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The Most Lustrous Branch: Watergate and the Judiciary

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Fulbright and Jaworski

what, if any, limitations should be placed on the application of its re-
soning.[92]

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perpetuating. Id. This would not accord with the basic premise of the Act that labor peace
most likely to result when bargaining advantages reflect economic realities. Id. at 1170. The
based on the rationale of the line of cases culminating in Lodge 76, Machinists, the court held
that "[c]ourts cannot bind the parties in perpetuity to forego the use of economic weapons in
support of bargaining positions." Id.

92. Cf., Cox, supra note 13, at 1355: "[I]f the underlying rationale for federal preemption is
the need for preserving the balance which Congress struck, some formula is required to measure
the outer limits of congressional concern." Id.

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THE MOST LUSTROUS BRANCH: WATERGATE AND THE JUDICIARY

*LEON JAWORSKI**

I COVET the privilege of being with you on this occasion. I have long admired your institution, its prestige, and its accomplishments. There is a more special and singular reason for embracing the high prerogative of joining you this evening. I refer to the cherished memories of John F. Sonnett, with whom I had discussions touching on problems of our profession from time to time, and with whom I labored in the vineyard of the American College of Trial Lawyers.

Jack Sonnett, to me, was not a seeker of headlines. Still, his achievements in the field of advocacy were great. He was a solid, able gladiator in the courtroom, both trial and appellate, and ever mindful of his obligations as an officer of the court. Beyond this, he served his country with marked distinction.

I will have some comments to make this evening on some of the legal problems presented in the Watergate era. At this point, I should like to allude generally to the obligations and responsibilities the Special Prosecutor faced, which frequently were in conflict with that urged by some organizations, some editors, and even some lawyers. Unlike their status, I had taken an oath of office and I labored under the responsibilities assumed by an officer of the court. It appeared to me that some who urged courses of action different from those followed by the Prosecution Force often lost sight of the constitutional rights of individuals who had fallen from public grace, were despised by many and even scorned. But, regardless of public disillusionment, their rights under the Constitution remained the same and my responsibilities of office remained the same. When, in the face of these conditions, I had decisions to make, I found comfort in the examples set by such illustrious advocates as John F. Sonnett.

I said a few years ago, in discussing the "Unpopular Cause," that

* This Article substantially embodies the text of the Seventh Annual John F. Sonnett Memorial Lecture delivered by Mr. Jaworski at the Fordham University School of Law on February 15, 1977.

Mr. Jaworski was Special Watergate Prosecutor from November, 1973 through October, 1974. In 1971-1972 he served as President of the American Bar Association, and is a former President of the State Bar of Texas, the American College of Trial Lawyers, the Houston Bar Association and the Texas Civil Judicial Council. He has been special assistant to the U.S. Attorney General (1962-1965), special counsel to the Attorney General of Texas (1963-1965 and 1972-1973), and adviser to President Johnson (1964-1969). Currently he is Chairman of the Board of Trustees of the Southwestern Legal Foundation, Chairman of the Board of Trustees of the American Judicature Society, Fellow of the American Bar Foundation, and Member of the American Law Institute.

"when entering the profession, a lawyer does not engage in a popularity contest, but he does assume a special creed"—as the late Mr. Justice Jackson put it—"to safeguard every man's right to a fair trial." Obviously, this "special creed" needed to be applied to Watergate defendants—to Richard Nixon—and to all others who, under our Constitution, were entitled to the rights it protects.

When, in retrospect, we think of Jack Sonnett, I hope that you will permit me to reiterate a comment I made some years ago: "The greatest reward that flows to a lawyer is not measured in riches, social position or popularity. Rather, it comes as an unseen, intangible inner satisfaction that emanates from the faithful discharge of duty. This is truly the lawyer's highest form of compensation."

I think that Jack Sonnett, were he with us today, would approve of my reviewing the difficult decisions in Watergate and the stellar performance of our judiciary under strained and complex circumstances. So believing, I will address myself to this subject.

