

Cross-examination, in the definitions of the legal philosopher, Wigmore, is a marvellous machine for the discovery of legal truth. John Dean got the first real and a prolonged and in some cases vicious cross-examination, from the Ervin committee. Wigmore would have had to say it established truth. The attempt to discredit Dean backfired and accredited his testimony and his severe and specific indictment of all those he named, particularly Nixon and his right and left bowers, Haldeman and Ehrlichman.

With all the time they had to anticipate the development, when it came to pass there was chaos and disorder in the Nixon camp, pandemonium among the camp followers. In one single day the official position and reactions changed five times! This added an abject lack of dignity to the self-discrediting disorder and in itself served to accredit Dean all over again, separately from the fact of his testimony. Compared to the young man's calm under an almost unprecedented five days on the witness stand and on all-network, coast-to-coast TV.

"Nixon sent a couple of old hacks to do a sharp knife's work and they didn't cut.

Dean's testimony moved the disclosures and the proof far forward. He left no doubt of that of which there had in any event been no possibility of doubt, that Nixon knew of the cover-up, which is a crime and a serious crime. This made Nixon guilty of that and related crimes, guilty under the law. The one law Dean and committee members referred to was obstruction of justice. It is enough for our immediate purposes. It left no doubt that Nixon was part of the obstruction of justice, wanted it, and that it was done in his interest, for him by his own. Dean's was the first official proof of Nixon's criminal conduct. It became proof with its credibility being established. Until then it was a mere allegation.

Haldeman and Ehrlichman did more than agree, as Dean recounted what had happened. They were part of it, ordered it. They and the other horse of Nixon's troika, Colson, were all involved in the payment of hush-money to procure the silence of the then accused burglars. This added bribery to obstruction of justice and probably added new violations of election laws.

The initial distinction between Dean's testimony and that of the other Nixonians who had testified is that his was without self-serving pretense. He made no claim to lofty principle, to dedication to this great leader in the seat of power, to having been corrupted by others, or to having been weak and unsure. Instead he made a straightforward confession to participation in a series of crimes - personal confession to personal and voluntary participation - to which he ascribed no motive. Because he blamed nobody else for his own crimes and because he laid them out in full, he was believable.

Strange as it may seem, with five long days for it to have been done, he was not asked his motive, none ofx was suggested to him, and he kept from offering one.

Unlike the other young men who had preceeded him, he did not regard or say he regarded the re-election of the Prewident as the most important thing in the world.

Dean is an able young man with remarkable composure and self-control. In five days he never departed from the approach and manner he must have decided upon in advance, not once. Under severe provocation, he didn't lose his cool - not a single time. He resisted all the many opportunities to score debating points, remaining ever polite, always restrained. The one disadvantage to this is that it made him appear emotionless and that is regarded by most as less than human.

He departed from the practise of all who preceeded him by sitting entirely alone at the witness table. His two lawyers sat nearby, but on camera he was there alone, taking it andhandling it like a man.

Simple motive could easily be attributed to this impressive young man. For his crimes, upward mobility, the desire to get ahead, to advance from the good professional start in life he had already made. For his detailed confession, the desire to minimize the consequences of his crimes.

When this confession began with his preparing 245 typed pages of detail piled on detail, names, dates, places, sums and the other specifics lawyers know build credibility, there was little reasonable doubt of the fullness of the confession, whether or not it was full.

The attempt to destroy him failed not because he was telling the truth, which I believe, but because those who undertook the task were not equal to it and because of the manner in which they undertook it. By a fluke if not by clever anticipation, Dean had said that Nixon regarded Senator Gurney as his tool, as a man whose future depended on Nixon and Nixon alone. Stupidly, the White House then let it be known that it had prepared Gurney's cross-examination for him. Even more stupidly, when Gurney got down to his attempt to destroy Dean, the first question he asked, as TV commentators immediately noted, was the first on the White House list.

There was nothing wrong with the attempt to destroy Dean. It was proper. It is the purpose of cross-examination. Nor was there anything wrong with the White House asking that questions it wanted asked be asked. The committee's rules provided for this, not for the White House alone. What was wrong was the way it was done.

This was so sleazy that none of the three Republican members of the committee would ask the White House's questions. Saying he believed these should be asked, Hawaiian Senator Inoye asked them, departing from the script in the manner of a good prosecutor to ask others they or Dean's responses suggested.

