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Richard L. Aynes

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TO SET THE RECORD STRAIGHT: By Judge John J. Sirica

W. W. Norton & Co., 1979. 303 pp.

Reviewed by Richard L. Aynes*

IN MANY WAYS it seems almost impossible that eight years have passed since that night on June 17, 1972 when the Democratic National Headquarters at the Watergate complex was burglarized. Yet, the fact that so much time has passed becomes evident when one recognizes that many of the principal characters, once prominent in the headlines, have now faded into obscurity. To be sure, former President Nixon still captures attention. But how often do our thoughts turn to Rosemary Woods, Maurice Stans, Herbert Kalmbach, Robert Mardian, or Eugenio R. Martinez?

The arrests at the Watergate, of course, triggered investigations that subsequently resulted in the most profound political upheaval in the history of our nation. As a result, voluminous accounts of the break-in and the resulting investigation have appeared elucidating those events now widely referred to as the "Watergate Affair." These include the publication of court opinions,¹ documents, and transcripts,² reports by Congress,³ findings

*Assistant Professor of Law, The University of Akron School of Law; B.S., Miami University, J.D., Cleveland State University, 1974.

¹ *United States v. Nixon*, 418 U.S. 683 (1974); *United States v. Liddy*, 509 F.2d 428 (D.C. Cir. 1974), *cert. denied*, 420 U.S. 911 (1975). *Nixon v. Sirica*, 487 F.2d 700 (D.C. Cir. 1973); *United States v. Liddy*, 397 F. Supp. 947 (D.D.C. 1975), *aff'd*, 530 F.2d 1094 (D.C. Cir. 1976), *cert. denied*, 426 U.S. 937 (1976); *In re* Report and Recommendation of the June 5, 1972 Grand Jury Concerning Transmission of Evidence to the House of Representatives, 370 F. Supp. 1219 (D.D.C. 1974); *In re* Grand Jury Subpoena Duces Tecum Issued to Richard M. Nixon, 360 F. Supp. 1 (D.D.C. 1973).

² **THE NIXON ADMINISTRATION: WATERGATE IMPEACHMENT PROCEEDINGS, RESIGNATION, PARDON, PAST AND PRESENT JUDICIAL PROCEEDINGS, AND UNITED PRESS INTERNATIONAL NEWS COVERAGE: A COMPREHENSIVE MICROFICHE LIBRARY WITH ANALYTIC INDEXES**, National Education Consultants (1975) (microfilm); **WATERGATE COVER-UP TRIAL TRANSCRIPT**, Microfilming Corporation of America (1975) (microfiche); **UNITED STATES v. JOHN D. EHRLICHMAN, CHARLES W. COLSON, G. GORDON LIDDY, BERNARD L. BARKER, FELIPE DE DIEGO, EUGENE R. MARTINEZ**, University Publications of America (1975) (microfilm); **UNITED STATES v. GEORGE GORDON LIDDY, EVERETTE HOWARD HUNT, JAMES W. MCCORD, BERNARD L. BARKER, EUGENIO P. MARTINEZ, FRANK A. STURGIS, VIRGILIO GONZALEZ**, University Publications of America (1975) (microfilm); **UNITED STATES v. JOHN N. MITCHELL, HARRY R. HALDEMAN, JOHN D. EHRLICHMAN, ROBERT C. MARDIAN, KENNETH W. PARKINSON**, University Publications of America (1975) (microfilm); **R. NIXON, PRESS CONFERENCE OF OCTOBER 26, 1973** (1973) (film); **R. NIXON, MARCH 9, 1974: RICHARD M. NIXON** (1974) (cassette); **R. NIXON, SUMMATION OF RECORDED PRESIDENTIAL CONVERSATIONS TO THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES BY PRESIDENT RICHARD NIXON**, April 30, 1974 (1974); **R. NIXON, THE WHITE HOUSE TRANSCRIPTS; SUMMATION OF RECORDED PRESIDENTIAL CONVERSATIONS TO THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES BY PRESIDENT RICHARD NIXON** (1974); **R. NIXON, SUBMISSION OF RECORDED PRESIDENTIAL CONVERSATIONS TO THE COMMITTEE ON THE JUDICIARY OF THE HOUSE OF REPRESENTATIVES BY PRESIDENT RICHARD NIXON** (1974); **OCEANA PUBLICATIONS, CONSTITUTIONAL ASPECTS OF WATERGATE: DOCUMENTS AND MATERIALS** (1976-79); **B. BUSCHEL,**

by various investigative agencies of the government,⁴ as well as books by many of the principal actors.⁵

