

Sentences Divide Attorneys

Dean Sees His Punishment Harsh in Light of Pardon

By John P. MacKenzie

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The legal profession appears sharply divided over whether the pardon of Richard M. Nixon and light punishments given other Watergate figures warrant a reduced prison term for John W. Dean III, the onetime White House cover-up artist who helped blow the case open.

A survey indicates broad agreement that Dean's sentence of one to four years is not excessive for the crime to which he pleaded guilty—conspiring to obstruct justice—but that many attorneys are troubled by the relative penalties.

"The godfather is free in San Clemente and his chauffeur is in jail," said one lawyer. But another commented: "The Nixon pardon was wrong, especially its timing, but you can't allow that to distort everything else you do."

The question of Dean's punishment has arisen because the 36-year-old former presidential counsel has raised it in a motion now pending before Judge John J. Sirica. The request says very little about the pardon but a great deal about the relative penalties meted out to other Watergate figures.

"Dean's attorney," Charles N. Shaffer, claimed that Dean's sentence is harsh compared with those given others, especially defendants who cooperated less fully with the government or started cooperating long after the cover-up unraveled.

Sirica is not expected to act on the motion until the verdict is rendered in the current cover-up trial.

Many lawyers, insisting on anonymity because motion is pending, said the trial's outcome is the most significant unknown factor that will bear on Dean's fate.

"The judge knew about the pardon when he sentenced Dean the first time," one lawyer pointed out. "If he throws the book at them, Dean's sentence won't look so harsh. Now, if they're all acquitted, Dean's sentence will look very harsh indeed."

Not everyone is reluctant to talk about Dean's sentence. Sens. Sam J. Ervin Jr. (D-N.C.), Barry M. Goldwater (R-Ariz.) and Lowell R. Weicker (R-Conn.) have written to Judge Sirica to recommend leniency.

Weicker stressed the risks Dean took in taking on Nixon.

Goldwater said Dean had done his best to correct his own wrongs. It is questionable whether the senatorial letters will influence the independent-minded Sirica.

Several of those questioned said their views of proper sentencing had been clouded by a flurry of celebrated events topped by the pardon. Among them; the Spiro Agnew plea, fine and resignation coupled with the jail terms handed to two co-defendant informants, and the misdemeanor plea and lack of a jail sentence for former Attorney General Richard G. Kleindienst.

The motion asked Judge Sirica to consider, or reconsider with new emphasis, that Dean's cooperation "led to the discovery of the presidential tapes," that Dean had tried to persuade Nixon to end the cover-up at a time when he was sure that would mean prison for himself; and that he cooperated early and continuously.

Shaffer asked that Dean, who entered prison Sept. 3, be released immediately or that the term be cut to "a flat sentence of one year and a day," rather than letting the parole board decide whether he must serve longer.

Dean's own reaction to his sentence was expressed in an interview with Playboy magazine: "The severity of my sentence surprised me. I had thought that when (Jeb Stuart) Magruder was sentenced to 10 months to four years, that that sort of rep-

resented the perimeter of what I might expect myself, because Magruder was involved not only in the cover-up but in the planning of Watergate and in countless perjury situations. . . . I had never perjured myself, I had not been involved in the actual planning and the record is pretty clear that, in my own way, I had tried to stop it from occurring."

Dean's plea embraced numerous obstructions of justice at a time when he was privy to FBI investigation data and threw investigators off the trail—attempting to get Watergate burglar E. Howard Hunt Jr out of the country, trying to get money for bail and payments to the original defendants, coaching Magruder's perjury and transmitting a clemency offer to James C. McCord.

Shaffer's motion renewed a dispute with Judge Sirica at the Aug. 3 sentencing over whether Dean could have been prosecuted for anything more than the Mc-

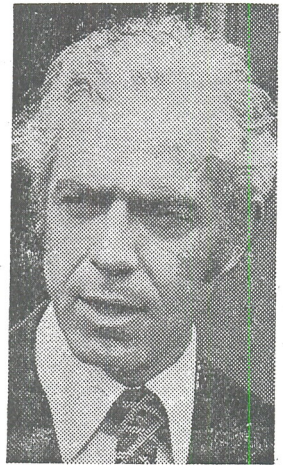
Cord clemency offer. The other charges, he said, were protected by the understanding Dean reached with original Watergate prosecutors Earl J. Silbert and Seymour Glazer. The prosecutors promised not to use against Dean what he told

them or evidence gathered on tips from Dean, Shaffer noted.

Shaffer said that if Judge Sirica will hold a hearing, he will produce an associate Watergate special prosecutor who will support his estimate of Dean's limited vulnerability. Previously the Watergate prosecutor's office has indicated some support for Dean.

At sentencing time Shaffer wanted Judge Sirica to await the trial so that the famous White House tapes could dramatize the accuracy and even the understatement of Dean's accusatory testimony, showing that Nixon was in full charge of the cover-up despite entreaties from Dean.

As for the discovery of the tapes, Shaffer produced a letter from Samuel Dash, former chief counsel of the Senate Watergate committee, saying that "but for the specific clues John Dean gave our committee, we might not have uncovered the White House taping system." Critical questioning of former White House aide Alexander Butterfield "was in direct response" to Dean's statements to committee staff members that he suspected Nixon had



CHARLES N. SHAFFER
... produced Dash letter

taped one of his conversations.

All the lawyers interviewed agreed that Judge Sirica cannot be reversed by a higher court no matter how he rules on Dean's motion. The basic sentence is less than the five year maximum for the conspiracy count and while appellate courts have begun to scrutinize sentences more carefully of late, the lawyers adjudged the sentence within any reviewing court's zone of reasonableness.

Sirica has reduced Watergate sentences before, but those actions involved the burglars who had been given "provisional" stiff terms.

For many thoughtful members of the bar, the Watergate sentences are but the latest example of the judge's dilemma in finding a fair penalty for the defendant and society. Many critics charge that the Watergate conspirators have got off too lightly compared to the blue-collar or no-collar criminal, but concern for the relative fairness of the sentences between Watergate defendants is a more recent development.

A recent sentencing study

by the Federal Judicial Center showed that federal judges display extreme variations not only in sentencing different kinds of defendants but also in their views of how the same defendant should be punished. The study, in which judges were given the same set of facts and asked what their sentences would be, produced the added finding that more experienced judges do not agree on punishment any more than the newer judges.

Shaffer's motion cited these sentences for comparison: Herbert W. Kalmbach, 6 months; Charles W. Colson, 1 to 3 years; Howard Hunt, 2½ to 3 years; Dwight Chapin, 10 to 30 months; John D. Ehrlichman, 1¾ to 5 years; Egil Krogh, 6 months.