Even then, with this self-contrived self-demeaning situation that is without precedent, the heavy-handed incompetents of the White House found it necessary to disgrace themselves further. They leaked the questions in advance to The New York Times!

And when the whole thing backfired, they backtracked, fumbled step after falter, in the end trying to make it appear that the questions from the White House, on White House stationery and from White House counsel, were not White House questions and that Nixon knew nothing about them. As the disaster to Nixon glared from the nation's TV tubes, the shabby efforts to disassociate Nixon from the shabby process was retracted, withdrawn and contradicted, time after time.

And so very publicly!

In all these five long and taxing days, there were but two seeming defects in Dean's testimony. One had to do with where he had a meeting with Nixon's personal

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lawyer, Herbert Kalmbach, the man who handled more than a quarter of a million dollars in hush money. The other had to do with Dean's taking \$4,850 in ~~money~~ campaign money entrusted to him for dubious uses. Where the latter could have hurt Dean, Gurney's ineptness eliminated that hurt. And when Gurney had to resort to these two trivialities to ~~destroy~~ such lengthy and specific laying out of fact after fact, detail after detail of personal confession or personal criminal conduct, it was apparent that Gurney had nothing to work with, as it was that he was unequal to the task.

Where the meeting was held was without significance in any event. Dean had said it was at the Mayflower hotel and that it was his recollection beginning in the coffee shop, whence they adjourned to the quiet and privacy of Kalmbach's room. Gurney produced a hotel registration to show it was at a different hotel. The purpose was to impeach Dean by showing error, a legitimate purpose if minor after Dean's recitation of incrimination. But it faded into a laugh on TV when Dean's lawyer noted that the name of the coffee shop was The Mayflower. That night the TV newscasts showed pictures of the coffee shop, with the name, Mayflower.

Meanwhile, production of the hotel registration confirmed the essential fact, that Kalmbach was there and that there had been such a criminal meeting with a criminal purpose to be served for the criminal President by his personal lawyer. Not much help to Nixon.

By the time people stopped to think about it, if Dean had been a crook with that \$4,850 of crooked money from a total of a little over \$15,000 in his personal safe, it would have made little difference when he was confession to many and more serious crimes. However, on that, too, Gurney was not able, in Nixonian concepts, to lay a glove on Dean. Dean said that he borrowed it for a honeymoon that the Watergate crisis and the role he served for Nixon in it kept delaying, and for other personal purposes. He also claimed that he had put a check in the safe as evidence he had taken the money. What was immediately apparent is that none of this would have been known if he had not, voluntarily, ~~explained~~ confessed.

Here again Gurney was a gray-haired man doing a man's job like a boy. To make his case he introduced into evidence only partial records. Dean's counsel seized the opportunity the next and last day to introduce some of the documentation Gurney did not, proof that the money -all of it - had been placed <sup>in the bank</sup> /by him, not Dean, in an escrow account, where it remained, where it at that very moment was.

So, if Dean had intended to steal, he hadn't and Gurney had failed to make a case that he had. The proof showed that Dean had more than enough in investments he didn't ~~want~~ want to cash in to make the money good. Here also motive was readily available, whether or not the fact. Not evil motive, either, whether or not honest.

Money in the bank generally earns interest, as it generally does if invested in stocks or bonds. They ~~XXXXXX~~ Nixon money in Dean's safe, clandestine money, was not drawing interest. Dean's using it cost nobody anything. Had he cashed in his investments, borrowed money or used his credit cards, he would have been paying interest. In using this money instead of borrowing or cashing investments, Dean saved at an annual rate of about \$350 a year.

If all of this was not disaster enough for the fumbling Gurney, he engineered more by excesses. Because he is a lawyer and knew better, he magnified this. First he called Dean an embezzler, the inappropriate propaganda phrase devised a little earlier by Nixon's leader in the Senate Hugh Scott. Acott also knew better. This enabled Charles Norman Shaffer, like Scott a former prosecutor, to go to the microphone and challenge Gurney on the law. Gurney was silent.