Historically, Watergate cannot be swept under the rug. Whether the legal aftermaths of this tragic saga have contributed to the undergirding of our institutions for this nation's future welfare, history will determine in due course of time. The legal actions that were taken are recorded in judicial annals and someday will be judged, without the emotion and the bias and the prejudice that ruled the views of many critics at the time of decision.

One of the historic decisions that faced the Special Prosecutor involved the question of whether the then President of the United States should be indicted, along with the others accused in the Watergate cover-up. It is one about which much has been written and said—some of it fairly accurately and some of it quite inaccurately. One of the leading newspapers in this City, for instance, repeatedly and blindly has continued to distort the basic issue involved and the treatment accorded it. It has failed correctly to project the views of the staff, as well as the conclusions and actions of the Special Prosecutor.

After all of the evidence assembled in the investigation relating to the Watergate cover-up had been presented to the grand jury, the moment of decision as to what action to take with respect to the then President was at hand. Bear in mind we are now talking about a date early in March, 1974. This issue had been studied for some time. I had discussed it with some of my principal assistants, had considered their memoranda, and had undertaken to assess the question from the standpoint of what was legally sound and particularly what might be acceptable to our highest court. For the purpose of the discussion that follows, let us assume that the evidence involving the former President was sufficient to support an indictment for obstruction of justice.

Because it is now generally known that I considered indictment not to be the proper course, the reasons for my conclusion properly may be stated: There was substantial doubt that a sitting president was indictable for the offense of *obstruction of justice* and, considering the dire consequences of an act of such doubtful validity, the returning of such an indictment, under all of the circumstances, seemed insupportable. While legally an indictment could be returned against a sitting president for the offense of murder, by way of example, there was serious doubt that the United States Supreme Court would have permitted an indictment of a sitting president for obstruction of justice, *especially when the House of Representatives' Committee on the Judiciary was then engaged in an inquiry into whether the President should be impeached on that very ground*. The proper constitutional process appeared to us to be that of letting the House Judiciary Committee proceed first with its impeachment inquiry. I should add parenthetically that in my judgment, had an indictment been returned, the then President would not have resigned, which meant that our country would have been burdened with a beleaguered President who could not have been brought to trial for a substantial period of time. It seemed that the trauma the nation would suffer in the interim would be awesome.

A solution to the problem, it appeared to us, was that of sending to the House Judiciary Committee all of the evidence that had been assembled by the grand jury bearing on the former President's involvement in the alleged obstruction of justice. This conclusion was concurred in by the members of the staff concerned with this problem and inferences that there existed a diversity between them and the Special Prosecutor are baseless.

Such action, of course, was without legal precedent, but it seemed to be legally proper and would induce an expediting of the situation relating to the President. Accordingly, there was prepared a detailed report of the evidence that had been presented to the grand jury involving the actions of the President pertaining to the alleged offense of obstruction of justice. This grand jury report was presented to Judge Sirica, along with the indictments of the defendants in the *United States v. Mitchell* case (the cover-up case). Litigation followed, attacking the legality of transmitting such a report, and you will recall that the courts upheld the Special Prosecutor's contention.[1] Thus, the House was enabled to begin its proceedings much sooner than otherwise, and move along with greater celerity. The significance of this

1. In re Report & Recommendation of June 5, 1972 Grand Jury, 370 F. Supp. 1219 (D.D.C.), writ of mandamus denied sub nom. Haldeman v. Sirica, 501 F.2d 714 (D.C. Cir. 1974).

stratagem largely has been overlooked. It ranks in importance with the Supreme Court decision ordering a turning over to the Special Prosecutor of the tapes that were under subpoena.[2] Without the grand jury data transmitted to the House Judiciary Committee, the latter was helpless to proceed with meaningful hearings. It is my belief, as well as that of those aware of the facts, that the House Judiciary Committee, without the benefit of the grand jury proceedings, would have foundered in progressing effectively in the pending impeachment proceedings.

