

WATERGATE

The Nixon Conspiracy Laid Bare

"Your Honor, the prosecution rests its case."

When that declaration is made early this week by Prosecutor James Neal, it will be the best news yet in the Watergate conspiracy trial. Through eight turbulent weeks of sophisticated courtroom wrangling, the often dramatic testimony of polite, unshakable witnesses and the courtroom listening to taped White House conversations, Neal and his young team of assistant prosecutors have presented a devastating case against five former agents of President Richard Nixon.

The evidence that the five had conspired to cover up the true origins of the Watergate bugging and burglary is massive. It includes the playing of more than 20 hours of recordings, the appearance of 30 witnesses, the presentation of some 130 documents. If the deluge of material was sometimes bewildering, the rhythmic interjection of such confessed conspirators as John Dean, Jeb Stuart Magruder, Herbert Kalmbach and Fred LaRue giving their versions of cover-up activities, and the playing of tapes that verified their testimony was overwhelmingly effective. The most promising hope for the defense seems to be that one juror might conceivably hold out and produce a hung jury, which could result in a new trial.

Ironically, the best chance of that happening rests on how clearly the tapes, including some never publicly revealed before, show that Nixon was the increasingly desperate leader of the cover-up strategy. He not only lied to the public but often to the aides who were risking their own freedom to protect him. Some jurors might refuse to convict in the belief that it would be unfair to imprison the aides while Nixon escapes criminal prosecution because of President Ford's pardon. The Nixon on the tapes, in fact, sounds more devious than the men on trial.

Bugging Plan. Indeed, the new tapes provide the first evidence suggesting that Nixon might even have ordered the intelligence-gathering plan that led to the bugging of Democratic national headquarters. On a March 27, 1973 tape, H.R. Haldeman told Nixon that "the final step" in putting the bugging plan in operation occurred when Haldeman's aide, Gordon Strachan, called Magruder and told him "to get this going" because "the President wants it done and there's to be no more arguing about it." Magruder, according to Haldeman, passed this presidential order along to former Attorney General John Mitchell, who said, "O.K., if they say to do it, go ahead." Nixon's only reaction on the tape to Haldeman's narrative was an angry-sounding expletive: "Shit."

Except for this ambiguity, the tapes

show that despite all of the former President's denials, he had 1) promised Executive clemency for various Watergate defendants; 2) approved the paying of hush money to the burglars and knew that this could be an obstruction of justice; 3) plotted to first make Magruder and Mitchell, then Dean, the scapegoats so as to save himself. Even many of the transcripts released by the White House last April in a televised profession of belated candor were revealed by the playing of the tapes to have been edited to omit the most damaging statements and thus continue the cover-up.

There are a few weaknesses on certain specific allegations against some defendants in the Government's multi-count case. Last week Sirica suggested that he might dismiss two of the counts against Mitchell and Ehrlichman, both of whom were charged with lying to federal agencies. All five defendants are expected to take the stand in their own defense. But they will also expose themselves to the crisp cross-examination of the prosecution team, most notably Neal, 46; Richard Ben-Veniste, 31; and Jill Wine Volner, 31. Each defendant is in dire but different straits:

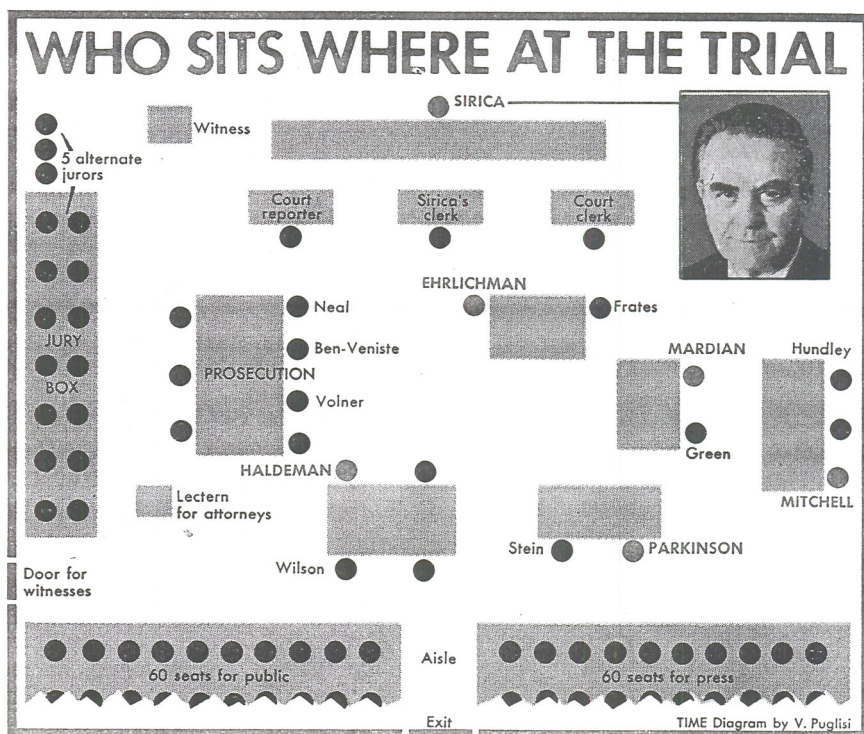
JOHN MITCHELL. Partly because Nixon, Haldeman and Ehrlichman plotted so strenuously to get "the big enchilada" to take the full rap for Watergate, Mitchell has come off as a less sinister figure than during the Senate Watergate hearings. The prosecution's testimony that he approved the bugging plan rests on the testimony of Magru-

