

# Watergate Defense Loses a Round Over

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WASHINGTON, Nov. 5—The five defendants in the Watergate cover-up trial lost a major preliminary battle today over the admissibility of White House tape recordings that the prosecution wants to offer as evidence.

Over the objections of defense counsel, Judge John J. Sirica ruled that the prosecution could proceed to "lay a foundation" for the tapes, proving their admissibility, in the manner that the prosecution had suggested—showing how the tapes had been made and how voices on the tapes had been identified.

The defense lawyers had argued that this manner was inadequate and that far more evidence would be required, showing, for example, the chain of custody of the tapes from the time they were recorded.

Judge Sirica also ruled that this evidence was to be presented before the jury. That way, he said, the jurors will "get the complete picture."

The defense lawyers wanted the evidence presented out of the presence of the jury. Judge Sirica will not rule on the admissibility of the tapes until all the "foundation" evidence has been presented. The defense lawyers argued that the evidence was "irrelevant" unless the judge ruled in favor of admitting the tapes.

## Jabs at Government

"It is prejudicial for the defendants to have to object in the presence of the jury to preliminary matter," David G. Bress, one of the lawyers for former Assistant Attorney General Robert C. Mardian, said just before Judge Sirica ruled.

Mr. Bress, who is in court temporarily before undergoing further medical treatment next week for a throat condition, also said, "If you want to com-

mit error, you do what the Government suggests."

Judge Sirica reacted angrily. He said that he was not doing what either the prosecution or the defense told him to do. He was doing, he said, what he thought is right.

The judge said that he was willing to have the evidence given out of the presence of the jury. But, he said, all the counsel would have to agree that once he ruled on the admissibility of the tapes, they would not be entitled to bring out to the jury any aspects of the foundation testimony that had already been presented in the jury's absence.

Some of the defense lawyers agreed. Mr. Bress did not.

When the jury was brought in, Jill Wine Volner, an assistant special prosecutor, called Alexander P. Butterfield to the witness stand.

Mr. Butterfield, a former special assistant to Richard M. Nixon in the White House and now the head of the Federal Aviation Administration, disclosed the existence of the taping system in his testimony before at the Senate Watergate hearings on July 16, 1973.

## Testimony Repeated

Mr. Butterfield repeated to the jury his earlier testimony about the institution of the White House taping system in February, 1971.

The prosecution is using Mr. Butterfield to attest to the accuracy of its transcriptions of the tapes, some of which have been amended at the suggestion of Mr. Butterfield.

Mr. Butterfield identified for the jury the reels containing 28 tape-recorded conversations and the accompanying 28 transcripts, saying that he had listened to the tapes and read the transcripts.

James F. Neal, the chief prosecutor, told Judge Sirica that he hoped to complete the

presentation of his foundation evidence by the end of next week.

"We'd like to start next week with what I consider this case to be all about," he said.

The prosecution has already played seven tapes but has not yet decided whether to play all 26 that were identified today. The 26 include the three recordings of Mr. Nixon's conversations on June 23, 1972. Their release in transcript form by Mr. Nixon in August precipitated his resignation.

Judge Sirica has listened to many of the tapes. He indicated that one reason he did not want to have a replay of the foundation evidence—once out of the presence of the jury and once with the jury—was that replay might require him to hear the same tapes repeatedly in making his decisions on admissibility.

He said that this would be a "waste of time."

## An Exchange of Quips

"You know how you can avoid listening to them?" John J. Wilson one of the lawyers for Mr. Haldeman, quipped.

"Disqualify myself," the judge replied with a smile.

"Don't admit them," Mr. Wilson said.

There were various other developments during the day, the 288th of the trial in United States District Court.

Judge Sirica said that he hoped to rule next Monday morning on what course to follow after the disclosure yesterday that William O. Bittman, who had been considered a possible Government witness, withheld until last weekend a critical document.

The document is a memorandum prepared by one of the seven original Watergate defendants, E. Howard Hunt Jr., outlining the "commitments" of money and pardon that had allegedly been made to the sev-

en men in return for their silence on Watergate.