There is still another facet to the matter. The then President was entitled to his constitutional rights to a fair trial, whether it be an impeachment proceeding or a criminal proceeding. For both processes to have undertaken to function contemporaneously may have meant a denial of the right to a fair trial. It may even have caused a stalemate for a long period of time.

If you wonder whether I would make the same decision today as I did then—the answer is yes.

During the Watergate days, the subject of plea bargaining was highlighted. It is a subject in the administration of our criminal justice system much discussed these days; it is a subject misunderstood by many and even distorted by some. Its importance cannot be overemphasized.

In recent years, the American Bar Association released a volume on its approved Standards of Criminal Justice.[3] This monumental work, begun in 1965, was completed in 1973 when approval was given to the final set standards. The Special Committee in charge of this project was composed of eminent jurists, outstanding members of the bar, including both defense counsel and prosecutors.[4]

One of the topics to which these standards address themselves is that of plea discussions, often referred to as "plea bargaining." An advisory Committee on Criminal Trials, composed of distinguished judges, lawyers and law professors, was assigned this subject for special consideration.[5] The following excerpt is particularly enlightening.

> Trials, however, by no means represent the major activity of a prosecutor in the administration of criminal justice in the United States. The vast majority of criminal cases are disposed of without trial as the result of guilty pleas and, if the system as a whole is working properly, *this is as it should be*. . . . The process of plea discussion serves important social interests and . . . is one of the *most important functions of both prosecution and defense counsel*.

2. United States v. Nixon, 418 U.S. 683 (1974).
3. ABA Standards Relating to the Administration of Criminal Justice, Compilation (1974).
4. Id. at 467-70.
5. See Pleas of Guilty, in id. at 295.

> . . . Properly conducted, plea discussion may well produce a result approximating closely, but informally and more swiftly, the result which ought to ensue from a trial, while avoiding most of the undesirable aspects of that ordeal. Disposition without trial of course provides a substantial cost saving to the accused and to the public in terms of the time of lawyers and all other participants. *Although the cost saving alone would not be an appropriate justification for abridging the legal process if it were achieved at the expense of fairness or equal justice, from the standpoint of the objectives of the criminal law, a fair and just disposition of a case without trial is obviously preferable to its disposition by trial, as is true in civil litigation*. The speed and certainty of a disposition by plea promotes *deterrence*, a *basic* goal of criminal justice.[6]

In my humble judgment there is nothing wrong with upright plea bargaining. Of course, as is true in the performance of any official function, it is subject to abuse by one who does not approach it with fairness for the rights of all concerned. A prosecutor has dozens of ways to fail in the proper performance of the prosecutorial function, and thus I wonder why critics should show any more concern in regard to the procedure of plea bargaining than any of the other duties that the prosecutor performs. The whole matter gets back to the prosecutor's proper, fair and just performance of duty. My predecessor, Archibald Cox, believed in plea discussions, I believe in them, my successors, Henry Ruth and Charles Ruff, believe in them, and I am not aware of an instance in which the practice was abused in the Special Prosecutor's Office.

Before the government witnesses in the cover-up case were permitted to plea-bargain, they had to agree to plead guilty to a felony carrying at least a five-year maximum sentence and also had to agree to testify to the truth under penalties of perjury. Is there anything unfair in such an arrangement either to society or to the individual? What is important to remember is that among the Watergate accused, there are men who have paid their debt to society by serving time in prison, and are now free to pursue their rehabilitation because of proper plea bargaining; there are others who have been and are being brought to the halls of justice because of appropriate plea bargaining, who otherwise would have escaped the processes of the law.[7] The American public has demanded that the story of Watergate be known, and through the processes of justice under law, the story has been made known. And I can assure you that had it not been for perfectly fair and just plea discussions, the full story of the break-in and the cover-up would never have been known.

