

# Watergate Prosecution Faces Dilemma Of Using Confessed Plotters as Witnesses

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WASHINGTON—The prosecution is continuing the laborious task of presenting essential evidence at the Watergate cover-up trial, but is finding some of the work costly to its case.

The third week of testimony in the complicated conspiracy trial of five former aides of Richard Nixon has proven a bit rockier for the Special Watergate Prosecutor's team than had the first two, which featured the cool and experienced John Dean and the irrefutable tapes of presidential conversations.

The prosecution faces the dilemma inherent in any conspiracy case: The only witnesses to the crime are generally its participants, and they often appear suspect. Defense attorneys went all out to dramatize to the jury the suspect nature of confessed conspirators E. Howard Hunt and Jeb Stuart Magruder, who have been on the witness stand this week.

Yesterday Magruder, former deputy director of President Nixon's re-election committee, underwent vigorous cross-examination, which occasionally made him appear evasive even though it didn't break down his basic story. Today his former assistant at the campaign committee, Robert Reinsner, is scheduled to testify.

Earlier this week Mr. Hunt, one of those who conducted the June 1972 bugging operation at Democratic party headquarters in the Watergate office building, provided some key testimony to support the prosecution's contention that "hush money" was paid to the original Watergate defendants to keep them from disclosing the involvement of higher-ups. He said he got the money, including \$75,000, on the evening of March 21, 1973—the day the tapes show Mr. Nixon approved such a payment.

## Hunt Parallels Dean

Although the former Central Intelligence Agency agent stubbornly insisted he was "bill-collecting" rather than blackmailing, Mr. Hunt confirmed almost word-for-word former White House counsel Dean's testimony that Mr. Hunt threatened to disclose the "seamy things" he had done for the White House if he didn't get the money he felt was due him.

However, Mr. Hunt said his testimony at this trial was the first time he had told the full truth about Watergate, even though he received immunity from further prosecution in March 1973. While his confession of past lies—including those in his about-to-be-published book—was dramatic, it gave defense attorneys a chance to ask, in effect, "Why should anyone believe you this time?"

Cross-examination disclosed that Mr.

Hunt himself, in the page-proof version of his new book, had accused assistant special prosecutor Richard Ben-Veniste of urging him to commit perjury on behalf of the prosecutors. He said he took the reference out of the final version of the book because his lawyers told him he didn't have any basis for the charge. He conceded that he had been lying to Mr. Ben-Veniste and the aggressive prosecutor was simply trying to break down his story.

Nevertheless Mr. Hunt seemed to appear as a person who gives his cooperation to whoever is in power. He explained that he continued to lie to the grand jury in March and April of 1973, even after receiving immunity, because he felt that "by protecting others still in high positions of power" he might "hopefully affect the length of my sentence."

## Magruder Provides Contrast

Magruder, apple-cheeked and eager, provided a contrasting style to the gray and tired-looking Mr. Hunt. Yet Magruder, too, displayed some vulnerabilities under cross-examination and, like Mr. Hunt, was hesitant in some of his responses. Indeed, John Dean, with his well-cataloged memory and confident recitation of two-year-old facts, is a hard act to follow. Magruder admitted he was a bit nervous, biting his lips and occasionally looking around the courtroom as if for support.

Magruder's testimony was most damaging to his former boss at the re-election committee, former Attorney General John Mitchell, who, according to Magruder, approved the bugging operation and supervised the ensuing cover-up. Magruder also

said he discussed cover-up aspects with H. R. (Bob) Haldeman, former White House chief-of-staff, on at least three occasions and with John Ehrlichman, President Nixon's chief domestic adviser, on one occasion.

Magruder also placed Robert Mardian, another re-election committee official, and Kenneth Parkinson, a committee lawyer, in a number of the meetings where the cover-up story was developed. All five defendants are charged by the prosecutors with conspiring to obstruct justice and all but Mr. Mardian are accused of carrying out the obstruction. In addition Messrs. Mitchell, Haldeman and Ehrlichman are charged with lying to various investigative bodies.

Yesterday, as Mr. Mitchell's attorney, Plato Cacheris, resumed his cross-examination, he pointedly reminded Magruder that he was still bound by the oath to tell the full truth that he had taken Tuesday afternoon—the same oath "which you have taken many, many times before." Mr. Cacheris had previously gotten Magruder to review for the jury the numerous times he perjured himself before he began cooperating with the prosecutors April 11, 1973. Magruder conceded that "one of the reasons" he decided to cooperate with the government at that time was "in order to effect the best deal possible" for himself. Magruder is currently serving a prison term of 10 months to four years for conspiring to obstruct justice in the cover-up.

## Differences in Testimony

Mr. Cacheris also contrasted the hour he had spent interrogating Magruder in preparation for the trial with the perhaps 100 hours the prosecution had spent. Then he hammered away at shades of difference between Magruder's current testimony and previous statements he gave to prosecutors, the Federal Bureau of Investigation or the Senate Watergate Committee.

Another potential problem that has arisen for the prosecutors this week is the critical illness of Mr. Nixon. Mr. Ehrlichman maintains that the former President is an essential witness for his defense and Judge John J. Sirica has made it clear he wants Mr. Nixon to testify in person. Yesterday reports began circulating that there would be a bid for a mistrial if Mr. Nixon wasn't able to testify. There was also talk about the possibility of moving the trial to California to take his testimony.

The prosecutors have also subpoenaed Mr. Nixon, but only to authenticate the tapes of his conversations and they seem to think they can manage that without him. James Neal, head of the prosecution team, has announced that next week they will begin laying a foundation for the playing of those tapes by showing such technical things as how the taping system worked, how the tapes were stored and by getting a witness to identify the voices. Alexander Butterfield, the former White House aide who disclosed the existence of the tapes at Senate Watergate hearings, is expected to be a key part of that presentation. John Dean had testified to the authenticity of the tapes played earlier, but those were of conversations in which he was a participant.