Among the judge's possible options are recalling Mr. Hunt, calling Mr. Bittman as a court witness and severing the case of Kenneth Wells Parkinson, one of the five defendants in the cover-up trial and the one who was apparently the most damaged by the belated production of the document.

## Haldeman Loses Round

H.R. Haldeman, the former White House chief of staff who is one of the five defendants, lost the initial round today in his attempt to prove one of the most crucial elements of his defense—that he was still unaware, in the days immediately following the Watergate break-in, of the illegal intelligence-gathering plan known as "Gemstone" that had led to the break-in.

In a brief exchange this morning before the jury was brought in, Judge John J. Sirica told Mr. Haldeman's attorneys that he listened over the weekend to a tape recording of a conversation between Mr. Haldeman and Richard M. Nixon on June 23, 1972, six days after the break-in.

The judge said that he had checked a crucial part of the tape, and, as he heard it, Mr. Haldeman mentioned the word "gemstone."

The jury will be given a transcript, prepared by the prosecution of that tape recording.

Mr. Haldeman's chief counsel, John J. Wilson, objected to the transcript last week, saying that as he heard the tape, Mr. Haldeman might have been saying "convention." Mr. Halde-

# Admissibility of Tapes

man, he said, was not familiar with the word gemstone at that point.

"I couldn't come up with a word like 'convention' like you indicated," Judge Sirica said this morning. "I get 'gemstone.' We'll leave it up to the jury."

### Lawyers in Disputes

There were the usual disputes between the lawyers.

Mr. Frates said that he wanted to introduce a letter that Mrs. Volner had written to him regarding an interview with one of the F.B.I. agents. Mrs. Volner said that in that case, maybe she should introduce the two letters that Mr. Frates had written to the special prosecution on the same subject.

"It looks like a lot of tweed dee and tweedle-dum," Judge Sirica said.

"That's what I thought when I got her letter," Mr. Frates replied.

George I. Frampton, an assistant special prosecutor, offered to introduce testimony by Fred F. Fielding, a former assistant to John W. Dean 3d, who once was Mr. Nixon's counsel at the White House.

Mr. Frampton said that Mr. Fielding would testify that Mr. Dean had told him about one of

the same incidents that Mr. Dean testified about at the trial. The purpose, he said, was to "rehabilitate" Mr. Dean by showing that his statements—out at the trial and one to Mr. Fielding—were consistent.

Mr. Frates objected, saying that he had never heard of such a procedure. Judge Sirica sustained the objections.

### Comments on Obligation

After the questioning of the F.B.I. agents, Mr. Neal rose to comment on Mr. Frates's objection to Mr. Frampton's offer.

"I am used to lawyers who are candid with the court," Mr. Neal said. "Either Mr. Frates has overlooked a well-known rule of law, or he doesn't follow that principle." Mr. Neal added that he preferred to think that Mr. Frates had overlooked the law.

Mr. Frates replied, "It seems that every time one of his witnesses doesn't stand up on cross-examination, he has a personal comment about one of the attorneys."

The lawyers' squabbles were not always so unfriendly. Mr. Neal said that he planned to present a videotape of Mr. Halderman's testimony before the Senate Watergate committee in 1973 to back up the prosecution's charge that Mr. Halderman perjured himself in that testimony.

"Will it show Mr. Strickler and I sitting behind Mr. Halderman?" Mr. Wilson asked.

"It shows Mr. Wilson scowling," Mr. Neal answered, smiling.

Mr. Wilson looked satisfied. "I don't want to be charged with subordination," he said.

### Hard Way to Raise Funds

CLAPHAM, England (AP)—Rev. Peter Winstone has made a fakir-style bed of six-inch nails that he plans to lie on for six hours. He is going to charge his visitors watching the "lie'in" and said it would spare his parishioners the tedious events normally held to raise church funds.



United Press International

Robert C. Mardian, one of the five Watergate cover-up defendants, arriving at U.S. District Court yesterday.