What will sustain our basic system of criminal justice is the fairness of its administration. Once the fairness fails, the system itself will be in

6. Id. at 78-79 (emphasis supplied).
7. For a summary of the indictments, guilty pleas and outcomes of the trials of the Watergate defendants, see L. Jaworski, The Right and the Power 280 (1976).

jeopardy. The administration must be fair to society, but it must also be fair to the individual.

Next let me treat the subject of a clash between the constitutional forces of fair trial and free press—which could have created a dilemma. My topic pertains to one factual situation of historical significance and without precedent—and let us hope that there will never be another like it. The dilemma I want to discuss with you is hypothetical but it could have been real. Suppose President Ford had not pardoned Richard Nixon and an indictment of him had been returned, could he have received a fair trial? If so, under what circumstances?

The problem, of course, was created by the exercise of the constitutional guaranty of freedom of the press and the public's right to know. The right—in fact, the obligation to report to the American people the events that preceded the pardon were fulfilled properly, effectively and certainly, with perhaps a few exceptions, responsibly. But what I want to examine with you is the consequence of the discharge of that right and that responsibility on Richard Nixon's constitutional right to a fair trial, had the pardon not been granted and an indictment had been returned. In short, the press, in this setting, had the right to exercise its constitutional guaranty and Richard Nixon had the right to stand on his constitutional guaranty. Therein lies the dilemma.

A brief resume of some events that transpired prior to the pardon should be helpful in the consideration of this problem.

The House Judiciary Committee sitting in inquiry on impeachment began its hearing with many of the sessions publicized—not only in the press but on live television and radio as well. Wide coverage was given the proof that indicated Nixon's involvement. The sessions not public created a number of stories of alleged evidence adduced which were, rightly or wrongly, attributed to members of the Committee or staff and these were widely circulated. To cap the climax, when the tape recording of June 23, 1973, was made public, numerous Republican members of the House impeachment inquiry committee, who had previously defended Nixon, went on live television, not only to say that they were changing their vote but also flatly to state that they had concluded Nixon was guilty of obstruction of justice.[8] Then followed a few days of headlines on whether Nixon would resign (with various Congressmen and others calling on him to resign)[9] and the Committee in the meantime stood 38 to nothing in favor of Articles of Impeachment on the charge of obstruction of justice. When Nixon resigned, the nation was told from shore to shore that in a move to avoid certain

8. N.Y. Times, Aug. 6, 1974, at 1, col. 8.
9. See, e.g., N.Y. Times, Aug. 7, 1974, at 1, cols. 4-8.

impeachment, the President gave up his office. The columns and the airwaves were filled with inculpatory comments regarding Nixon's guilt, ignominy and disgrace, and of its historically unprecedented nature. The news media did a thorough job, exercising its first amendment rights to the fullest extent and making certain that every American willing and able to read, or willing and able to listen, knew of Nixon's predicament and his resignation. Surveys indicated that an estimated 92,000,000 persons viewed the televising of the Judiciary Committee proceedings.

Typical of editorial comments was the observation that President Nixon had for all practical purposes admitted criminal wrongdoing. The damaging tape records spoke for themselves.

Such was the background. What if Nixon—now no longer a sitting president—were to be indicted for obstruction of justice? What about his constitutional right to a fair trial? Like any other citizen, and regardless of his resignation and the unprecedented accusations of guilt, he was presumed to be innocent in the eyes of the law until proven guilty according to judicial process.

Then followed the days when indictment had to be considered. But where does the prosecutor go after indictment, if there cannot be had a fair trial under the Constitution?

President Ford held his first news conference and the initial questions propounded—as well as some subsequently—related to the subject of whether President Ford was considering granting Nixon a pardon. The answers were somewhat ambivalent.[10] Not long after, I received a request from the President's counsel that I inform the President of the period of time, in my judgment, that would need to elapse, in the event of indictment, before he could receive a fair trial. I made such an estimate, pointing out, however, that the situation was unprecedented and that "the complexities involved in the process of selecting a jury and the time it will take to complete the process, I find difficult to estimate at this time."[11]

A decision on whether or not to indict was not a pressing matter at the moment because, had the decision been to indict, action would not have been taken until after the jury had been selected and sequestered in the *Mitchell, et al.* cover-up case, then set for the last day of September, because otherwise any indictment of Nixon would have meant an indefinite delay in that trial. While the matter was being studied, President Ford moved to pardon former President Nixon.