Gurney then pretended that this long and painful confession was not enough because Dean had not made it to the grand jury. However, Dean had gone to the prosecutors on his own, voluntarily. Had he made confession to the grand jury without immunity, which the prosecutors could and under most circumstances would have offered, he would have been asking that he be indicted. nobody in his right mind does that. Dean had done nothing in this regard that is not <sup>legally</sup> recognized as /right and proper. He stood on the Fifth Amendment, which was included in the Constitution for precisely

this purpose. The legal transgression was by Gurney, who improperly sought to prejudice the record against Dean by questioning him about his refusal to throw away his legal rights for no good reason, to make this appear to be, somehow, wrong and in itself evil. Here Shaffner again arose to cite the Supreme Court, which was to read another lecture on the law to Lawyer Gurney. The Supreme Court had, in fact, held that it is improper to seek to hold against a citizen the citizen's use of Constitutional rights that exist for this very use.

The egg Gurney smeared on his own face and on camera was Nixon's egg. It helped neither Nixon nor Gurney. It did make Dean look clean. The aborted efforts to destroy Dean accredited him.

Where Gurney failed in seeking to use the hearings for his own and Nixon's purposes, other members succeeded in serving their own purposes. There were emotional moments more dramatic than those of the replaced soap operas. And there was an exquisitely sensitive intellectual high point, a moment of exciting subtlety, probably lost on most of the audience, when vice-chairman Howard Baker, the ranking Republican on the committee, undertook his cross-examination.

Dean's face ~~show~~ did not hide his full appreciation of the fact that ~~this was the~~ Gurney's ~~real challenge~~ ~~not~~ ~~the~~ ~~exhaustedness~~ not Gurney's verbal hamhandedness, was his real challenge. Dean's face was unexpressive, as it had been for four days. The signs were first in his eyes and then in his voice as he responded. His eyes were uneasy, his voice lower, its tempo slower.

Baker, an experienced and competent lawyer, was polite, calm and, as he presented himself, the embodiment of reasonableness. He went to great length to explain his purpose, to organize the record, which was, as all testimony always is, diffuse, extensive, as all testimony always is. That, however, was not Baker's purpose. For this committees have staffs and the staffs serve this function, as I had when I was on such a staff. To put the facts together does not require hearings of additional questioning.

Nobody noted that Baker contrived a purpose he didn't have. And nobody had to tell Dean what Baker's purpose really was.

However, in contriving this seemingly reasonable explanation of what he was about to do, the deft and sensitive Baker also contrived a situation from which he could not but profit and which provided no opportunity for loss. He could not, from it, emerge soiled and disgraced as Gurney had, not could he emerge a failure. He could fail to damage Dean in any way without in any way hurting himself.

To me, in a very quiet way, this was the moment of crisis in the hearings, the premature climax, the turning point. In a very real sense, also the point of no return.

Several weeks earlier, in discussing this book with the New York representative of the [a] German publisher, I had said that as best it could then be anticipated, the testimony of two/<sup>Ervin committee</sup>witnesses only could make a major difference in the book. Dean was one. The other was Hunt.

Neither was a hurdle, for without both the essential facts were already clear and far beyond reasonable question. Dean, however, was clearly the one who would first involve the President personally in criminal activity. Perhaps he would be the only one to do this. Dean's importance was crudely established by the Nixonian effort to destroy them, an effort that crested when the hearings were delayed a week allegedly in deference to the delicacy of the situation presented by the presence in the country of Soviet leader Leonid Brezhnev. The delay was last-minute, the evening before Dean's scheduled appearance on the witness stand. Brezhnev's visit was long-scheduled. So, whether or not so intended, the delay provided another week for assault upon Dean. The Nixonians did not waste that time. The assault was heavy and heavy-handed. The inevitable that the unsubtle Nixonians ignored or disregarded was a leaked counterattack that necessarily heightened tension while discrediting the Nixonians and accrediting Dean.

The TV nets, which had presented the hearings on a rotating basis, a different net each day, all decided to air every Dean minute. It didn't help Nixon. It meant that all the major stations would carry the testimony.

The audience for this climax was the maximum audience and the lemmings had done ~~all they could to maximize that audience and the attention the testimony would get.~~ that audience and the attention the testimony would get. all they could to maximize that audience and the attention the damaging testimony would get.

With Hunt, my question was how much detail he would add to his own, Nixon's and Nixonian crime, how much elaboration of his fascist career he would lay on the record, what new crimes he would be driven to confess for himself and his principals by his sick ego and his engorged lust for vengeance.

If to those without my experience Baker's interrogation was a dull interlude in the unprecedented drama, to me it was in a very quite way the most exciting moment. It was the moment of Nixon's truth in the sense that it was the one chance for relieving the case laid on him by Dean, who he had tried to make his surrogate victim if his own subversion and paranoia.