One of the recent and more worthy accounts is that presented by Washington D.C. District Court Judge John Sirica in his *To Set the Record Straight*. Judge Sirica's sixteen chapters generally cover five topics: 1) a prologue outlining his early experiences and how he attained his position of federal district judge; 2) the first Watergate break-in trial; 3) Judge Sirica's attempt to "break" the silence of the cover-up following the initial proceeding; 4) the controversy over the production of the Presidential tapes; and, 5) the ultimate trials of Nixon administration officials for conspiracy to obstruct justice.

In the twenty-three page autobiographical prologue, Judge Sirica re-

THE WATERGATE FILE (1973); HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., BRIEF ON BEHALF OF THE PRESIDENT OF THE UNITED STATES (1974).

⁸ F. MOSHER, WATERGATE: IMPLICATIONS FOR RESPONSIBLE GOVERNMENT: A SPECIAL REPORT AT THE REQUEST OF THE SENATE SELECT COMMITTEE ON PRESIDENTIAL CAMPAIGN ACTIVITIES (1974); COMPARISON OF WHITE HOUSE AND JUDICIARY COMMITTEE TRANSCRIPTS OF EIGHT RECORDED PRESIDENTIAL CONVERSATIONS BEFORE THE HOUSE COMM. ON THE JUDICIARY, 93d Cong., 2d Sess. (1974); HOUSE COMM. ON THE JUDICIARY, IMPEACHMENT OF RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, H.R. DOC. NO. 93-339, 93D CONG., 2D SESS. (1974); HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., MINORITY MEMORANDUM ON FACTS AND LAW (1974); HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., STATEMENT OF INFORMATION (1974); HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., STATEMENT OF INFORMATION: BACKGROUND MEMORANDUM (1974); HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., STATEMENT OF INFORMATION SUBMITTED ON BEHALF OF PRESIDENT NIXON (1974); HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., SUMMARY OF INFORMATION (1974); HOUSE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., TESTIMONY OF WITNESSES (1974); HOUSE SUBCOMM. ON CRIMINAL JUSTICE, 93D CONG., 2D SESS., PARDON OF RICHARD M. NIXON AND RELATED MATTERS (1974); HOUSE SUBCOMM. ON CRIMINAL JUSTICE, 93D CONG., 2D SESS., SPECIAL PROSECUTOR AND WATERGATE GRAND JURY LEGISLATION (1973); HOUSE SUBCOMM. ON CRIMINAL JUSTICE, 93D CONG., 2D SESS., AUTHORITY TO ISSUE FINAL REPORT BY SPECIAL PROSECUTOR (1975); JOINT COMM. ON CONGRESSIONAL OPERATIONS, 93D CONG., 2D SESS., SPECIAL REPORT . . . PURSUANT TO SECTION 402 (A) (2) OF THE LEGISLATIVE REORGANIZATION ACT OF 1970 IDENTIFYING COURT PROCEEDINGS AND ACTIONS OF VITAL INTEREST TO THE CONGRESS; UNITED STATES V. JOHN N. MITCHELL & RICHARD M. NIXON, ET AL., AND RICHARD M. NIXON V. UNITED STATES (1974); SENATE SELECT COMM. ON PRESIDENTIAL CAMPAIGN ACTIVITIES, 93D CONG., 2D SESS., RESOLUTION TO ESTABLISH A SELECT COMMITTEE OF THE SENATE TO INVESTIGATE AND STUDY ILLEGAL OR IMPROPER CAMPAIGN ACTIVITIES IN THE PRESIDENTIAL ELECTION OF 1972 (1974).

⁴ DEPARTMENT OF JUSTICE, UNITED STATES SPECIAL PROSECUTION FORCE: FINAL REPORT (1972); DEPARTMENT OF JUSTICE, WATERGATE SPECIAL PROSECUTION FORCE (1975).

