

PROSECUTION ENDS CASE IN COVER-UP; DEFENSE STARTS

Lawyer Says That Mitchell
Was 'Kept in the Dark'
by the White House

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2 COUNTS ARE DISMISSED

But 10 Others Are Upheld
Against 5 Defendants
in Rulings by Sirica

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WASHINGTON, Nov. 25—

The jury at the Watergate cover-up trial heard today the end of the prosecution's case and the beginning of one of the five defendants' cases, that of former Attorney General John N. Mitchell.

The prosecution rested its case at noon, having presented 28 witnesses, 28 White House tape recordings and two other tape recordings in 29 days of testimony.

James F. Neal, the chief prosecutor, told the court out of the presence of the jury that a conspiracy "has been established beyond question; a conspiracy to obstruct justice and defraud the United States."

Mr. Mitchell's lawyer, William G. Hundley, told the jury that Mr. Mitchell had been "kept in the dark" about the cover-up by people at the White House who wanted to "set him up."

Statement Differs

Unlike the opening statement several weeks ago by the attorney for John D. Ehrlichman, the former White House adviser on domestic matters who is another defendant in the case, Mr. Hundley did not specifically lay the blame on former President Richard M. Nixon. The implication, however, was clear.

The jury had heard several tape recordings in which Mr. Nixon and others discussed the possibility of "sacrificing" Mr. Mitchell by letting him take the responsibility for Watergate.

"All I ask," Mr. Hundley said, "is don't you judge John Mitchell the way you heard him judged on those White House tapes by that White House jury."

Judge John J. Sirica dismissed two of the counts in the 12-count indictment, as he had indicated he would. The two counts charged Mr. Mitchell and Mr. Ehrlichman with having made false state-

ments to a Government agency when they told agents of the Federal Bureau on Investigation in July, 1972, that all they knew about Watergate was what they had read in the newspapers.

The judge had questioned the law on which the two counts were based and the quantity of proof offered by the prosecution.

However, he denied the other motions made by defense at-

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torneys for directed verdicts of acquittal.

Technically, that meant he ruled that the government had established a prima facie case on each of the 10 other counts—the basic conspiracy count against Mr. Mitchell, Mr. Ehrlichman, H. R. Haldeman, the former White House chief of staff; Robert C. Mardian, former Assistant Attorney General, and Kenneh Wells Parkinson, former attorney for the Nixon re-election committee; the obstruction of justice count against all but Mr. Mardian; the three other counts charging false statements by Mr. Mitchell; the two other counts charging false statements by Mr. Ehrlichman, and the three counts charging false statements by Mr. Haldeman.

The judge made his ruling without comment out of the jury's presence after listening to motions by lawyers for all defendants except Mr. Haldeman to Mr. Neal, at his request, summarize the prosecution's evidence.

Judge Sirica had been expected to deny the various defense motions. Apparently, he wanted Mr. Neal's summary for the record to support and explain the ruling he was about to make.

The concise and sometimes impassioned Neal summation recapped the highlights of the prosecution's massive case.

Not a Perfect Case

Mr. Neal had conceded a few weeks ago that it was not a perfect case, saying that the Government would not be able to provide every document that had existed.

There was also some contradictory testimony, and many of the witnesses were convicted felons, having already pleaded guilty to Watergate-related crimes. Some, such as Jeb Stuart Magruder, the former deputy director of the Nixon re-election campaign, were confessed perjurers.

Mr. Neal noted in his summary that there was "admittedly" a "difference in degree" in the evidence against the defendants, especially against Mr. Ehrlichman, Mr. Haldeman and Mr. Mitchell on the one hand, and against Mr. Mardian and Mr. Parkinson on the other.

However, he said there was adequate evidence tying Mr. Mardian and Mr. Parkinson to the conspiracy and Judge Sirica's subsequent rulings on the defense motions appeared to strengthen that contention.

The jury spent only a small portion of the day in the courtroom.

It heard two witnesses this morning—Egil Krogh Jr., who set up the secret White House security force known as the plumbers, and an agent of the

Internal Revenue Service who had prepared a chart summarizing money payments allegedly made to the seven original Watergate defendants in return for their silence about the break-in of Democratic headquarters in the Watergate complex on June 17, 1972.

The jury also heard Mr. Hundley's statement late this afternoon, in which he said that Mr. Magruder had secretly authorized the plan that led to the Watergate break-in.

But others in the courtroom heard a summary of most of the positions in the case through Mr. Neal's summary, Mr. Hundley's statement and the motions by other defense attorneys.

The positions were as follows:

John N. Mitchell

Mr. Neal started with the question of motive.

There had been testimony by Mr. Magruder, Mr. Neal said, that Mr. Mitchell had listened in January and February of 1972 to proposals by G. Gordon Liddy, one of the seven Watergate burglars, for a massive and largely illegal intelligence-gathering operation and that Mr. Mitchell had approved a third Liddy proposal on March 30, 1972, for bugging the Democratic headquarters at the Watergate.

