

JURY HEARS SIRICA SAY DEFENSE DID 'GOOD JOB' ON DEAN

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Says He Thinks Lawyers Succeeded in Portraying Role of the Witness

MOVE DRAWS OBJECTION

Judge Appears to Regret the Remark, Saying That He Expressed No Opinion
NYTimes

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WASHINGTON, Oct. 25 — Judge John J. Sirica caused something of a furor today on the 19th day of the Watergate cover-up trial with a remark about John W. Dean 3d, the prosecution's chief witness.

In the presence of the jury, Judge Sirica asked a defense lawyer if he was trying with his questions to make Mr. Dean appear to be a liar.

Without waiting for a reply, the judge then remarked that he thought all the defense lawyers had done a "pretty good job."

The judge appeared to regret his remark as soon as he made it, and seemed to amend his comments as he went on, limiting them to the fact that the defense lawyers had brought out to the jury Mr. Dean's admitted participation in the Watergate case.

His entire statement was thus as follows: "I think you have done a pretty good job, all of you—that he has admitted his participation in this alleged cover-up."

'Expressed No Opinion'

Later, after lawyers for the prosecution put an objection on the record and asked the judge to make a statement to the jury that would erase any possible damage, Judge Sirica told the jurors that they were the "sole judges" of the case.

He told them that though judges in the Federal courts were permitted to comment to the jurors on the evidence, it was not his practice to comment.

"Thus I have expressed no opinion regarding this witness or his testimony, and I will express no opinion," he said.

But the court record of a bench conference held after Judge Sirica made his remark shows that the prosecution lawyers, led by James F. Neal, had wanted the judge to make a somewhat stronger statement to the jury.

According to the court

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United Press International

E. Howard Hunt Jr., convicted Watergate burglar, arriving yesterday at courthouse for the Watergate trial.

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record, the prosecution lawyers suggested to the judge immediately after he made the remark that he had not really intended to say what he had said, and that he should thus give the jury some kind of instruction to make that point.

Judge Sirica then went to his chambers during a recess and drafted his statement. At the end of a recess, in the bench conference, he showed it to the lawyers. The record of the conference shows that the prosecutors considered the statement inadequate, but that they wanted it read rather than have nothing done.

Final Day on Stand

The incident occurred on Mr. Dean's eighth and final day on the witness stand. In his testimony on direct examination, he had implicated to varying degrees all five of the defendants in the case, H. R. Haldeman, John D. Ehrlichman, John N. Mitchell, Robert C. Mardian and Kenneth Wells Parkinson.

On cross-examination, Mr. Dean stood by the account he had given on direct examination. However, he made some concessions of mistakes in his prior testimony in other forums and also many statements regarding his own actions in the Watergate cover-up, as defense lawyers sought to attack his credibility.

On re-direct examination Mr.

Neal, the prosecutor in charge, attempted — seemingly with some success—to rebut inference raised in cross-examination.

Judge Sirica's comments regarding Mr. Dean came during the cross-examination, conducted this afternoon by David Bress, who with Thomas C. Green, is defending Mr. Mardian.

Mr. Bress had asked Mr. Dean, former Presidential counsel who is now a Federal prison inmate, whether he told Richard M. Nixon, in March of 1973 that he would not accept immunity from prosecution.

Mr. Dean said he did not recall such a remark. There was some colloquy between Mr. Bress and Mr. Neal about producing the transcript of the remark.

Judge Sirica, who had become increasingly impatient with Mr. Bress, cut the colloquy off.

The court reporter's transcript then quotes the judge as follows:

"Now even if it's reflected in there that his answer is in the affirmative, Mr. Bress, what does that have to do with the issues in the case? I think we're going far afield here. Is this just to make him out another liar on a piece of evidence, is that the idea? I think you have done a pretty good job, all of you—"

The judge appeared to pause his tone changing slightly. Then he continued:

"—That he had admitted his participation in this alleged cover-up case. He's told what he knows. It's up to the jury regardless of what he's admitted or anything, they can still believe him or disbelieve him."

Lawyers on all sides in the case refused to discuss the judge's comments, several of them citing the "gag rule" that Judge Sirica has placed on lawyers, forbidding out-of-court comments on the case.

However, all of the lawyers had appeared shocked while the judge was making the remarks. Later the prosecution lawyers also appeared distressed.

Some of the defense lawyers subsequently looked a bit amused.

Yesterday—out of the presence of the jury—Judge Sirica had made another comment that startled the lawyers, this one involving former Attorney General Mitchell, who was for a time head of the Nixon reelection campaign in 1972.

The judge said yesterday that the case would never have come up at all if Mr. Mitchell had said "throw them out" when campaign aides first presented him with plans for illegal political intelligence activities.

Objection to Comment

Mr. Mitchell's lawyer's put an objection on the record. If such a comment had been made in the presence of the jury, it is probable that Mr. Mitchell would have had ground for a mistrial.