⁵ C. COLSON, BORN AGAIN (1976); J. CONNALLY, UNITED STATES V. JOHN B. CONNALLY (1975) (microfilm); S. DASH, CHIEF COUNSEL: INSIDE THE ERVIN COMMITTEE-THE UNTOLD STORY OF WATERGATE (1976); J. DEAN, BLIND AMBITION: THE WHITE HOUSE YEARS (1976); M. DEAN, MO, A WOMAN'S VIEW OF WATERGATE (1975); H. HALDEMAN, THE ENDS OF POWER (1978); H. HUNT, UNDERCOVER: MEMOIRS OF AN AMERICAN SECRET AGENT (1974); L. JAWORSKI, THE RIGHT AND THE POWER (1976); G. LIDDY, WILL, THE AUTOBIOGRAPHY OF G. GORDON LIDDY (1980); G. MAGRUDER, A GIFT OF LOVE (1976); J. MAGRUDER, AN AMERICAN LIFE: ONE MAN'S ROAD TO WATERGATE (1974); J. McCORD, A PIECE OF TAPE: THE WATERGATE STORY: FACT AND FICTION (1974); R. NIXON, RN, THE MEMOIRS OF RICHARD NIXON (1978); M. STANS, THE TERRORS OF JUSTICE: THE UNTOLD SIDE OF WATERGATE (1978).

lates some information about his youth including his experience as an amateur boxer and the numerous business failures of his father. In addition, he reveals that he never graduated from college and twice dropped out of law school. Details concerning his private practice, information about his position as United States District Attorney, and discussion regarding his involvement in Republican politics are also given. Similarly, he tells of his friendship with boxer Jack Dempsey, who was the best man at his wedding, and engages in reflections about what might have occurred had he accepted Senator Joseph McCarthy's offer to be chief counsel of his Senate Committee.⁶

As expected, items of interest concerning the Watergate Affair permeate the book. In his narration of these events, Judge Sirica maintains the tone of a firm, yet open and unpretentious individual who feels he has played a vital role in an important national event. For example, he describes his desire to get to the bottom of the case when, after the sentencing of the defendants caught in the initial break-in, he continued to believe that there was a cover-up:

I was far from alone in my skepticism about the facts brought out at the trial. The Senate of the United States had voted to investigate the Republican campaign tactics. The press was full of caustic comment about the trial itself and the government's handling of it. I had been practicing law for thirty years. I had handled cases involving political scandals. I had seen cover-ups in operation before. I had been chief counsel to a congressional committee and had quit when the matter was whitewashed and investigation stifled. I was often described as an 'obscure federal judge' and that was true, but I was not a damn fool.⁷

This same approach is illustrated by his reaction to the firing of Archibald Cox as Special Prosecutor and the FBI agents taking charge of his office:

It began to look as if some colonels in a Latin-American country had staged a coup. "What the hell is this crowd doing?" I thought. I cheered the resignations of Richardson and Ruckelshaus. I had been impressed by Cox, thinking that if the Watergate case was to be disposed of without further suspicion, the White House needed someone like him to carry out the investigation. I thought his firing was brutal, contemptible, unjustified and arrogant. As far as I was concerned, the President was breaking the law.⁸

The President's firing of Cox raised the Judge's suspicion that the

⁶ J. SIRICA, *TO SET THE RECORD STRAIGHT* 37-38 (1979).

⁷ *Id.* at 91.

⁸ *Id.* at 168.

President might refuse to obey his subpoena to produce the tapes. His reaction to such a thought is described with equal vigor:

I was determined that the President was not going to fool around with the courts the way he had with Cox. The awe of the Presidency that I had felt when considering how to frame the opinion about the tapes had diminished. I was just plain damned angry.⁹

The Judge indicates that he had been prepared to hold President Nixon in contempt if he had refused to honor the subpoena to produce the tapes for an in-camera inspection.¹⁰ Judge Sirica stated that he would not have required the President to appear personally in his court to show cause why contempt sanctions should not have been imposed if the President had signed a personal waiver: "There was no doubt in my mind that when the President's lawyers appeared pursuant to that order, I would find Nixon in contempt."¹¹

Yet, how would Judge Sirica have attempted to enforce that subpoena? He indicates that he would not have imposed a jail sentence though he had considered that option.¹² Rather, he resolved to make the President pay a fine of between \$25,000 and \$50,000 a day since he "knew the President loved money"¹³ and believed that this fine would have led Mr. Nixon to quickly comply with the court's order.