der and the hearsay claim by LaRue that one of the burglars, G. Gordon Liddy, had named Mitchell as having authorized the project. Mitchell also has the advantage of being defended by the most engaging lawyer in the courtroom, William Hundley. When another attorney asked Judge Sirica to expel anyone from the courtroom who laughed during one tape-playing, Hundley asked brightly: "How do you feel about crying, Judge?" Said Sirica: "I can't answer that."

But the tapes and testimony indicate that Mitchell sat through three meetings at which Liddy presented his eavesdropping plans, tried to get Attorney General Richard Kleindienst to release one of the original burglars, suggested that Magruder burn some notes on intercepted Democratic telephone conversations, was host to cover-up meetings at his apartment and approved some of the cash payments to defendants.

H.R. HALDEMAN. Seated at a table from which he can readily see the jury and smile at the spectators (*see chart*), the now amiable Haldeman has shed his crew-cut, stern image. He cracks jokes during recesses, signs autographs, confers at ease with his tart-tongued attorney, John Wilson. Often shouting and showily unimpressed by the judge, Wilson has tried to provoke Sirica into intemperate statements. He seems intent on seeking an unfair trial so a conviction could be reversed on appeal.

That is about the only escape hatch Haldeman has, since, next to Nixon, the tapes show him in the worst light. He was constantly suggesting "scenarios" to promote phony White House stories, rather than tell the truth about Watergate. He apparently led the Nixon-ordered attempt to get the CIA im-



pede the FBI's investigation of Watergate, turned over a \$350,000 cash fund that was used to buy the burglars' silence and knew in general about the Liddy plans well before anyone was arrested. The case against him looks strongest of all.

JOHN EHRLICHMAN. The testimony of Kalmbach, Nixon's former personal attorney, is damning to Ehrlichman. As Ehrlichman sat stonily with head down at his front table, Kalmbach repeated

his celebrated Senate testimony: "John, I am looking you right in the eye," while seeking reassurance from Ehrlichman that he should continue to pass out cash to the burglars. When a tape (secretly made by Ehrlichman) was played of Kalmbach recounting that conversation in a telephone call to Ehrlichman, Kalmbach's voice on the tape cracked. Simultaneously, on the stand Kalmbach fought back tears. Later he did weep. Staring down at Ehrlichman, Kalmbach also testified that the two had once sat

in a car overlooking the Pacific when Ehrlichman told him: "I want you to be certain that you identify John Dean as the one who directed you in these [payoff] efforts." Kalmbach said he replied: "And you, too, John."

That testimony may have made Ehrlichman look, to the jury, like a man who had betrayed a friend. Other than that, however, Ehrlichman seems in the best position, poor as that is, of all the defendants. His smooth and imposing lawyer, William Frates, has a good chance

Wagons Around the President

Tapes of White House conversations made public for the first time at the Watergate cover-up trial last week, as well as portions of other conversations edited out of earlier White House transcripts, show that Richard Nixon planned and participated in cover-up acts almost from the beginning, then grew increasingly suspicious of his aides as he sought frantically to protect himself. Some excerpts:

GRANTING PARDONS

April 14, 1973. President Nixon, H.R. Haldeman and John Ehrlichman.

P. You get them full pardons. That's what they have to have, John ... Do you agree?

E. Yep, I sure do.

Jan. 8, 1973. Nixon and a former aide, Charles Colson.

P. Basically I, uh, question of clemency ... Hunt's is a simple case. I mean, after all, the man's wife is dead, was killed; he's got one child that has —

C. Brain damage from an automobile accident.

P. We'll build, we'll build that son of a bitch up like nobody's business. We'll have [William] Buckley write a column and say, you know, that he, that he should have clemency, if you've given 18 years of service.*

PAYING HUSH MONEY

April 14, 1973. Nixon meets with Ehrlichman.