But suppose the pardon had not been granted, and an indictment

10. N.Y. Times, Aug. 29, 1974, at 20, col. 4.
11. L. Jaworski, The Right and the Power 241 (1976).

had been considered proper. Then the prosecution would have come face to face with the dilemma to which I have alluded.

There is the first amendment and the public's right to know on the one hand—there is former President Nixon's constitutional right to a fair trial under the sixth and other amendments on the other hand. Had the unprecedented news media coverage of the events that transpired so influenced and subjugated the minds of prospective jurors that a fair trial could not have been accorded Nixon for a year, for two years—three years? And how does one accord a fair trial, under a presumption of innocence, to a defendant sitting in the dock as a resigned president who left office under the pressure of impeachment proceedings charging criminal wrongdoing?

Of course, there were those whose views were spawned in prejudice and hatred, who had piously spoken and written of constitutional rights and safeguards in the past, who could find no cause for concern regarding Nixon's constitutional rights in this setting. Some editorials indicated a complete lack of understanding of or concern for the constitutional problems involved. But it must be remembered that constitutional safeguards apply to *all* and if they are to be glossed over when the scorned are involved, by easy stages their erosion is sure to follow.

May I, at this point, make it clear that I have not and am not now taking a position on whether President Ford should have granted the pardon. This is not within my province to do. I did take the position that it was within his constitutional power to grant a legal pardon, and having done so, it was a final and conclusive act. A few months after my decision was made, and in another case, the Supreme Court, on December 23 in what is known as the *Schick* case, held that any limitation to the pardoning power must be found in the Constitution—and there is none.[12]

In a poll conducted by West Publishing Company[13] among lawyers of our nation to select the great milestones of law during the two centuries of America's existence, *United States v. Nixon*[14] received the third largest number of votes. And why? Because it so pointedly and unmistakably affirms the doctrine that no one is above the law, not even the President. And in the *Nixon* case, as it did in *Marbury v. Madison*[15] (which received the largest number of milestone votes), the Supreme Court assumed the responsibility of becoming the ultimate guardian of the Constitution.

12. Schick v. Reed, 419 U.S. 256, 266 (1974).
13. See J. Lieberman, Milestones (1976).
14. 418 U.S. 683 (1974).
15. 5 U.S. (1 Cranch) 137 (1803).

Professor Alexander Bickel of Yale authored an interesting volume fifteen years ago discussing the Supreme Court at what he termed the "Bar of Politics." He gave it the title *The Least Dangerous Branch*.[16] In selecting the title, Professor Bickel drew from the words of Alexander Hamilton, in the *78th Federalist*, "the judges as guardians of the Constitution."[17]

I doubt that the judiciary of our nation has been put to a severer test, since its early history, than it faced in this generation, culminating in the tragic episodes at the seat of our government in the past few years.

I wish on this occasion to rename Professor Bickel's title selection, based on Alexander Hamilton's observation. With pride and reverence, I wish to refer to it as "The Most Lustrous Branch." As I retrospectively review the performance of this third branch of government in times of stress and crises, I feel confident that this renaming can be justified. I do not base my judgment on the bold and unwavering performance of the judiciary in the matters spawned in Watergate alone, but as well in the response of the courts to the challenges our free society faces in modern times.

I doubt that there are any among us who fully conceive the effect of the judiciary's actions on the attitude and resolves of this generation's young. I hope that you will believe my assurance that the youth of today follow more closely the labors of our courts than fifty years ago—yes, even more so today than a decade ago. Of this I am fully convinced and the volume of correspondence I received during my days in Washington from young people—and the multitude of letters I have since received—bear out this conviction.