Of course, the White House did not resist the subpoena and ultimately decided to voluntarily turn over the tapes. The court, however, did not have the machines to play the tapes and had to borrow them from the White House. By this time, the Judge had concluded that "no precaution seemed excessive,"¹⁴ and had the machines checked by the United States Marshall's Office for electronic surveillance mechanisms. Representatives from the Department of Defense conducted a similar investigation in both the courthouse office and jury room where the tapes were to be examined.¹⁵

Central to the narration is Judge Sirica's assessment of the culpability of former President Nixon. With one possible exception,¹⁶ his hard-hitting

⁹ *Id.*

¹⁰ *Id.* at 179.

¹¹ *Id.*

¹² *Id.* He concluded that this course was "absurd."

¹³ *Id.*

¹⁴ *Id.* at 202.

¹⁵ *Id.*

¹⁶ Regarding the alleged harshness of the sentences which he gave to certain Watergate defendants, Judge Sirica indicates that the media and people in general misunderstood the conditional nature of his sentences. In this, he seems to be correct. He notes that Nixon, in his subsequent memoirs, called the sentences an "outrage." He then recalls Nixon's statement of April 30, 1973, when Nixon told the nation that Sirica was "a courageous Judge" and wonders "why he didn't tell the nation then that the sentences

comments about Mr. Nixon seem to be justified by the evidence contained in the public records. No one can read the Judge's account without believing that, at least in his mind, the evidence against the President was overwhelming. Nevertheless, it was apparently difficult for him to confront the reality of this evidence. Judge Sirica was a lifetime Republican and had campaigned for both Presidents Eisenhower and Nixon in two elections. In addition, he reveals that he had voted for Richard Nixon both in 1968 and 1972.¹⁷ Perhaps these facts explain why he personally had hoped that the President was not involved in the Watergate Affair.¹⁸ Yet, after listening to the tapes, and especially the statements made by President Nixon, he admits that he "felt foolish" in harboring this trust.¹⁹ Indeed, he indicates that despite a lifetime of dealing with criminal law and watching all kinds of criminal testimony come before him, he was not "hardened" enough not to be shocked by what he heard the President state on the March 22 tape: "I want you all to stonewall it, let them plead the Fifth Amendment, cover-up or anything else, if it'll save it—save the plan."²⁰

Judge Sirica indicates that from that moment on, there was no longer any doubt in his mind that there was a conspiracy, initiated inside the White House, to obstruct justice: "It was one of the most disillusioning experiences of my life to have to listen . . . to what had gone on at the highest levels of the government of the United States of America."²¹ It is not surprising that one so convinced of Mr. Nixon's guilt would be disturbed by the denials and defenses the former President included in his memoirs.

Though he initially had some question about whether it was a good idea for President Ford to pardon former President Nixon, the Judge indicates in his book that he now believes that the pardon should not have been granted. He bases his conclusion upon the fact that, in the absence of any proceeding in the federal courts or the Senate which would conclusively indicate that the President was guilty of crimes, the former President has been allowed to obscure the record and to argue that no crimes were, in fact, committed.

He concludes that there would have been no reason based on time or public exposure to prevent the former President from being tried be-

I had imposed on March 23, 1973, were outrageous. I guess he 'misspoke' himself, as he did frequently during that period." *Id.* at 119.

Judge Sirica goes on to point out that Nixon had previously condemned "soft-headed judges" who did not impose strict enough sentences. *Id.*

¹⁷ *Id.* at 209.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 205.

