

# Watergate Jury Gets Case Today After 13 Weeks,

By LESLEY OELSNER  
Special to The New York Times

DECEMBER 30, 1974

WASHINGTON, Dec. 29—At 9:30 tomorrow morning Judge John J. Sirica will take the bench in Court Number Two at the United States Courthouse on Constitution Avenue. After summoning the jury, for two and a half hours he will explain to them the law on conspiracy and perjury and obstruction of justice.

Then, after 13 weeks of trial, he will give them the case of the Watergate cover-up, the cover-up that caused the biggest political scandal in the nation's history and led to the departure in disgrace of Richard M. Nixon from the White House.

Judge Sirica will be giving the jury the case after testimony by more than 80 witnesses, playing of 30 tape recordings including 28 made by the Nixon White House, and 61 days of legal proceedings that took 12,348 pages of court reporters' transcripts to record.

In turning the case over he will be leaving two major questions to be answered—one for the jury, and another for everyone who watched and read and head of official action and no action in the years after the break-in at the Democratic National Headquarters at the Watergate complex on June 17, 1972.

## First It's Up to Jury

The first question, for the nine women and three men on the jury, is the guilt or innocence of the five former White House and Nixon campaign and Nixon aides charged with aides charged with the coverup conspiracy. They are:

Attorney General John N. Mitchell, the campaign director.

H. R. Haldeman, who was Mr. Nixon's White House chief of staff.

John D. Ehrlichman, once Mr. Nixon's chief domestic affairs adviser.

Former Assistant Attorney General Robert C. Mardian, a campaign official.

Kenneth Wells Parkinson, a lawyer retained by the committee after the break-in.

The second question—one for the nation, or, perhaps, for history—is whether the legal system worked, in the face of massive abuse of power at the highest levels of govern-

## Testimony by 80 and

## Playing of Tapes

ment.

There are many concomitant questions. For example, was it fair for Mr. Nixon to be pardoned—in view of the trials mass of evidence picturing his playing a role in the cover-up? Was it fair to prosecute his aides, when he went free? Did the jury take his pardon into account—and should it have done so?

### A Question of Duty

Was it fair for Judge Sirica, who presided at the trial in 1973 of the Watergate burglars and was undoubtedly a factor in unraveling the cover-up, to assign himself to the cover-up trial? Was it possible to have an impartial jury, in the view of the massive press coverage of Watergate?

And did Judge Sirica, the eight prosecution lawyers and

the eleven defense lawyers fulfill their duties at the trial of the five men?

This Watergate trial, which began on Oct. 1 with a handful of picketers outside the courthouse and a huge pool of prospective jurors inside, has been many things—a criminal prosecution, a historic event, a spectacle drawing long lines of spectators each day, a self-contained community with its own habits and jokes, a continuing drama that seemed as the weeks went by to present more emotions and human strengths and weaknesses than most stage plays.

Lawyers and judge alike argued, joked, shouted, lost track of what was going on, and, in the parlance of Watergate, "misspoke." There were tears, as well—Herbert W. Kalmbach, once Mr. Nixon's personal attorney and later one of the men

who raised the money paid secretly to the Watergate burglars, broke down and cried midway through his testimony. Mr. Ehrlichman cried on the witness stand as well, and last Friday, Mr. Parkinson's attorney, Jacob A. Stein, wept as he summed up his client's case.

Joan Packard, a piano player at a local hotel, was first in the spectators' line on opening day and came each morning. She called it "the trial of the century." To many, including the chief prosecutor, James F. Neal, that was an understatement. It was, Mr. Neal said more than once, the "strangest" case "in the annals of the law."

### Legal System at Issue

The story of the last 13 weeks in Judge Sirica's courtroom had two parts.

The first was the testimony—the prosecution building its seemingly monumental case, but with some rough edges and contradictions from its own witnesses. The defendants following and—with the exception of Mr. Mardian, who was confronted with the least evidence and seemed to many to have the best-presented defense—putting on what appeared, to many, generally weak cases. These consisted mostly of their own testimony.

The second part was all the other elements that made up the trial—the bickering between the lawyers, the judge's rulings, and, among other things, the constant reminder of Mr. Nixon, through his tapes and the evidence against him, and the defendants' struggle, ultimately unsuccessful, to secure his testimony. These, taken together with the testimony, may finally demonstrate if the legal system worked.