Another witness which had been present at the March 30 meeting had failed to corroborate Mr. Magruder's account of Mr. Mitchell's approval. But Mr. Neal said that the court at his point had to conclude that Mr. Mitchell had approved the break-in.

Whether or not Mr. Mitchell had approved it, Mr. Neal said, the former Attorney General's presence at those three meetings at which the plan was discussed provided his motive for joining the cover-up conspiracy later.

Mr. Neal recited other testimony against Mr. Mitchell. He said that Mr. Mitchell had been old by Mr. Mardian and Frederick C. Larue, a former campaign aide, a few days after the break-in was financed by election committee money and that he and some of the other burglars had done other illegal things for the White House.

Mr. Neal also recapped the following testimony:

On June 24, 1972, Mr. Mitchell agreed with Mr. Mardian and John W. Dean 3d, then Mr. Nixon's counsel and now a key government witness, that it would be a good idea if the Central Intelligence Agency, for which some of the burglars had worked, would pick up the burglars' expenses.

They had discussed on the same day the possibility of using Herbert W. Kalmbach, the President's private counsel and subsequently raiser of funds for the defendants, to get the money, and that Mr. Mitchell had told Mr. Magruder to

have a "fire" to destroy his files on the Liddy plan.

Mr. Mitchell had been aware of Mr. Magruder's plan to commit perjury.

Mr. Mitchell had told Mr. Dean to give James W. McCord Jr. one of the seven original Watergate defendants, the same assurances of clemency that had been given to E. Howard Hunt Jr., another of the defendants.

A Different View

The Mitchell defense took a

markedly different view of some of these allegations, ignored others and added some new ones.

In a written memorandum by Mr. Hundley and Plato Cacheris, the co-counsel, the defense argued that there was not one ongoing cover-up conspiracy but a series of conspiracies, including one in the spring of 1973 in which White House personnel conspired to make Mr. Mitchell a victim.

Mr. Hundley, who said that Mr. Mitchell would take the stand tomorrow, said that Mr. Mitchell had rejected all the Liddy plans.

He said that Mr. Magruder had authorized "on his own" the money for the third Liddy plan, which led to the break-in.

"Basically Magruder was the White House man" at campaign headquarters, he said. "He was under tremendous pressure from Charles Colson," a special assistant to Mr. Nixon, and others.

Mr. Hundley agreed that Mr. Mitchell received Mr. Mardian's and Mr. LaRue's report a few days after the break-in on what Mr. Liddy had told them about it and the other illegal activities the burglars had worked on for the White House.

But, he said, "John Mitchell did not accept Liddy's version at face value." Mr. Magruder, he said, "vigorously denied" to Mr. Mitchell "any knowledge of the plan."

Mr. Hundley also said that Mr. Mitchell had tried on June 24 to find out from Mr. Magruder and Hugh V. Sloan, a campaign official, how much money had been paid to the Watergate burglars before the break-in, but that his effort had been in vain.

Mr. Hundley said that it was only in the fall of 1972 that Mr. Mitchell had begun to hear corroboration from Mr. Dean of the Liddy account.

The lawyer conceded that Mr. Mitchell had done nothing to bring this information to the authorities. But, he said, this was not a crime, and it was motivated by Mr. Mitchell's "complete sense of loyalty and belief in his President and former law partner."

Mr. Mitchell made a "conscious decision that he would not run to the police," Mr. Hundley said. But "he did not perjure himself, he did not obstruct justice."

As for the payments to the Watergate burglars, Mr. Hundley said that Mr. Mitchell considered it "somebody else's problem" and declined to raise the money himself.

H. R. Haldeman

The prosecution's evidence against Mr. Haldeman seemed especially damaging because so much of it appeared on the White House tapes, in Mr. Haldeman's own words, as he discussed the cover-up with Mr. Nixon. Mr. Neal mentioned only the high points today.

Among them were three tapes of the Haldeman-Nixon conversations on June 23, 1972, six days after the break-in, in which they discussed, as Mr. Neal said, "the misuse of the Central Intelligence Agency to thwart the F.B.I.," whose investigation the White House had just learned was leading to the bank checks that would show the burglars had been financed with campaign funds.

In addition, Mr. Neal said, there was testimony that Mr. Haldeman was "kept apprised"



James F. Neal, chief prosecutor in the Watergate trial, speaking to Judge John J. Sirica yesterday. In the foreground is Richard Ben-Veniste, associate of Mr. Neal.

The New York Times/John Daly Hart

of the payments to the burglars, allegedly made in return for the burglars' silence. There was also testimony about Mr. Haldeman's approval that part of a secret \$350,000 fund he controlled be used to pay off the burglars.

