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The Man Who Rode the Tiger

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The Man Who Rode the Tiger
The Life and Times of Judge Samuel Seabury

by
Herbert Mitgang

with a new introduction by the author



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To my brother, Leo Mitgang, 1916-1944

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The Seabury staff members are part of the drama of the investigation; their feats are mentioned in the book. Interviews with these Seabury "boys," distinguished lawyers and public servants, afforded a rare look behind the scenes at the investigation and the Judge's personal and political life. George Trosk of Judge Seabury's law office served as his chief of staff; others who served as Seabury counsel to whom I am indebted are John Kirkland Clark, Irving Ben Cooper, Robert M. Davidson, James H. Goodier, Harry D. Guthrie, Jr., Philip W. Haberman, Jr., Carroll Hayes,

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INTRODUCTION TO THE FORDHAM EDITION

In his "Notes on Virginia," written in the years between the Declaration of Independence and the Constitution, Thomas Jefferson cautioned his countrymen about the two worst dangers that could confront the governance of the Republic: "The time to guard against *corruption* and *tyranny* is before they shall have gotten hold of us. It is better to keep the wolf out of the fold than to trust to drawing his teeth and talons after he shall have entered."

As the United States heads toward a new millennium, it continues to be the most revered democratic government in the world. After slumberingslam-bang open primaries and conventions, a hush falls over the land on Election Day and a President is elected, or re-elected. Just before and during World War II, Franklin D. Roosevelt was the only President to gain a third and fourth term. Thereafter, the Twenty-second Amendment to the Constitution was approved, limiting a President to two terms. No matter how kingly the incumbent or how dangerous the crisis facing the nation, that cannot change.

In the first two American centuries, there have been forty-two Presidents: a few scoundrels, a large number of mediocrities, a handful of quite goods, and several truly greats. Regardless of who occupied the Oval Office, no monarchical coat-of-arms or dictatorial cross-and-bones was ever raised over the White House. We

have come close once or twice only one President, Richard M. Nixon, resigned rather than face impeachment but banana re-public-style tyranny, supported by an armed palace guard, has never ruled in the United States.

"There is nothing more difficult to carry out, nor more doubtful of success, nor dangerous to handle, than to initiate a new order of things," Machiavelli wrote in *The Prince*. "For the reformer has enemies in all these who profit by the old order, and only lukewarm defenders in all those who would profit by the new order."

Remarkably, the new order has survived without *tyranny* in this country. One reason why is that reformers in the press, in academia, in citizens' organizations, and in legislative bodies serve as watchdogs for the public, alerting them to the dangers of dictatorship. *Corruption*, however, has been rampant in many Administrations federal, state, and city. Time and again, the wolves that Jefferson mentioned in his telling metaphor have been at the gates or entered the folds of government.

The word corruption standing alone does not appear in the Constitution; the closest word to it is bribery, an impeachable offense. Now as well as in the past, bribery of public officials assumes familiar forms in business, in elections, and in government. All three are interrelated. Influence in the form of tax breaks and subsidies for privileged people and businesses are bought by big givers in campaigns. At the same time, efforts at campaign reform languish.

In 1996 alone, a number of distinguished United States Senators and Congressmen in both parties decided not to run for re-election, mainly because they would have had to beg for millions of dollars to mount campaigns. The higher the office, the more humiliating the game. Everyone knows that fundraising incurs obligations to donors and hobbles the legislative process, yet it is as American as . . . corruption.

There are solutions, but they may be as tough to change as getting the automobile manufacturers to approve seat belts and air bags until one private citizen, Ralph Nader, mounted a personal campaign that, over the years, has saved hundreds of thousands of lives. Can it happen in political broadcasting? Television is one of

the most costly items in running a campaign. In the original language of the Federal Communications Commission, the agency that regulates radio and television, the airwaves are licensed "in the public interest, convenience and necessity."

Beginning on the national level, if a certain amount of free time were given to eligible candidates, there would be greater willingness to run by dedicated men and women, fewer dropouts in the Senate and House, and fewer corrupting influences. Why should candidates seeking *public* office have to buy commercial time to be heard over the *public* airwaves?

Reformers are often ridiculed. They go up against power and power brokers who have been around for a long time. If Americans were prevented from receiving royal titles from foreign powers, at least we could boast of having our very own Robber Barons. The nineteenth-century industrialist William Vanderbilt put it cynically: "When I want to buy up any politician, I always find the anti-monopolists the most purchasable they don't come so high."

The term Robber Barons was used to describe industrial leaders and corporations such as Andrew Carnegie and Henry Clay Frick in steel, John D. Rockefeller in oil, Jay Gould and J. Pierpont Morgan in high finance, Cornelius and William Vanderbilt in railroads. Many of them displayed their wealth ostentatiously; hence, the derogatory term. They were criticized for setting up monopolies and trusts, often with the help of anti-labor private armies of Pinkertons. The Robber Barons and their twentieth-century successors were first exposed by journalistic "muckrakers" and then attacked by President Theodore Roosevelt, whom cartoonists liked to show carrying a big stick as a "trust buster." A few generations later, President Franklin D. Roosevelt attacked certain businessmen, repeating the first Roosevelt's phrase, as "malefactors of great wealth" who stood in the way of his New Deal measures to combat the Depression.

Times have changed; some of the heirs of the Robber Barons have proved to be educable. Now several of the formerly derided names are linked to benevolent foundations, educational institutions, libraries, and museums that are among the glories of our civilization.

Judge Samuel Seabury set an example for future reformers by his ethical investigations of corruption in the 1930s. The courageous investigator rode the Tammany Hall tiger without ending up inside, exposed corruption on every level of city government, forced Mayor James J. Walker to resign, and caused Fiorello H. La Guardia to become the most effective and popular Mayor in New York history.

In contrast to the Seabury investigations, later efforts were made to turn special prosecutors into political lackeys. The notorious Watergate affair in which President Nixon and his aides conspired to sabotage the Democratic National Committee's headquarters in the Watergate apartment complex in Washington brought down the Republican President. In 1973, Nixon was forced to name a special prosecutor, Archibald Cox, while he and his cronies were trying to impede the Senate select committee's investigation. Several months later, Nixon ordered Cox fired, because he had tried to subpoena secret recordings of presidential meetings and conversations. Rather than carry out the order, the two highest officials in the Justice Department resigned. After public outrage at what became known as the "Saturday night massacre," a new special prosecutor, Leon Jaworski, was named, and he resumed the effort to obtain the devastating tapes. Because Nixon corrupted the electoral process and sought to expand presidential powers beyond constitutional limits, he came close to impeachment. His resignation under fire showed the country the importance of investigations of public officials who violated their oaths of office.

Corruption is much smoother and more difficult to recognize today. It is disguised behind platoons of lobbyists parading in the corridors of power in city halls, in state houses, and in Congress. It can be found in wealthy individuals and political action committees who find ways to circumvent the law and hide millions of dollars in campaign contributions. In return they receive a quid pro quo from bought legislators. Who is more influential in Washington than the National Rifle Association in shooting down the most reasonable efforts at gun control? What is true of the gunslingers in the Capitol also applies to lobbying associations in other fields from anti-environmentalists to those who oppose a na-