In its testimony, the prosecution—using witnesses, tape recordings, and final argument—offered with much amplification this basic account:

G. Gordon Liddy, a Nixon campaign employe, devised in January, 1972, a million-dollar intelligence gathering plan, in-

cluding a variety of illegal features, designed to secure information about the Democratic opposition. Mr. Mitchell sent the plan back for revisions; then, on March 30, 1972, he approved a scaled down quarter-million dollar plan that included the surreptitious entry for wire-tapping of the headquarters of the Democratic National Committee at Watergate.

An initial entry was made at Watergate on May 28, 1972: the bugging was inadequate, and a second entry was made, on June 17. The five burglars retained by Mr. Liddy and his co-worker, E. Howard Hunt, were arrested in the act.

#### Mitchell's Action Related

The cover-up began.

Mr. Mitchell and Mr. Mardian, in California that day with others on campaign business, began at once to plan a press release stating there was no connection between the break-in and the committee. Mr. Mitchell told Mr. Mardian to call Mr. Liddy in Washington to have him ask Richard G. Kleindienst, then the attorney general, to get the five burglars out of jail. Mr. Mardian did so; Mr. Liddy made the approach.

In Washington, the destruction of incriminating documents began. Mr. Haldeman had an aide go through his files to clean out any damaging material relating to the bugging. Mr. Ehrlichman ordered John W. Dean 3d, then Mr. Nixon's counsel, to "deep six" electronics gear found in Mr. Hunt's White House safe.

When Mr. Mitchell returned to Washington a few days after the break-in, he also ordered destruction of documents, in Mr. Mardian's presence.

The cover-up also proceeded along other lines according to the testimony.

Mr. Ehrlichman quickly arranged for the acting head of the Federal Bureau of Investigation, L. Patrick Gray 3d, to report to Mr. Dean on the F.B.I.'s Watergate investigation, on the ground that Mr. Dean was looking into Watergate for Mr. Nixon.

#### C.I.A. Connection Noted

Mr. Gray reported to Mr. Dean after a few days that the F.B.I. had found some bank checks, one from a Mexican bank, in its search of the burglar's bank accounts. Mr. Gray did not know it at the time, but the checks, if traced, would lead back to the campaign committee.

Mr. Gray also told Mr. Dean

that because of the Central intelligence Agency backgrounds of some of the burglars, some investigators thought that the break-in might be a C.I.A. operation.

Mr. Dean told Mr. Mitchell of Mr. Gray's report; then, Mr. Dean told Mr. Haldeman, adding that Mr. Mitchell thought the White House should have the C.I.A. tell the F.B.I. to curtail its inquiry.



Associated Press

Judge John J. Sirica

On the morning of June 23, 1972, Mr. Haldeman reported this to Mr. Nixon; Mr. Nixon agreed with the plan to use the C.I.A.

Mr. Haldeman then summoned top C.I.A. officials and, in Mr. Ehrlichman's presence, told one of them to go to Mr. Gray. This official, Lieut. Gen. Vernon A. Walters, the C.I.A.'s deputy director, went to Mr. Gray, and the inquiry was halted, for about two weeks.

#### New 'Cover' Planned

The cover-up—according to the prosecution presentation—had two other aspects in the summer of 1972: the development with the knowledge of Mr. Mitchell and Mr. Mardian

of a more detailed "cover story" that Jeb Stuart Magruder, the campaign's deputy director, would give the authorities; the beginning of payments that eventually totaled \$429,500 to the Watergate burglars, in return for their silence.

The burglars' silence was deemed crucial because if the truth were told about Watergate, it might have hurt Mr. Nixon's chances in the November election.

Mr. Parkinson was hired by the committee in this period, and initially, at least, given the false cover story. Later, however, he gathered various information contradicting the cover story.

Over the fall and winter, the demand of the burglars—especially Mr. Hunt—increased. Mr. Parkinson passed messages to campaign and White House officials on behalf of the burglars; payments were met.

In January, those of the Watergate burglars who had not pleaded guilty went to trial before Judge Sirica. Perjury was committed. According to the prosecution's case, Mr. Magruder was one of those who committed perjury. Mr. Haldeman, knowing this, thereafter got him a high-level Government job.

The demands of the burglars increased, the prosecution's case went on, and Mr. Ehrlichman agreed that veiled offers of clemency should be made to the burglars. Mr. Haldeman authorized use of part of a secret \$350,000.00 fund.

