON, Oct. 27—The man who appointed himself to be judge of the Watergate trial announced from the bench last week that he was "not trying to try this case on strict rules of evidence."

According to John Sirica, the reason why the normal rules of the criminal courtroom will not apply is that he wants to expose the "full story" of Watergate. For those simpletons who could not grasp his purpose, he spelled it out: "T-R-U-T-H."

The purpose of this celebrated trial, according to the judge, is only incidentally to determine the guilt or innocence of the five defendants: the basic purpose is to bring to light the truth. Most people will applaud that goal; most people do not understand the purpose of the criminal courts.

The only and only purpose of bringing a defendant to trial is to determine whether the evidence proves that specific individual committed the specific crime with which he has been charged.

That is why we have strict rules of evidence. Those rules must be strict to protect the individual against the power of government. To use the criminal court system for any other purpose than the trial of defendants for the particular charge is to pervert that system.

Judge Sirica, like Senator Sam Ervin before him, evidently believes that it is more important to find out the truth than to send a few men to jail. Accordingly, he is conducting his Nuremberg-on-the-Potomac trial in a way designed (a) to expose villainy in the highest places, (b) to convict the defendants and (c) to guarantee that the appeals courts will overturn the convictions.

Thus, the "error bag" of the defense counsel is not the primary concern of this misguidedly patriotic man on the bench, because he envisions a trade-off: The nation will benefit from the full truth exposed in the trial court, and the defendants will get their protection and their freedom in the appeals courts. Everyone will find out what really happened and nobody will go to jail, as justice steps aside for truth.

On this theory, the ends justify the means. By means of a temporary abuse of the criminal justice system, the ends of the national interest in truth are served. And since the abuse will soon be set right in the expected reversals on appeal, what is the harm in loosening up the rules of evidence?

The harm is incalculable. The first crime of Watergate was the corruption of political power in the campaign process; the second crime was the corruption of government power in the cover-up; the third crime of Watergate is the corruption of the criminal justice system in the prosecution of the first two crimes.

All three crimes, all three corruptions of power, have been and are being committed in the names of high-sounding goals—at first, political victory; then, personal loyalty; now, the public's right to know. But they are all forms of the same corruption.

Judge Sirica's admissions, his Greek-chorus commentary and his hints that he will call former President Nixon to the stand as a "court witness" which both defense and prosecution can treat as hostile; make plain that this is not intended to be the fair trial of five accused men. This is the trial of Richard Nixon, who is the target of the prose-

cution, the dumping ground of the defense and the ultimate fount of the "full truth" that the judge seeks.

In years to come, as our children study the aberrations of these times, the classic horror story will be the way Watergate tainted nearly everyone connected with it, finally including the man who originally cracked the case.

The taint of the third Watergate crime is, once again, the unlawful use of the law: in the present instance, the unlawful use of the criminal courts to publicize crimes rather than to try defendants. Break-in, cover-up, vendetta—all illegal, all participated in by the self-righteous abusing their trust in the name of a higher cause—and in the end, with the great majority of public and press joining in.

At least the break-in and cover-up were intimate conspiracies. In the perversion of the criminal courts that is the third Watergate crime, we are all conspirators, even the civil libertarians who have registered a mild peep for the record about needing disinterested judges but who reserve their outrage for the denial of rights of more respectably disreputable defendants.

Those are not the rights of a handful of villains that are being ripped away in a good cause and to the delight of the public; those are your rights and mine, and there is no getting them back when we set the precedent for giving them away.

The criminal courts should never be used to vent our spleen, to get our enemies, to right political wrongs, nor even to lay the awful truth before the curious public eye—but only use for justice, the specific justice demanded in the Constitution, or as somebody should spell out to the adulated man who has cast himself in a role higher than judge: "J-U-S-T-I-C-E."