Prime Minister Disraeli told us that the youth of a nation are the trustees of posterity.[18] This admonition is easy to understand and to accept. If we embrace this truism and give it proper regard, it follows that the youth of our nation are our society's most precious possession. If they are to become disenchanted with our institutions of government—if they are to lose faith in our judicial system—then posterity will not be served by fiduciaries of confidence and faith and trust in our courts—rather posterity then will be served by trustees of disenchantment and indifference, leading perhaps to radical changes from a system which, fundamentally, today is unexcelled in basic fairness and justness.

16. A. Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics (1962).
17. The Federalist No. 78, at 517 (P. Ford ed. 1898). Although the primary theme of the 78th Federalist is indeed "the judges as the guardians of the Constitution," Hamilton's exact words were: "[I]t would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution. . . ."
18. Sybil, Book VI, ch. 13, in R. Blake, Disraeli 205 (1966).

Let me return to the reactions of the youth of this nation to the recent tragedy in Washington. Here is a girl, from Colorado, who writes:

> I am 11 years old and am very interested in our country and its history and government. The Watergate days were not very good times for the country but now that they are over I think we are a better and stronger nation and everything was done within our Constitutional idea.

Then she added: "I sure bet you're glad to be back in Houston." (This last comment was the understatement of the year.)

A student at Duke University wrapped it up in these words: "Hopefully the court proceedings will teach us that no man is above the law and that all of us must answer for our actions."

Finally, let me share this one with you from a young lady in high school in California, who put it this way:

> In the inspiring and refreshing search for truth and justice, there has been provided a sterling example for the young of my generation. There has been erased some of our cynicism towards government—and that's a lot to accomplish!

I could go on and on, but this is a fair, albeit meager, sampling of what runs through the minds of young America, and I trust that you will find these expressions as meaningful as have I.

Last year, I stood in the hallowed room in Independence Hall in Philadelphia, where the Declaration of Independence was signed, and eleven years later, after four months of debate, deliberation, study and prayer, our Constitution was drafted. There were vast differences of opinions and a great contrariety of views permeating these extensive sessions on the Constitution, yet in the end dissents were largely resolved by an understanding approach to opposing views of the participants and the acceptance of sincereness and good faith on the part of all. The eventual result was a monumental document that has stood the test of time and has enabled us daily to enjoy the freedoms and the individual rights it guarantees.

As I contemplated the setting in Independence Hall, as it existed almost two hundred years ago, there crossed my mind, more deeply than ever before, the hardships, the sacrifice, and above all else, the selflessness of these great patriots who gave so much to earn for generations to come the freedoms that are ours today. They risked being captured, regarded as traitors and being put to death. And as I walked away from this historic place, there returned afresh the eloquent expressions of dedication and devotion that meant so much to them and which they hoped would be as fervently embraced by us. To remind me—almost to haunt me—came the recollections of immortal words they penned—"that all men are created equal"—"life, liberty and the pursuit of happiness"—and, finally, the pledge to each other of "our lives, our fortunes and our sacred honor." Then I paused to wonder: are these just empty phrases to many of us today, or are they still as radiant, as inspirational and as binding in our pursuits as they were to these great founders of freedom and seekers of justice? I could not stop with these musings. What tortured my thinking was the undivided and unquestioned integrity and probity of these patriots—their trustworthiness and guilelessness—as contrasted with the shams and deceits and corruptions perpetrated by some of their successors of modern times.

What were the characteristics of the Founders who gave birth to this nation? And of the framers who cast our Constitution? Were they self-serving and greedy? Or were they men and women who loved freedom and justice and placed on the altar of sacrifice their fortunes—even their lives—to attain these ends? We gain some semblance of understanding of what plagues us today when we compare their sacrificial dedication to the conduct of some of our people in government today. But as we deplore their disgraceful conduct, let us applaud and never forget the exemplary and dedicated labors of so many of our nation's public servants.

