

But the Jury is Out as
Judge Asserts Defendant
Could Have Stopped
Watergate

By Lesley Oelsner

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Judge John J. Sirica told the defendants, lawyers and spectators, but not the jury, at the Watergate cover-up trial today that the case would never have occurred if John N. Mitchell, one of the five defendants, had said "Get them out fast" when campaign employees first presented him with plans for illegal political intelligence operations. Judge Sirica prefaced this statement in Federal District Court with a remark that perhaps he should not make it at all.

Mr. Mitchell's lawyers, William C. Hundley and Plato Cacheris, later put on the record a formal objection to the remarks.

Mr. Mitchell, a former Attorney General, was for a time manager of President Nixon's 1972 re-election campaign.

Judge Sirica's comment, delivered at midday after he sent the jurors out for lunch, was one of several developments on the 18th day of the trial.

Angry arguments erupted throughout the day between lawyers for both sides.

After one argument, and several hours after his comment about Mr. Mitchell, Judge Sirica

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Sirica told prosecution and defense lawyers to improve their behavior.

He warned that if they did not, he would have to "do something about it."

"I don't want this case to have what we call a carnival atmosphere attached to it," he said.

There was a brief period of relative peace in which the various lawyers followed the judge's instructions that they voice their objections and questions to him rather than to one another. But then the arguments began.

In other developments, the prosecution asked Judge Sirica to call as a "court witness" E. Howard Hunt Jr., one of the seven men convicted in the original break-in at the Democratic headquarters in the Watergate complex here. It asked him to do this rather than force the prosecution to call him as a Government witness,

"Mr. Dean, who first in your life time suggested the destruction of evidence?" Mr. Neal asked.

Another Objection Made

At this point, Mr. Frates objected even more loudly, accusing Mr. Neal of making a clos-

ing argument to the jury. Judge Sirica cut him off, saying, "That may be argument, but I'm going to let him do it."

Memorandum to Court

The prosecution told the judge in a memorandum that it became apparent during Mr. Hunt's testimony last year to the grand jury that "Mr. Hunt was not being entirely candid." Mr. Hunt, the memorandum said, was cooperating "only grudgingly and, we believe incompletely."

In the early part of the day, Mr. Hundley and then William S. Frates, one of the attorneys for John D. Ehrlichman, another defendant, cross-examined John W. Dean 3d, the former Presidential counsel who is now a Federal prison inmate.

Mr. Dean continued to stand by the account of the Watergate cover-up that he gave on direct examination, in which he implicated to varying degrees all five defendants—H. R. Haldeman, the former White House chief of staff; Kenneth W. Parkinson, a former counsel to the re-election campaign, and Robert C. Mardian, a former Assistant Attorney General, as well as Mr. Mitchell and Mr. Ehrlichman, Mr. Nixon's former adviser on domestic affairs. But Mr. Dean made a number of concessions similar to those he made in his first two days of cross-examination, concessions that defense lawyers view as damaging to his credibility.

Conspiracy Is Alleged

So, in the afternoon, the prosecution sought, apparently with some success, to repair the damage through re-direct examination.

The defendants in the case are all charged with a basic conspiracy count alleging, essentially, that they plotted to cover up the facts surrounding the Watergate break-in, such as the alleged involvement of the Nixon re-election campaign committee in planning and financing the break-in.

According to the charges, the conspiracy included such things as payment of money to Mr. Hunt and the six other men originally charged in the matter in order to keep them silent.

Meetings Described

The prosecution is contending that Mr. Mitchell approved the plan that led to the break-in.

Mr. Dean, in his testimony on direct examination, described two meetings he at-

ended in the then Attorney General Mitchell's office at the Justice Department, one in January, 1972, and the other in February, 1972, at which he said illegal intelligence plans were discussed.

Mr. Dean testified that at the first meeting, on Jan. 27, G. Gordon Liddy, later one of the seven original Watergate defendant, presented Mr. Mitchell with a million-dollar plan involving bugging, kidnapping and prostitution with which he and his aides would get "intelligence" about the Democrats.