²¹ *Id.*

cause, in his opinion, it was Nixon himself who caused the Watergate Affair to have been both delayed and engulfed in publicity.²² Judge Sirica believes that Mr. Nixon used that delay and publicity to make it appear that "he was doing the nation a favor by not standing trial."²³ In an attempt to "set the record straight," Judge Sirica renders the following "judgment":

The truth is that Richard Nixon left office because he was on the verge of impeachment. He was on the verge of impeachment because there was overwhelmingly convincing evidence, mostly from the grand jury sitting in the Watergate case, that he had committed criminal acts. The weight of that evidence overcame the natural political reluctance to attempt so radical a solution to a national problem as impeachment. . . . It wasn't politics that drove him from office. It was the evidence against him, the proof of his own acts, that cost him his office.

The Senate did not conduct a trial, though it was undoubtedly going to. And I have no doubt that the verdict in the Senate would have been to convict Richard Nixon—not because of the politics of the time but because regardless of political risk, no self-respecting politician could ignore the hard evidence.²⁴

Judge Sirica explains that his desire that Nixon stand trial was not motivated by any wish to inflict more punishment on the former President or his family. Rather, he felt that it would have been better for the country to have had a final judicial ruling of Nixon's guilt or innocence. Further, Judge Sirica points out that even though Nixon was forced to give up his office, he was not treated the same way as other defendants:

His associates served time in jail. He received a large government pension, and retired to his lovely home in San Clemente. I think people still wonder whether the concept of equal justice under the law really applies if one climbs high enough in terms of wealth, power, or influence. . . . It still bothers me that Richard Nixon escaped that equal treatment. I feel that if he had been convicted in my court, I would have sent him to jail.²⁵

At the end, the Judge's assessment of President Nixon is that "if Nixon had had the character of President Eisenhower, or any other honest president, this scandal would never have happened."²⁶

Though Judge Sirica reviews the Watergate portion of his life without

²² *Id.* at 232.

²³ *Id.*

²⁴ *Id.* at 233-34.

²⁵ *Id.* at 235.

²⁶ Judge Sirica continues: "I regret that I supported him in his national campaigns. I hope no political party will ever stoop so low as to embrace the likes of Richard Nixon again." *Id.* at 239.

pretention, he does not necessarily have a modest view of his own role in the proceedings. Although giving ample tribute to the press²⁷ and the grand jury²⁸ for their roles in the Watergate Affair, Judge Sirica subsequently concludes, not without justification, that "*the court system served to set the record straight*"; neither the press nor Congress had the power to obtain the materials that were ultimately gathered by the judiciary.²⁹

In closing, Judge Sirica, with admirable objectivity, evaluates the roles of the participants in the Watergate Affair. He claims that all the people who helped bring the case to a successful conclusion were "no more than people doing what was right, doing their jobs whether they were scared or exhausted or being criticized, or were all alone."³⁰ Speaking of his own actions³¹ the Judge indicates that he believes that he made a major contribution: "I think I did do something for my country. I think I did my job as best I could. I think I did my duty as a citizen and as someone fortunate enough to hold a position of public responsibility in our system of government."³²

Certainly it is difficult to quarrel with Judge Sirica's self-assessment. That he occupied a key position at a critical time in our history and made a substantial contribution cannot be denied. That we all owe him an extreme debt of gratitude for the preservation of our constitutional rights is a statement upon which most of us would agree. It is a pleasure to know that at least some of the revenues from "Watergate books" are going to those who served their country well rather than the perpetrators of the national crisis.

²⁷ *Id.* at 300.

²⁸ The Judge notes that:

It was quite a moment. Here was the grand jury made up of ordinary citizens from the District of Columbia, some of them poor people, telling the president of the United States, the most powerful man in the world, to turn over the tapes. If there was ever a moment that gave meaning to the idea that in our democracy the people govern themselves, this was it. It was a moving experience to watch those faces as they challenged the President. I had always been proud of this country and thankful for the life it let me lead. But I was never prouder than that morning in July. *Id.* at 140.

²⁹ *Id.* at 301.

³⁰ *Id.* at 303.

³¹ Judge Sirica has no regrets: "Simply stated, I had no intention of sitting on the bench like a nincompoop and watching the parade go by. If the action I took constitutes the action of a so-called 'activist judge', I plead guilty to the charge." *Id.* at 127.

³² *Id.* at 303.