Still fresh on my mind is the sadness of seeing one of the great tragedies of modern history—men who once had fame in their hands sinking to infamy—all because eventually their goals were of the wrong dreams and aspirations. The teaching of right and wrong had been forgotten and little evils were permitted to grow into great evils—small sins to escalate into big sins. How did Alexander Pope put it? "Unblemished, let me live or die unknown. Give me an honest fame or give me none."[19]

The Founders of this nation would have been shocked at the Watergate revelations. Then they would have concluded that despite the failures, shortcomings and wrongdoings on the Washington scene, they still had faith and optimism in the determination and dedication of this and future generations to carry forth the spirit of America and to attain the American ideal.

When I pause to contemplate the evil of tampering with the administration of justice—of obstructing it and prostituting it—I think of Saint Thomas More who breathed life into one of the greatest of all obligations of man—that of unswerving loyalty to the ends of justice. Not justice for the affluent and the powerful alone—not justice for the admired and the favored alone—not justice alone for those whose

19. Paraphrased from The Temple of Fame, in The Complete Poetical Works of Pope 52, 59 (Cambridge ed. 1931).

views and beliefs are shared—but justice as well for the weak, for the poor, and even for the despised and the scorned.

Saint Thomas More is best known in history for his courageous and sacrificial resistance of the evil demands of his King, whom he served as Lord Chancellor. He placed his conscience above life itself. It has been aptly said that he "reverenced the goodness of authority but reverenced even more the authority of goodness." Do you recall his last words on the scaffold? "I die the King's good servant, but God's first."

In eloquent terms and with lustrous integrity, this great man in history made his point in clear and unmistakable terms: You do not follow an obviously corrupt and evil leader.

Nothing leaves me with such a lack of faith and confidence in aspirants to public office and spokesmen of political parties than to hear them wail about some of the problems of today, without saying one word of the need of foundations of truth, justice and honor in public affairs. The question naturally arises—do they just assume them to be there—or do they even care?

In my own home state, I was saddened to read the appeal of a man interested in his own political future. He was urging his listeners to elect three men to Congress belonging to a certain political party. He did not consider it necessary for them to have any other qualifications than to be members of that particular party. Whether they were men of honor and trust seemed to be beside the point—what was important to him was having three bodies voting the straight party line. This is precisely what America does not need.

There was an English statesman named Shaftesbury—perhaps you never heard of him—who spoke words that should be embraced by us all and never forsaken by those who serve in government. He put it thusly: "[T]he most natural beauty in the world is honesty and moral truth."[20]

I always admired Henry L. Stimson, a great public servant, who inspired confidence in his devoted service. It was he who said: "The sinfulness and weakness of man are evident to anyone who lives in the active world. But men are also great, kind and wise. Honor begets honor; trust begets trust; faith begets faith; and hope is the mainspring of life."[21]

Public officials face many trials and tribulations; many face great temptations. When they have come to grips with their responsibilities and have dealt with the issues inherent in their duty to God and to

20. 1 A. Cooper, Earl of Shaftesbury, Characteristics of Men, Manners, Opinions, Times 94 (Robertson ed. 1964).

21. H. Stimson & McG. Bundy, On Active Service in Peace and War 672 (1948).

fellow man, let us hope that they can say, as did Abraham Lincoln at the end of the Civil War: "I have felt His hand upon me in great trials."

I would add these thoughts. Shortcomings and failures notwithstanding, we should be proud of America and evidence that pride with acclaim and enthusiasm. There is no other country like ours in the entire world. We can and must keep America great, not only for ourselves, but as well for the leadership our nation gives to the rest of the world.

I would say that insofar as concerns our judiciary, after the passage of two hundred years, the operation of our government under law would have brought forth expressions of pride and plaudits from the framers. After this long passage of time, we find that indeed the Constitution does work in times of the severest of stresses and strains. Contemplate with me for just a moment how superbly this document has preserved freedoms and established justice. And during the Watergate years it was interpreted again to leave no doubt that no one—absolutely no one—is above the law.