In mid-March, Mr. Hunt made a direct demand on the White House: if he did not get money, he would disclose "the seamy things" he had done for Mr. Ehrlichman at the White House, as part of the White House plumbers unit in 1971.

On March 21, Mr. Mitchell approved the payment the same day, Mr. Nixon said that the money should be paid.

Then, the cover-up began to come apart. The Senate Watergate committee hearings were approaching; some alleged co-conspirators, especially Mr. Magruder and Mr. Dean, began to cooperate with the prosecution. Mr. Nixon, Mr. Haldeman and Mr. Ehrlichman devised "scenarios" involving, variously, "draiving the wagons around the White House," "sacrificing" Mr. Mitchell, and discrediting Mr. Dean.

#### Dean Accused of Lying

The five defendants put on separate cases. There were some similarities—all contended that Mr. Dean, the Government's main witness, had lied, for example—but there were also some marked differences, and, various occasions when one defendant turned against another.

In making a variety of points in defense, Mr. Haldeman said this about the events of June 23, 1972:

The checks the F.B.I. had found would, if traced, show that certain people including a friend of Senator Hubert H. Humphrey had contributed money to the Nixon campaign. The sole reason for wanting the F.B.I. not to pursue the checks was to avoid embarrassment to these contributors.

He also contended that he had not known that the money for the burglars was for their silence. He said he thought it was for legal fees and family support, and thus proper.

Mr. Mitchell argued that he did not authorize the liddy plan that led to the break-in at watergate, and that he thus had no motive for joining any

attempt to cover-up the break-in. He also said he thought the payments were being made, for support and legal fees.

Mr. Mitchell's lawyers also contended that since Mr. Nixon and others wanted to sacrifice Mr. Mitchell in the spring of 1973, Mr. Mitchell was a "victim" of the conspiracy, not a co-conspirator; They argued, too, that Mr. Magruder and Charles W. Colson, a Nixon aide, were responsible for authorizing the break-in.

#### 'Deceived' by Nixon

Mr. Ehrlichman based his defense on the contention that he had been "deceived" by Mr. Nixon. He did not know of the Nixon-Haldeman conversation on the morning of June 23, he said; thus, when he sat in on the later meeting with the C.I.A. officials, he did so as an innocent. Also, he said he urged Mr. Nixon repeatedly to put out the full truth of Watergate—unaware that Mr. Nixon was involved.

Mr. Ehrlichman rejected the contention that he wanted Mr. Hunt paid off because he did not want Mr. Hunt to reveal the activities of the plumbers. He said Mr. Nixon had told him not to discuss the plumber's activities.

Mr. Mardian presented witnesses who, if believed, established an alibi for his activities on the morning of June 17, which, if true, would have precluded his making the call to Mr. Liddy.

#### Acted Like a Lawyer

He contended also that his activities in the month following Watergate—the only month for which the prosecution presented evidence against him—were consistent with his duties as a lawyer working on the

campaign committee's Watergate-related litigation. This included his interview of Mr. Liddy, on June 21, 1972, in which Mr. Liddy told him that the committee had financed the break-in.

Mr. Parkinson contended that he had been deceived by Mr. Mardian, Mr. Mitchell and others, by their leading him to believe the cover story. As for passing messages, he said, he did not know the meaning of those messages. He also contended that he acted as a lawyer should act, giving his client his all.

The presentation of all the testimony occupied the time and efforts of an array of lawyers.

For the prosecution, there were, in addition to Mr. Neal, Richard Ben-Veniste, Jill Wine Volner, Lawrence Iason, Peter Rient, Gerald Goldman, Judith Denney, and George Frampton.

For Mr. Haldeman, John J. Wilson, Frank Strickler, Ross O'Donoghue; for Mr. Ehrlichman, William S. Frates and Andrew Hall; for Mr. Mitchell, William G. Hundley and Plato Cacheris; for Mr. Mardian, first David G. Bress and then, when Mr. Bress became ill, Thomas C. Green, assisted by a third year law student, Jake Dweck; for Mr. Parkinson, Mr. Stein and Nicholas McConnell.

Mr. Neal was generally regarded as the star. He appeared extremely talented, but he also had a monumental amount of evidence to work with. Mr. Green was generally believed to have put on the best defense case; he too appeared talented and, like Mr. Neal, well-prepared. He had, however, the least evidence to rebut.

**DO NOT FORGET THE NEEDIEST!**