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The Cover-Up Trial: Pity the Poor Jury

I have nothing but pity for the Watergate jurors as they strain to sort out the facts that whirl by them each day. For about the only thing federal prosecutors, defense lawyers, congressional investigators and newsmen agree on is the complexity of the case.

Think of the cast of characters. There are five defendants—former White House aides H. R. Haldeman and John Ehrlichman; former Attorney General and 1972 campaign manager John Mitchell; former Mitchell campaign aide Robert Mardian, who also had been an assistant attorney general; and Kenneth Parkinson, a Washington lawyer hired by the Nixon re-election committee after the break-in of Democratic national headquarters in June 1972. In addition there are 19 unindicted co-conspirators who were part of the cover-up but are not defendants, either because they cooperated with the government in the investigation or, as with former President Nixon, escaped indictment through some legal loophole. To the 24 must be added another 15 prospective government witnesses, such as former CIA Director Richard Helms and former acting FBI Director L. Patrick Gray III—individuals who played some role in the concealment of the crime.

Then there are those who are mentioned casually in testimony or on the White House tapes but who never are clearly identified to the jury as their names drift in and out. On the March 22, 1973, White House tape alone, at least 10 new names are heard during a crucial conversation among the former President, John Dean and defendants Haldeman, Ehrlichman and Mitchell. Some are important, such as "Baker" who at times is referred to as "Howard." As they sit there listening to the tape and following the transcript, how many of the jurors know that the man in question is Sen. Howard Baker, ranking Republican member of the Senate Watergate committee? They are not told that, either before or after the one hour and 46 minute tape is played. Nor at the time of the playing is "Kleindienst" identified as Richard Kleindienst, the then Attorney General. "Chapin" and "Segretti" float by and are gone before anyone understands where they belong in the flow of events. Poor jurors. During the Ervin hearings and the House impeachment inquiry, congressmen and newsmen frequently carried indexed biographies of the principal actors. The jurors, with much less background in the case to begin with, have no memory aids and don't take notes.

Mr. Pincus is executive editor of The New Republic, from which this article is adapted.

Let me illustrate how easily one can become confused. On a March 22 tape, Mr. Nixon, late in that conversation and with only Mitchell present, reminds his long-time adviser of "... what happened to Adams. I don't want it to happen with Watergate... the Watergate matter. I think he made a, made a mistake, but he shouldn't have been sacked, he shouldn't have been. And, uh, for that reason, I am perfectly willing to—I don't give a shit what happens. I want you all to stone-wall it, let them plead the Fifth Amendment, cover up or anything else, if it'll save it—save the plan." The "Adams" reference was left dangling. The jury was not informed that President Eisenhower, when Nixon was Vice President, forced his top White House aide, Sherman Adams, to resign when it was learned he had accepted gifts from a manufacturer in trouble with the Federal Trade Commission. Without knowing what Mr. Nixon meant by "Adams," the jurors could not really appreciate the depths of emotion in Mr. Nixon's remarks.

The jurors also had to be mystified about a critical bit of Dean's direct testimony concerning defendant Robert Mardian. Dean was describing how one cover-up story was being concocted to give a false impression of why Watergate conspirator G. Gordon Liddy had received \$200,000 in cash. In fact that money was paid for bugging Democratic headquarters. The false story was that the money was to buy intelligence on potential demonstrators at the GOP convention. Dean said Mardian objected to the phony story because "my own office is sending material over here." Could the jury recall that the "office" in this instance was that of an assistant attorney general of the United States? Or that Mardian's "own office" at the Justice Department dealt in domestic intelligence and kept tabs on potential convention-time troublemakers? Or that Mardian had arranged for that sort of material to be sent "over here," meaning to the Nixon reelection committee?

Months from now, when all the testimony is in and the government sums up its case, these seemingly small and unrelated facts may fit into a pattern. But for the moment, the story is bound to be baffling.

The hundreds of meetings and conversations confound even the prosecu-

tors. For example, with Dean in the witness chair, chief prosecutor James Neal endeavored to explain how the hush money was transferred. He established by Dean's testimony that on February 10, 1973, Dean met with Haldeman and Ehrlichman in La Costa, Calif., where they discussed the need to give more money to the seven men who had just been convicted in the first Watergate trial. Dean recalled for the jury that it was agreed by Haldeman and Ehrlichman that Mitchell ought to be asked to raise the additional money. Under further questioning by Neal, Dean testified that on Feb. 15, 1973, he learned Mitchell refused.

Having taken the jury that far, prosecutor Neal then asked Dean to go back a month, to January 1973, and explain a cash fund that had been kept in the White House under Haldeman's control. From Dean's answers, it developed that "in late January or early February" at Mitchell's request, Dean had asked Haldeman to release some \$280,000 for payment to the then Watergate defendants, because they were "off the reservation." Dean testified that the funds were given to a Mitchell aide at about that time—"late January or early February." But Neal did not ask—nor did any of the defense attorneys—why the need for more money came up at La Costa on Feb. 10 when some \$280,000 in payments had just been transferred from the White House.

The bare recitation of facts about the cover-up is bewildering enough to the jury, but the statements and interventions of the various defendants' lawyers compound the confusion. Since the start of the trial the truthfulness of the government's three chief witnesses has been attacked, as was to be expected: each of them—Dean, E. Howard Hunt and Jeb Stuart Magruder—has either withheld material information or lied while under oath. The defendants' lawyers themselves are making it no easier for the jury. In his opening remarks Ehrlichman's lawyer, William S. Frates, said that Dean—the government's first witness—had met with a 1972 Nixon committee employee, Herbert Porter, before Porter went to the grand jury, "got with him," said Frates, "and devised and led him into falsely testifying under oath before the grand jury." Had Mr. Frates got Porter mixed up with Magruder? Porter never talked to Dean about his testimony before going to the grand jury. Magruder, on the other hand, did.

Frates' opening statement also

showed that some defendants—along with some government witnesses—will be telling stories that differ from those they told earlier at the Senate Watergate hearings. Ehrlichman, for example, had assured the senators that he and Haldeman voluntarily resigned their White House positions on April 29, 1973. Asked directly by Sen. Edward Gurney if the President had asked for his resignation, Ehrlichman had replied, "No, sir." Frates, however, in his effort to portray Mr. Nixon as the man "who knew the full story (and) withheld it from Ehrlichman" informed the jury that at the April 29, 1973 Camp David meeting, Ehrlichman was faced with a "forced resignation."

Judge Sirica recently suggested that searching for the T-R-U-T-H was the jury's basic task. Right now, just sitting in the courtroom day after day trying to remember who's who, would be a test for any citizen.
