

Mitchell and Parkinson



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Alexander P. Butterfield,
who disclosed the White
House taping system, on
way to testify at Water-
gate trial yesterday.

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WASHINGTON, Nov. 6—John N. Mitchell, the former Attorney General, and Kenneth Wells Parkinson, a lawyer for the Nixon re-election campaign, asked today for a mistrial in the Watergate cover-up case as a result of the prosecution's surprise disclosure Monday that a supposed Government witness had withheld and lied about crucial evidence.

They also asked that, if their motion, which applied only to themselves and not to the three other defendants, was granted, that they be tried separately at a later date.

They said that the timing of the disclosure gave the Government an "unfair advantage" and called the Government's actions "puzzling and unexplainable."

The chief prosecutor in charge of the case disclosed on Monday that William O. Bittman, a former Justice Department lawyer whom he had tentatively planned to call as a witness, had admitted over the weekend — after months of denying it—that he received a memorandum in November, 1972, from one of the seven original Watergate defendants, E. Howard Hunt Jr. SET PU2D

'Commitments' Outlined

The memorandum outlined what it called "commitments" of money and pardons that had been made to the seven men in return for their continued silence on Watergate, including the fact that campaign and White House officials had been involved in illegal activity.

Mr. Hunt testified at the trial last week, recanting his grand jury testimony in which he had denied the existence of the memorandum.

But as the Mitchell and Parkinson memorandums pointed out to say, the defense lawyers' cross-examination of Mr. Hunt last week was based on the knowledge that Mr. Bittman had repeatedly denied the existence of the Hunt memorandum and the assumption that Mr. Bittman was more credible than Mr. Hunt.

The disclosure, the Parkinson and Mitchell motions contend, thus "negates" the cross-examination of Mr. Hunt.

Mr. Parkinson is generally considered the defendant most injured by the prosecution's disclosure. Mr. Hunt testified at the trial that he had sent the memorandum via his wife to Mr. Bittman for presentation to Mr. Parkinson, and that Mr. Bittman had subsequently told him that he had read it to Mr. Parkinson and that Mr. Parkinson had replied "He would see what could be done about it."

"Now that the document has been produced by Mr. Bittman, counsel for Parkinson and his client are discredited and must appear to the jury as persons motivated to conceal the truth," Mr. Parkinson said in the motion submitted by his attorney, Jacob A. Stein.

Another Point Raised

"The Government states that it will recall Hunt, and he will identify the document," the motion continues. "Hunt's credibility will thus be firmly established."

The Parkinson motion raised another point—that the prosecution had known for a month before Mr. Hunt's appearance at the trial that he planned to testify about the document, recanting his grand jury testimony.

"Why did the Government fail to inform counsel of this?" the motion asks. "Why did the Government keep this a secret? The Government's willingness to believe Mr. Bittman seems to have inhibited it in its pursuit of the evidence which Mr. Bittman has now disclosed."

Mr. Mitchell's motion, submitted by William G. Hundley and Plato Cacheris, adopts the arguments in the Parkinson motion and adds some other points as well.

The Mitchell motion argues, for instance, that Mr. Hundley would have pressed Mr. Hunt much harder on at least one subject during cross-examination if he had known at that point that Mr. Bittman's credibility was in question.

Mr. Hunt testified at the trial

Call on Watergate Judge for a Mistrial

that he understood that Mr. Mitchell might have perjured himself and said that he got this understanding from Mr. Bittman.

"Counsel for Mitchell was blunted on cross-examination when Hunt relied on Bittman as the source for his alleged Mitchell perjury," the motion states. "Counsel for Mr. Mitchell, like counsel for Mr. Parkinson, had no reason to question the credibility of Mr. Hunt."

Attorneys for John D. Ehrlichman, a third defendant, also filed a mistrial motion today as a result of the Bittman incident. However, William S. Frates, Mr. Ehrlichman's chief counsel, withdrew the motion this afternoon, saying that he planned to file a revised one and that his first motion contained inaccurate allegations against the Government.

Judge May Rule Monday

Judge Sirica has given the prosecution until Friday to respond. He said today that he hoped to rule on Monday on the various issues involved—the mistrial motions, the prosecution's plan to recall Mr. Hunt and the possibility of calling Mr. Bittman as a court witness.

Most of the day's proceedings were spent on testimony about the White House taping system, as the prosecution continued its effort to "lay a foundation" for the admissibility of 26 White House tape recordings.

For the most part, the testimony was familiar. At one point, a juror dozed off. Fewer spectators attended as the day proceeded.

On cross-examination, defense lawyers elicited some information that may be useful to their cases. John J. Wilson, lawyer for H. R. Haldeman, for instance, drew from a Secret Service agent, James George Baker, the admission that he himself may have caused some small gaps in the tapes.

Mr. Baker was for a time the person who changed the reels in the taping system for the Oval Office. He said today that he sometimes changed reels in mid-conversations, so that as much as three-minutes of conversation was not recorded.

On direct examination, the jury was told that the original transcripts that the prosecution had prepared of the 26 tapes had a number of mistakes—197 in all, according to testimony by Alexander P. Butterfield, a former Nixon assistant.

The purpose of the proceedings, which continue tomorrow, is technically to provide Judge Sirica with evidence on which he can decide whether to admit the tapes into evidence. However, it is considered unlikely that the judge will bar the tape. The defense lawyers are thus seeking to limit the credibility of the tapes by showing that they are incomplete or perhaps have been tampered with.

In written motions given to Judge John J. Sirica this morning, the defendants said that the Government's belated disclosure had seriously prejudiced their cases.

Judge's Ruling Recalled

Yesterday, Judge Sirica ruled, over the objections of defense counsel, that the prosecution must present its foundation evidence in the presence of the jury. The judge ruled after one

of the defense counsel refused to join an agreement in which the judge would take the evidence out of the jury's presence on the condition that defense counsel would not later attempt to bring any of the same evidence to the jury's attention.

The judge said then that he did not wish to "waste time" by repeating evidence.

Today, however, after Mr. Butterfield left the witness stand and the prosecution outlined its plans for subsequent witnesses, Judge Sirica suggested that the rest of the foundation testimony be kept from the jury after all.

He said that it was "much faster" to go through the evidence when the jury was not there.

"Why do we want to bother this jury with any more testimony?" he asked.

Lawyer States Request

John J. Wilson, an attorney for H. R. Haldeman and one of the lawyers who argued yesterday that the evidence be taken out of the presence of the jury, rose to answer.

He wants, he said, to cross-examine before the jury the Secret Service agent who is going to testify about checking on the White House taping system.

"Why can't you cross-examine the agent out of the presence of the jury?" the judge asked.

"I think the answer is self-evident, sir," Mr. Wilson replied.

The judge indicated that it was not self-evident.

"I want to have the effect on the jury, not you," Mr. Wilson said.

Mr. Wilson, 73 years old and famous in the courthouse for his crusty and tough manner of arguing his cases, said that the Secret Service agent's testimony would bear on the question of the tapes' integrity.

"We certainly have the right to go into the integrity of the tapes," he said. Mr. Wilson's client, Mr. Haldeman, is a participant in many of the tapes. The contents, as recorded in previously released transcripts, are extremely damaging to Mr. Haldeman, it is generally conceded.

Then Mr. Wilson put in his final argument—that since the jury had already got "a piece of it," the jury should get the rest. Testimony resumed, in the jury's presence.