Lawyers for Mr. Haldeman, alone among defense attorneys, said today that they were reserving their right to make motions for a directed verdict later. Mr. Haldeman's attorneys will make an opening statement to the jury after Mr. Hundley has finished presenting his case,

probably by the end of the week.

John D. Ehrlichman

Mr. Neal recited the testimony about Mr. Ehrlichman's presence at the meeting on June 23, 1972, when Mr. Haldeman directed Lieut. Gen. Vernon A. Walters, deputy director

of the C.I.A., to go to the acting head of the F.B.I., L. Patrick Gray 3d, and tell him that continued investigation of the money found on the Watergate burglars would damage C.I.A. activities.

Then the prosecutor cited the following related testimony:

¶Mr. Ehrlichman had told Mr. Dean and General Walters that they were to deal with each other on the Watergate problem.

¶When General Walters refused to press the false C.I.A. story with the F.B.I. director, Mr. Ehrlichman had approved Mr. Kalmbach as fund-raiser for the burglars.

¶Mr. Ehrlichman had subsequently told Mr. Nixon in a tape-recorded conversation that the money was "for the purpose of keeping them [the original defendants] on the reservation."

Mr. Neal reviewed such other evidence against Mr. Ehrlichman as testimony that Mr. Ehrlichman had told Mr. Dean to "deep six," or destroy, equipment that had been found in Mr. Hunt's White House safe; other testimony that Mr. Ehrlichman had been told of Mr. Hunt's apparent threat to disclose White House secrets unless he received money or clemency, and that Mr. Ehrlichman had told Mr. Colson to give "general assurances" to Mr. Hunt about clemency.

Mr. Ehrlichman's chief counsel, William S. Frates, sought to blunt a key prosecution point by injecting the theme of national security into the case. His attempt, however, did not appear successful.

Robert C. Mardian

Mr. Neal and Mr. Mardian's attorney, Thomas C. Green, analyzed the case against Mr. Mardian. Mr. Neal said the evidence showed Mr. Mardian had

joined the conspiracy, the only count against him.

Mr. Green asked for a directed verdict of acquittal on the ground that the evidence was minimal and unreliable and that there was no evidence against him beyond the summer of 1972, when he left Washington.

Mr. Neal said that Mr. Magruder had testified that Mr. Mitchell, on June 17, 1972, told Mr. Mardian to call then Attorney General Richard G. Kleindienst to ask him to get Mr. McCord out of jail; Mr. Kleindienst was subsequently reached by Mr. Liddy.

Mr. Neal recalled the testimony about Mr. Mardian's and Mr. Larue's debriefing of Mr. Liddy on the break-in on June 20, when Mr. Liddy told of the election committee's financial backing of the break-in. That testimony, Mr. Neal said was followed by testimony about Mr. Mardian's suggestion several days later that perhaps C.I.A. funds could be used for the burglar's bail fees.

The prosecutor recited the testimony that Mr. Mardian had been upset by Mr. Magruder's telling Mr. Parkinson the full story about Watergate, rather than the cover story, and, the testimony that Mr. Mardian had said that someone had to "stop" Mr. Gray, the F.B.I. director, in his inquiry.

Mr. Green argued that it would have been "physically impossible" for Mr. Mardian to have made the call directing Mr. Liddy to get in touch with Mr. Kleindienst on June 17, in view of the testimony about the time the call was made.

As for Mr. Mardian's attendance at the June 20 debriefing with Mr. Liddy, Mr. Green said, Mr. Mardian was acting as a lawyer for the committee. There was nothing that Mr.

Mardian did, Mr. Green said, that was "inconsistent" with his duties as a lawyer.

Kenneth W. Parkinson

Mr. Neal said that Mr. Parkinson had told the grand jury that he had heard the true story of Watergate from Mr. Magruder and that he had shredded his notes after Mr. Mitchell told him the account was false.

The prosecutor also said that there had been testimony about Mr. Parkinson's role as a go-between in the payments to the burglars, that Mr. Parkinson had received messages from William O. Bittman, the attorney for Mr. Hunt, that "commitments" were not being kept; that he had passed these messages on; that he had brought in a "laundry list" of demands by the burglars on Dec. 1, 1973, and that shortly thereafter \$50,000 was paid to the burglars.

Earlier in the day, Jacob A. Stein, Mr. Parkinson's lawyer, contended that there was only one really damaging piece of testimony—the testimony by Mr. Hunt about the memorandum that Mr. Hunt sent to Mr. Bittman in November, 1972, outlining the "commitments" that had allegedly been made to the burglars.

Mr. Hunt had testified that he had sent the memo to Mr. Bittman, that Mr. Bittman had told him that he had read the memo to Mr. Parkinson and Mr. Parkinson had said he would "see what he could do about it."

Mr. Stein pointed out that Mr. Hunt's testimony about Mr. Parkinson's alleged response was "hearsay," and that the jury had been allowed to hear it only because of the conspiracy law exception to the general rule of law banning hearsay.