P. They've gotta have a straight damn line that of course we raised money. Be very honest about it. But, uh, we raised money for a purpose that we thought was perfectly proper.

E. Um hum. Uh hum.

P. But we didn't want to shut 'em up. These men were guilty ... We just didn't, we didn't want 'em to talk to the press.

E. Yeah, yeah.

P. That's perfectly legitimate, isn't

*Asked about this by the New York Times, Buckley declared: "I don't need to be reminded to write columns urging clemency, even for sons of bitches, as Mr. Nixon would know by now from personal experience." Buckley in his syndicated column supported Ford's pardoning of Nixon.

it? Or is it? Legitimate not to want them to talk to the press.

E. I think it is. I, uh, I, I don't have a perfect understanding of the, of the law on that and I ... [Three days later, when the subject was brought up again, Ehrlichman added: "Before I get too far out on that, uh, I want to talk to an attorney."]

FEARING JOHN DEAN

April 19, 1973. Nixon and Ehrlichman discuss John Dean's meeting with Nixon on March 21, 1973, in which Dean warned of "a cancer growing on the presidency" and Nixon approved paying money to silence Hunt. Dean is talking to the prosecutors.

P. Don't know what the son of a bitch is going to say ... He's obviously very upset. He's just lashing out. Goddammit ... I'm at a loss ... that goddam Dean.

E. I think you can very truthfully and logically and properly say that ...

P. I was really trying to probe his thought process. I went down every road we possibly could ...

E. Exactly right. You see, you're the one who ... said ... "Send that man to Camp David ... and let's get it all down." That's when he was uncovered.

P. I suppose that really isn't true ... Well, that's what we have to say.

April 25, 1973. Nixon, Haldeman and Ehrlichman.

E. Obviously, neither one of us wants to do anything to harm you in any way; we want to avoid harming you ... I think it's entirely conceivable that if Dean is totally out of control and if matters are not handled adroitly that you could get a resolution of impeachment ...

P. That's right.

E. ... My own analysis is that what he has falls far short of any commission of a crime by you ... so far as I know ... I don't know what you have talked about with him in those ten or twelve hours you and he spent there in ... February and March.

April 25, 1973. Nixon meets with Haldeman.

P. You, Ehrlichman and I have got to put the wagons up around the Pres-

ident on this particular conversation [the President's March 21 talk with Dean]. I just wonder if the son of a bitch had a recorder on him. I didn't notice any but I wasn't looking.

H. It's almost inconceivable that the guy would try that ...

P. He was really coming in, in fact, to warn me.

H. ... I think you probably surprised him enormously by, by even raising this point ...

P. What, what?

H. Of, you know, well, we could get the money.

P. Yeah.

H. I think that's the last thing he expected you to say.

April 25, 1973 (later in the day). Nixon and Haldeman.

P. Is there any, uh, way that, uh, even surreptitiously or discreetly or otherwise, I mean, that, a way you could determine whether, uh, this matter of whether Dean might have walked in there with a recorder on him?

H. No, I don't think there is any way ... so remote as to be almost beyond possibility.

P. ... But the point is that that's, ah, that's a real bomb, isn't it?

H. Ah, ya.

P. Put that on the desk with [then Deputy Attorney General] Henry Petersen and says, "I gotta recording of the President of the United States and here's what he said." ... I didn't look at him that closely, but you were there, goddam, I mean ... even the smallest ones are bulky enough that ... with a fellow like Dean you'd sort of see that, wouldn't ya, where do you carry them, in your hip pocket or your breast pocket?

H. Oh, under your arm, you know, where they carry a pistol holster or something?

P. ... The point is that, ah, now if he's going to have this pissing contest ... all right, bring it out and fight it out and it'll be a bloody goddam thing, you know in a strange kind of way that's life, isn't it ... be rough as a cob and we'll survive ... Despite all the polls and all the rest I think there's still a hell of a lot of people out there ... you know, they, they want to believe, that's the point, isn't it?

H. Why sure, want to and do.

run in 1976, and Edward Kennedy that he would not. Last week there were two more decisions for '76, both by liberal Democrats, one opting in and one out.

The man who announced in was Congressman Morris K. Udall of Arizona, 52, the brother of the former Secretary of the Interior and a tall, effective politician who appeals to the likes of George McGovern's 1972 constituency. The man who dropped out was Minnesota Senator Walter Mondale, 46, a Kennedyesque liberal who has spent a year in "exploratory" campaigning toward '76, traveling and speaking in 30 states. That experience, he said, had taught him that "I do not have the overwhelming desire to be President which is essential for the kind of campaign that is required." He had also discovered, of course, that there did not seem to be any overwhelming desire on the part of the electorate to see him a candidate. But that discovery has not deterred less able politicians, and in having the courage of his perceptions and acting on them, Mondale deserves some praise.