What Baker really did and what to the experienced it was apparent he had to do was lead Dean into a retelling of the essential details of his testimony out of sequence, other than as Dean had originally testified. Time after time Baker interrupted Dean, ostensibly to make explanations or ask new questions. Neither Baker nor Dean needed these explanations or questions. Baker's real intent was to throw Dean off balance, to interrupt the workings of his mind, to disturb his recollections, to make him nervous. And it was all right and proper, for one of the purpose was a necessary purpose, to subject Dean and his testimony to the most rigorous testing. It is exactly as Wigmore said, and it was Baker's obligation to do what he could within the framework of propriety to rattle Dean and to determine if, in rattling him, he and his ~~testimony~~ <sup>evidence</sup> could be shaken.

Not once did Baker raise his voice. Not once was he without lucid explanation of what he said he was about. Not once did he miss a chance to unsettle Dean and disturb Dean's composure and self-control. It was as calm as it was deadly.

If Baker succeeded in this consummate subtlety, if he at any moment penetrated Dean's story or found any single contradiction, he would have taken Dean apart on



camera. This was Baker's duty, his ~~obligation~~ obligation to the establishing of truth.

On the other hand, if with this surgical delicacy he failed to cut Dean at all, ~~he~~ Baker also met his responsibilities to the establishing of truth. His was the function of getting the fact, at the root of truth. He could do it by destroying Dean and his evidence or he could do it by failing after strong and concerted effort.

It was a condition ideally suited for a man with political ambition, a man already considered a possible Republican presidential candidate in 1976, a year when that party would need as it never had needed a Mr. Clean. Whatever happened, Baker could not ~~lose~~ lose.

He didn't.

On the nation's TV screens he was this patient, agonizing, dispassionate seeker for truth, a dedicated public servant, an honest man.

It was also a condition ideally suited for ruining Dean. Because Baker was the epitome of competence, because his was really a virtuoso performance, and effort of thorough professionalism, he accredited Dean's evidence at the extreme opposite Gurney's.

Regardless of whatever followed, that day and forever, it was the end of any semblance of decency or integrity that history, if not the present, could assign to Richard Nixon.

This intensely dramatic climax was so quiet, so little understood, one might say so invisible, that the emotional climaxes that followed were not anti-climax.

To the greatest degree possible without substantiating witnesses, Dean's evidence was authenticated. It was accredited by the efforts to destroy it.

If it would seem impossible that crescendo could continue to swell after four such days, precisely because Gurney had been so unspeakably inept and Baker so much the perfectionist and most of all because of the crudity of the White House's efforts, the succession of them besmirching everything Nixonian, the drama intensified as it departed the subtle and resumed the instantly comprehensible.

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It was taken up by Old Sam Ervin and young Lowell Weicher, both men whose integrity of character and purpose was outside questioning, both the victims of attempted Nixon character assassination. The beauty of it was that the attempted character assassination was non-party. Ervin is a Democrat. Weicher is a Republican who had steadfastly maintained he did not and could not believe that Nixon was party to the crimes and subversion.

But to Nixon, already caught and convicted regardless of the last line of the drama, party was as irrelevant here as it had been in the campaign. There was only one thing he could do, attack. There was only one way he could attack, viciously and separate from fact. He was reduced to that last scoundrelly refuge, personal villification.

Both the assailed Senators used their forum expertly.

Old Sam, 76 years old and still accumulating a store of wisdom from all of life, from the bible to the courtroom, from the rural countryside from which he came to poetry, drew on all quotable sources with pertinence as with entertainment, giving the grim proceedings a relief they required.

His heavy jowls wuavered, his bushy brows rose and fell as thought to provide exclamation points to punctuate his words. ~~But~~ If his voice, heavily accented with the mark of the south, was calm and the words he selected were plain, the blows this wise old man struck were heavy.

In response to the White House effort to defame him he said that the statute of limitations had already run on his indiscretions and nature had denied him the capability of committing new indiscretions. That rbought the house down.

He then proceeded to read Nixon a lecture on the law and Constitution ~~by xxxxxxxx~~ by asking a series of self-answering questions. If he was not the first Senator to resort to this rhetorical device, none ever did it more effectively. He laid Nixon's criminality out straight and plain and he specified the provisions of the Constitution Nixon had violated.

(Pick up with citations, follow with Weicher, building to applause, then flash back to Buzhardt and Saffire and Gunga Dean)