Well, just what was it that our courts did in the Watergate days to counteract cynicism of the young and to keep the respect of the older generation? There was a trial judge, Judge Sirica, who would not accept distortions of truth and the obstruction of justice. He sought the truth and he found it. There was an appellate court ready to meet the first challenge of the President to the release of the tape recordings.[22] It acted with dispatch and decisiveness. The same trial court and the same appellate court, without delay and with a direct approach, decided that a crucial grand jury report should be transmitted to the House Judiciary Committee.[23] The final test of the courts as a "lustrous branch" came when the trial court overruled the President's claim of executive privilege in response to a subpoena duces tecum in a situation involving criminal wrongdoing.[24] The Supreme Court, in the interest of expediting justice, bypassed the court of appeals in granting certiorari[25] and then boldly and unwaveringly and with a minimum of delay laid to rest the troublesome problems that beset the nation.[26]

22. In re Grand Jury Subpoena Duces Tecum Issued to Richard M. Nixon, 360 F. Supp. 1 (D.D.C.), modified in part sub nom. Nixon v. Sirica, 487 F.2d 700 (D.C. Cir. 1973).

23. In re Report & Recommendation of June 5, 1972 Grand Jury, 370 F. Supp. 1219 (D.D.C.), writ of mandamus denied sub nom. Haldeman v. Sirica, 501 F.2d 714 (D.C. Cir. 1974).

24. United States v. Mitchell, 377 F. Supp. 1326 (D.D.C.), aff'd sub nom. United States v. Nixon, 418 U.S. 683 (1974).

25. United States v. Nixon, 417 U.S. 927, 960 (1974).

26. United States v. Nixon, 418 U.S. 683 (1974).

It was perhaps the American judiciary's finest hour. Suppose the trial judge had been indifferent to his full responsibilities. Suppose the court of appeals had not come to grips forthrightly with the unprecedented question posed in the transmission of the grand jury report to the House Judiciary Committee. And suppose the Supreme Court had not measured up courageously and judiciously to the traumatic issues that confronted all three branches of government and the nation as a whole. I dread the thought. The result would have been a chapter in our history books charging that our courts were ineffective and indolent. Respect for the administration of justice, at a time when suspicion lurked in the minds of the young, would have received a serious set-back. Men in high places, whose sentences have become final, would have escaped the arm of the law. Had the grand jury report not been transmitted, the House Judiciary Committee hearings on the Articles of Impeachment would have been so slow in proceeding and perhaps so long delayed that efforts to arrive at effective action could well have been temporized and eventually frustrated. Finally, had not the Supreme Court of the United States fearlessly and stalwartly met the issues on the subpoenaed tape recordings, there would have been no end to the ordeal burdening the nation and the scars of doubt and disillusion would have been deepened. The question naturally arises: how would this have affected the faith and the credence of the trustees of posterity in our institutions of government, especially the Judicial Branch.

Let us make no mistake about it—this salute to the Judiciary lies not in who won or lost—it rests on the record of the courts putting into operation the judicial process as it should work—with reasonable dispatch, meeting the issues squarely and disposing of them decisively. This brings to mind Lord Erskine's declaration in 1820, at the time of the trial of Queen Caroline: "[T]here is something so beautiful and exalted in the faithful administration of justice, and departure from it is so odious and disgusting . . . ."[27]

Daniel Webster lived from 1782 to 1852. He labored in the field of law with great devotion and never failed to champion the supremacy of the law. On one occasion, he eloquently affirmed that justice is man's great interest on earth. He would stoutly assert, were he speaking to us today, that the judicial process is a mighty fortress, and that we must not ever let it be weakened. And then he would remind us, as he once did in the prime of his illustrious career: "The Law: It has honored us, may we honor it."

27. 8 Lord Campbell, Lives of the Lord Chancellors of England 264 (Mallory ed. 1875).