THE CONGRESS

Two Sharp Slaps

"My motto towards the Congress is communication, conciliation, compromise and cooperation."

So promised Gerald Ford in his first presidential address. In part because of Ford's failures to practice his four Cs, his old friends on Capitol Hill last week overrode his vetoes of two bills by stunning margins. The first veto involved amendments to the 1966 Freedom of Information Act that would give citizens easier access to Government documents. Only 58 members of Congress—31 in the House and 27 in the Senate—stood with the President.

Ford's second veto was of a bill to extend the Rehabilitation Act of 1973 for one year, provide \$851 million for programs to aid the handicapped and transfer the administration of the act's services to the office of the Secretary of Health, Education and Welfare. Here the margins were even more impressive. By 398 to 7 in the House and 90 to 1 in the Senate, Congress upheld the measure over the President's objection.

The bipartisan slaps at the White House reflect a newly independent and increasingly sour, belligerent mood in Congress as well as Ford's own ineptness. Carelessly, he had not consulted the Republican leadership nor had he lobbied old colleagues for his vetoes. "If the President expects to have his vetoes sustained, he has to make a definite case for them," said House G.O.P. Leader John Rhodes. From the other side of the aisle, Majority Leader Tip O'Neill was more acid: "Since the day he commuted Nixon, he hasn't done anything right."



DRAWING BY HANK HAHN

DEFENDANT HALDEMAN & JURORS LISTENING TO NIXON TAPES AT TRIAL
The White House transcripts, too, were part of the cover-up.

to show that Nixon and Haldeman often duped Ehrlichman, perhaps not telling him about the existence of the White House taping system until April 1973, leading Ehrlichman to believe that legitimate national security interests might be jeopardized in any freewheeling FBI investigation of Watergate. If Nixon is found too ill to testify in any fashion, Frates might also have a better chance to appeal any conviction.

ROBERT MARDIAN. On cross-examination of Government witnesses, Mardian's lawyer, Thomas Green, has denied the Government's claim that Mardian made the telephone call setting up the approach to Kleindienst to free one of the burglars. Mardian's defense on that point is that the call was made before Mardian could have learned about the burglary. But the prosecution has pinned down the fact that Mardian was briefed by Liddy within days of the burglary and thereafter cooperated in the cover-up.

KENNETH PARKINSON. Seemingly the most peripheral of the five defendants, the Nixon re-election committee's former lawyer has nevertheless been solidly linked to knowledge of the hush payments. When told the "true" Watergate story by Magruder, he shredded his notes, ostensibly because Mitchell convinced him that the cover-up story was more credible. His attorney, Jacob Stein, has engaged in repetitive and tedious cross-examination that may have elicited jury sympathy for prosecution witnesses.

But Parkinson is in greatest difficulty over a Nov. 14, 1972 memo that Howard Hunt, one of the original defendants, sent to Hunt's former lawyer, William Bittman, and which Hunt claims Bittman read to Parkinson. Among other things, it baldly stated that all the defendants had received assurances of pardons and support money

in return for "maintaining silence." Bittman, who had repeatedly denied ever seeing such a memo, reluctantly produced a copy one day after his former law partners advised him that they would reveal its existence to the prosecutors. That vindicated Hunt's testimony and makes Bittman's continued denial of having relayed the information to Parkinson highly suspect. Moreover, it places Bittman in danger of facing criminal charges too.

All the defendants still seem to be clinging to one basic common contention: that they believed the payments to the burglars were solely meant to meet defense costs and family support but not to buy their silence. Judge Sirica, who seems to have more forcefully taken control of his courtroom since an appeals court termed his conduct of Liddy's 1973 trial "in the highest tradition of his office as a federal judge," made it clear that he does not believe this version. With the jury out of the room, he admonished Kalmbach: "You knew ... that this money was being used to hush up these people who had been arrested." Kalmbach insisted that he had not. After listening to the Nixon tapes, it seems inconceivable that the jury could miss the real intent of the payments.

POLITICS

One In, One Out

For better or worse, mostly worse, the U.S. presidential campaigns begin earlier and earlier each quadrennium. Aspirants gear up sooner; indeed, some, like Democrats Henry Jackson and George Wallace, never really geared down from their 1972 campaigns. And likely prospects are finding the need to declare themselves in or out sooner than ever before. For their own particular reasons, Gerald Ford recently felt compelled to assert definitely that he would