At the second meeting, Mr. Dean testified, Mr. Liddy presented a scaled-down plan budgeted at \$500,000. As the prosecution views the case, the Watergate break-in resulted from a third, further-scaled down plan submitted later.

It was these two meetings in Mr. Mitchell's office to which Judge Sirica was referring today.

Judge Sirica made his remark about Mr. Mitchell after a heated argument, out of the presence of the jury, between James F. Neal, the prosecutor in charge of the case, and Mr. Frates.

Mr. Frates, toward the end of that argument, said, "If Mr. Neal and I agreed, we wouldn't be here." Judge Sirica said that this remark made him want to say something he had in mind.

He said that maybe he should not tell everyone what he was thinking, observing, "Every time I say something, people put the wrong interpretation on it."

He stopped, and shook his head. He would not say it, after all, he went on. And then he changed his mind, saying, "I'll tell you what's in my mind."

"It's too bad that Mr. Mitchell didn't say, 'Throw them out of here, get them out fast,' and you wouldn't be in this courtroom today. Too bad, it didn't happen that way."

He quickly added, "Anyway, it's not for me to say what should have been done."

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"No harm has been done," he said.

Upheld by Court

Judge Sirica was the presiding judge in the prosecution of the seven original Watergate defendants, five of whom pleaded guilty before him and two of whom went to trial.

Judge Sirica repeatedly remarked at that trial that he did not believe he was getting the full, truthful account of Watergate; indeed, subornation of perjury at the trial is an element of the conspiracy alleged in the present indictment. The judge is generally credited with had a large role in unravelling the cover-up.

Yes, Mr. Dean said.

Complaints on Transcripts

One of the biggest defense complaints since the trial began has been the judge's decision to let the jurors read transcripts prepared by the prosecution while they listen to the various

tape recordings.

The defense lawyers contend, among other things, that the transcripts contain inaccuracies. The judge, while adopting some of the defense revisions of the transcripts, generally responds that the transcripts are "substantially accurate" and that the jurors can listen for themselves.

Several of the defendants now on trial, including Mr. Mitchell, sought unsuccessfully last summer to have Judge Sirica removed from the case on the ground that his involvement in the whole history of Watergate made him biased against the defenders.

Judge Sirica has contended that he could be impartial—a view that the United States Court of Appeals for the District of Columbia Circuit, in effect, let stand when it declined defense requests that Judge Sirica be disqualified.

The judge has also made it clear that he is blunt-spoken. Indeed, at one point in an argument today on a prosecution objection to questions being asked of Mr. Dean in cross-examination, Judge Sirica commented.

"I don't think that anyone is trying to point this gentleman as a lily white angel."

"Let's be frank about it, he has already confessed," the judge said.

Prosecutor Rebuffed

"And he's paying for it," Mr. Neal quickly added.

Judge Sirica has often seemed to be overruling far more defense objections than prosecution ones. Today, however, he rebuffed several of Mr. Neal's objections to cross-examination. Then, at a point in Mr. Neal's re-direct examination of Mr. Dean, he overruled many of Mr. Frates's objections.

In cross-examination, in a loud, angry voice, Mr. Frates elicited from Mr. Dean such concessions as the fact that he had destroyed evidence and that funds to aid defendants were not in themselves illegal.

Mr. Neal, also in a loud voice, attacked each of these and other concessions when he rose to re-examine Mr. Dean.

He asked Mr. Dean is there anything illegal about defense funds or bail money. No, Mr. Dean replied.

"Is there anything illegal about paying money to people to keep them silent?" he asked next. Yes, Mr. Dean answered.

Mr. Neal asked, "What was the purpose of the money to the original Watergate defendants?"

"To keep them silent," Mr. Dean answered.

So, too, with the testimony about destroying evidence.

"Had you destroyed any other

evidence prior to going to the White House in June of 1970?" he asked. No, the witness answered.

"Who was one of your superiors at the White House—was Mr. Ehrlichman?" Yes, came the reply.

"Was Mr. Ehrlichman an older man?" he asked.

"Yes, sir, he was and is an older man," Mr. Dean replied, after an intervening objection by Mr. Frates was overruled.

"How old were you when you went to the White House?" Mr. Neal asked.

"32," Mr. Dean replied.