In the case of a remark by the judge in the presence of the jury that is damaging to the prosecution, however, the situation is less clear.

The law provides for a legal motion in which the Government can ask for a mistrial on the ground of judicial error. However, some lawyers said today, it is not clear whether the constitutional ban on double jeopardy would prevent a subsequent prosecution of the

same defendants, if their first trial ended on this kind of a motion.

The safer course, lawyers said, is thus to find some way in which the error can be corrected, if possible. This is what the judge and prosecution lawyers were seeking to do in the discussions regarding the instructions that Judge Sirica should make to the jury.

It is, of course, impossible to know whether the judge's instructions this afternoon had this corrective effect—or indeed, to know whether Judge Sirica's initial remark made any impression on the jury.

Judge Sirica made it clear that he had firm ideas about how trials should be conducted—ideas, he has occasionally conceded, that may not always be the same as those held by all other judges.

This afternoon, for instance, Mr. Neal was questioning Mr. Dean on re-direct examination. Mr. Bress objected that one of Mr. Neal's questions was "leading"—leading Mr. Dean, in other words, toward the answer that Mr. Neal wanted him to give.

"He can put leading questions on re-direct," Judge Sirica said.

"I never heard of that rule," said Mr. Bress, who has taught courses in the law of evidence at one of the law schools here.

"I know you're a professor of law," Judge Sirica retorted. But, he said, "You don't know all the rules."

Mr. Bress agreed that he did not know everything. But he said he did know that one can not ask leading questions on re-direct.

"You do in my courtroom," the judge replied.

Questioning Technique

The lawyers at the cover-up trial, like lawyers in almost every trial, have tried consistently to get a little more into their questions than they are supposed to—suggesting to the jury, say, that certain events occurred or, perhaps, that the witness is making something up.

Mr. Bress, questioning Mr. Dean in a hoarse, raspy voice caused by a throat illness, did this several times today. After one such "question" in which Mr. Bress had read at length from a transcript of Mr. Dean's prior testimony, James F. Neal, the prosecutor in charge of the case, rose to object.

Mr. Bress, Mr. Neal contended was "testifying" to the jury.

"There's been some testifying on both sides," Judge Sirica observed.

The judge was less tolerant of another of Mr. Bress's questions, which cut off Mr. Dean in mid-answer to a previous question. It was a type of questioning that other lawyers in this trial have been using repeatedly.

"You can't cut a witness off," Judge Sirica said in a sharp tone. "You know that."

If a witness is answering a question and you stop him, that isn't right," he went on.

Mr. Dean, who had been sitting patiently in the witness chair during the interruption, was allowed to continue with what he had started to say earlier: That the reason he did not tell the grand jury last winter about one of the incidents he described last week at the trial was that prior to his grand jury appearances, he had been told to keep his answers to the point and not expand upon them.

"Did you get a similar instruction" prior to appearing at the trial, Mr. Bress asked, "to give the answer and then make a little speech at the end?"

It was another of those questions that carried a message to the jury. Judge Sirica struck it from the record, and told the jury to ignore it.

The proceedings today were marked by the same mixture of bickering between the lawyers, long dreary chunks of testimony, and short bits of humor—or at best good humor—that has been seen all week.

There was a loud protest by Mr. Bress, for instance, about what he said was the prosecution's failure to give the defense counsel the necessary materials in time for trial.

There was a response by Richard Ben-Veniste, one of the prosecutors, who contended that defense lawyers wanted everything from the prosecution but gave "no sign of reciprocity."

And from Judge Sirica, there was some good-natured humor, as he bade Mr. Dean good-by.

The judge turned to Mr. Dean who had been sitting calmly in the witness chair to the judge's right through all the hours of questioning.

"How long have you been here?" he asked.

"nine days," Mr. Dean replied, mistakenly adding an extra day.

"Now, my advice to you is get off this stand as fast as you can, and get out of this courtroom before some other lawyer thinks of another question to ask you."

He smiled, and Mr. Dean, smiling too, took his advice.

E. Howard Hunt Jr., one of the seven men convicted in the original break-in at the Democratic headquarters in the Watergate complex here, is scheduled to be the second Government witness when the trial reconvenes on Monday.

At the start of the proceedings today, Judge Sirica granted a request by former President Richard M. Nixon for transcripts of all the White House tape recordings that have been played and will be played at the trial.

Mr. Nixon had asked for the transcripts in a written motion Tuesday, saying that since he is under subpoena to appear as a witness it may be "anticipated" that he will be asked "in detail about events and conversations extending back at least two and a half years." 22 oc

"Mr. Nixon seeks no more than to be placed in the position of being able to refresh his recollection concerning long-past, even long-forgotten conversations concerning a lengthy and complex series of events before any possible testimony," the motion said.