WATERGATE

Chief Judge Sirica took on the original Watergate case. This was a major undertaking that earned him national and international recognition. But Watergate could not be confined to the original break-in. Many cases and novel legal problems followed. As different matters came up Judge Sirica farmed them out to different Judges, but primarily to me.

My involvement covered a variety of different matters in 1974, including the following.

(1) The indictment and trial of Ehrlichman, Colson, Liddy, Barker and Martinez. (Cr. No. 74-116)

(2) The indictment and trial of Dwight Chapin. (Cr. No. 990-73).

(3) The indictment and guilty plea of Donald Segretti (Cr. No. 828-73).

(4) The indictment and guilty plea of Egil Krogh. (Cr. No. 857-73).

(5) A civil suit arising out of Judge Sirica's case, United States v. Mitchell, by NBC, ABC, CBS, et al., to obtain and broadcast Nixon tapes in evidence in the criminal case. (Misc. No. 74-128). 386 F.Supp. 639 (1975). Subsequent Order of Judge Sirica on 4/4/75 reversed me, and then the 10/26/76 Court of Appeals decision reversed Judge Sirica.

(6) A civil action to set aside the discharge of Archibald Cox as Special Prosecutor that questioned the legality of the firing by Robert Bork. (Nader v. Bork, Civil Action No. 1954-73. 366 F.Supp. 104 (1973)). Court of Appeals Order 8/20/75 dismissing appeal as moot.

Other cases were assigned to Judge Hart and Judge Bryant. We were all in the center of a

growing storm under ever-demanding press attention and called on to confront difficult constitutional problems in the face of ever-changing facts. The parallel proceedings on the Hill affected our own timing and certainly intruded on efforts to maintain an atmosphere of judicial calm and thoughtful deliberations. For example, Senator Ervin, Chairman of the Senate Select Committee inquiring into Watergate, in a rush for headlines sought to subpoena tapes[1] from President Nixon which were vital to Judge Sirica's criminal case and pertinent to the Ehrlichman criminal case before me. This would have compromised the trials and increased pretrial publicity to some defendants' prejudice. Judge Sirica asked me to handle the subpoena, which Nixon resisted; and with tongue somewhat in cheek, I sustained President Nixon's claim of Executive Privilege (see Letter from President Nixon to me dated February 6, 1974) to keep the judicial proceedings before Judge Sirica on track. Similarly, the managers of the House Committee considering possible impeachment of President Nixon were concerned with our work but more considerate. They were willing to delay a bit if the Ehrlichman matter could be moved to a conclusion rapidly, and I gave assurances to the lawyers for the Majority and Minority that the Ehrlichman trial would be done by about the end of June -- I hoped.

The only defendant in the Ehrlichman case assigned to me who attempted an excessive defense was Ehrlichman himself. Colson pled guilty. Liddy offered no excuses. Barker and Martinez correctly claimed they had acted to protect the security of the United States on White House orders from Hunt, Colson, et al. It was Ehrlichman's defense that brought me into a sharp

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[1] Senate Select Committee on Presidential Campaign Activities, et al. v. Richard M. Nixon, individually and as President of the United States, Civil Action No. 1593-73, 370 F.Supp. 521 (1974), affirmed, 498 F.2d 725 (1974).

confrontation with President Nixon during pretrial discovery.

The trial itself was more or less routine once a jury had been selected. The defense was feeble and arrangements worked out with the press went fairly smoothly. Pretrial was a different matter. The course of the trial depended on whether or not President Nixon was personally involved and whether claims of national security or the suggested right of the President to withhold White House materials needed by the defense were sustained. Rumors were flying around. I did not want the trial to start unless it could be finished. It was necessary to pin the President down and settle the merits of any obstacles presented.

Initially Ehrlichman suggested he had acted on orders from President Nixon to protect national security. He made elaborate requests for papers from the Defense Department, CIA and Justice Department. The President denied any advance knowledge of the break-in into the offices of Ellsberg's doctor or his staff's participation in the planning in an April 29, 1974 letter. However, he made a broad attempt to protect White House and agency documents on the ground that it was his overriding responsibility to protect national security. I struck down this obstacle in a long opinion, United States v. Ehrlichman, 376 F.Supp. 29 (1974), 546 F.2d 910 (1976). The way was still open for Ehrlichman to press his claim to examine government records of various security agencies, but he made no effort to do so, making it crystal clear that his claim that he acted for reasons of national security was merely a ploy.

The really bitter confrontation concerned Ehrlichman's request to see his own papers. They had been taken from him and sealed in a White House vault when he was fired by the President. Informal requests for access for himself and his lawyer had been denied. I held a hearing and supported Ehrlichman's demands, indicating that any secret or irrelevant material could first be

screened by me in camera. The White House still resisted. Obstacle after obstacle emerged. Ehrlichman could look at the papers alone but could not copy them or make notes. Then when I said he could make notes and have a lawyer, observers would be required to be present to overhear lawyer-client talks. Hours were limited. No table or chair would be provided. Counsel for the President, James D. St.Clair, a respected, experienced Boston trial lawyer, insisted he was following presidential instructions. I hinted in open court that this intransigence could lead to dismissal of the indictment against Ehrlichman, but the White House refused to budge.

On June 10, 1974, I finished an opinion directing the President to show cause why he should not be held in contempt or the indictment dismissed. This opinion is in my papers, but never was issued. I realized that if it issued, President Nixon would, in all probability, be impeached. Perhaps I had somehow failed to impress the White House with my hints that dire action would be taken and given the national consequences of my proposed action, I decided to make a final effort.

I asked St.Clair and Ehrlichman's lawyer and the prosecutor to come to chambers, and after repeating my clear demands for release of Ehrlichman's files, I appealed to St.Clair's sense of fair play. I had been involved in several antitrust cases as a lawyer and knew he was a successful attorney in this area. I said, "You must make it apparent to the President that he is being unfair. Imagine how you would feel if the U.S. sued one of your clients for criminal antitrust violations and the Department of Justice refused to show you papers its people had taken from your client's files and there were no other copies." He said he would take my message to the White House. The President gave in, probably never realizing how close he came to disaster -- or did he know?

Finally, it was necessary to get the President's sworn testimony before the jury. His letter to me of April 29, 1974 was not enough. The Jefferson and Burr controversy and Marshall's ruling

were the only genuine precedent. I decided to try interrogatories, drafted a short, precise set, boiling down Ehrlichman's lawyer's long-winded, mostly irrelevant efforts, sent it to the White House and the sworn responses were read to the jury.

There was in this unusual case always the unexpected until the very end. When we reached the day for final argument, the Courthouse was an armed camp. The cellblock had been seized by armed convicts and my courtroom was closed. I arranged to have the sequestered jury taken to the old courtroom used by the D.C. Court of Appeals where there still was an ancient jury box and held forth there, sharing Chief Judge Reilly's chambers. An old friend, he was most helpful and handed me a short nip of bourbon when the verdict finally came down.

The various letters from the President are in my papers and may take on more meaning against this background. The Watergate scandals would never have occurred if the many lawyers involved had remained true to their profession; but their failure did not, in the end, undermine the rule of law.