

# Watergate Jury Hears Nixon, on Tape, Praise Dean on Progress of Cover-Up

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WASHINGTON, Oct. 17—The judge, the jury and everyone else at the Watergate cover-up trial donned earphones today and heard the voice of former President Richard M. Nixon—recorded more than two years ago on the White House taping system—congratulate an aide on the progress of the Watergate cover-up.

The transcript of the conversation had been made public before, first in an edited version released in April by Mr. Nixon himself, as he sought to stave off impeachment, and then in a slightly different version released by the House Judiciary Committee.

But it was the first time that the tape had been played publicly. And, with the exception of the playing last winter of a different tape recording with a 18½-minute gap, in which little more than a long buzz could be heard, it was the first public playing of the White House tapes that helped remove Mr. Nixon from office.

## Congratulations for Dean

The tape played today recorded Mr. Nixon's conversation on Sept. 15, 1972, with John W. Dean 3d, then his counsel, and H. R. Haldeman, then the White House chief of staff. Mr. Haldeman is one of five defendants in the cover-up trial who are charged with a conspiracy to obstruct the investigation of the Watergate break-in of June 17, 1972.

Earlier on Sept. 15, a grand jury had returned its indictment in the original investigation, charging only the five men caught in the break-in of the Democratic national headquarters in the Watergate complex here and two other men who had worked with them on the scheme.

Mr. Nixon, in his conversation with Mr. Dean and Mr. Haldeman, was complimenting Mr. Dean on the good work he had done.

"The way you, you've handled it, it seems to me, has been very skillful, because you—putting your fingers in the dikes every time that leaks have sprung here and sprung there," Mr. Nixon said as transcribed by the Watergate Special Prosecution force in transcripts distributed just before the tape was played.

## Defense Counsel Object

Mr. Dean is now the Government's first and chief witness in the Watergate case, having already pleaded guilty to a conspiracy count. The tape was played in conjunction with his testimony.

It was played over the heated objections of defense counsel, who alleged among other things that much of the tape was irrelevant to the case.

It was played, too, in an atmosphere of great excitement and, at the beginning at least, a slight bit of frivolity. Prosecution lawyers and court aides passed out headphones to the dozens of spectators crowded

in the back of the courtroom like stewards and stewardesses on airplanes handing out the equipment for an in-flight movie.

As the headphones were distributed, William G. Hundley, attorney for former Attorney General John N. Mitchell, one of the defendants, said joking, "that'll be two dollars."

## Second Tape Played

Federal District Judge John J. Sirica, for his part, looked out at the men and women in his courtroom, each with a gray and black headset connected by a black cord to a "listening station" on the floor, and said, "We ought to have a picture taken."

Later today, a second tape was played, of a conversation between Charles W. Colson, a White House aide who was originally charged in the cover-up and has since pleaded guilty to a related charge, and E. Howard Hunt Jr., one of two former White House staff employees

among the seven original Watergate defendants.

In that conversation, of which a transcript was made public by the Senate Watergate committee in September, 1973, Mr. Hunt was pressing Mr. Colson on the subject of the payments that had been promised the original Watergate defendants. The payments are a central element of the cover-up charge against the five defendants now on trial.

Mr. Colson, though, sought to stop Mr. Hunt from giving any details, telling him that he, Mr. Colson, did not know anything about Watergate and that he wanted to help Mr. Hunt but could not if he was given facts he might have to turn over to the authorities.

Mr. Colson's remarks on the tape drew laughter from some listeners.

## Rebuke From Sirica

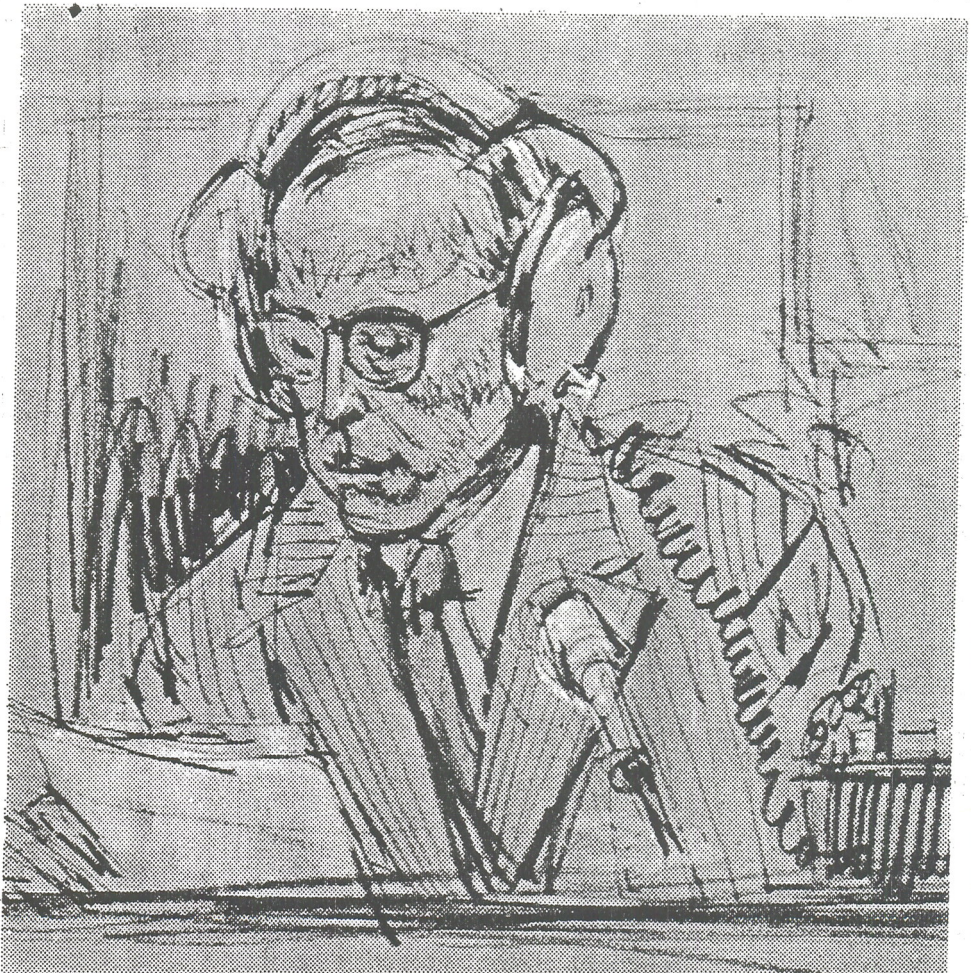
And Judge Sirica, when the tape was finished, responded with a sharp rebuke.

"This is a very, very serious matter," he said, "serious to the defendants, serious to the jury. There will be no more laughter."

He conceded that "some things may be amusing on these tapes." But he said, "to me it's no laughing matter."

The defendants—Mr. Haldeman, Mr. Mitchell, Robert C. Mardian, Kenneth W. Parkinson and John D. Ehrlichman, a for-

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John W. Dean 3d listening to a tape recording and following transcript at trial yesterday

Bureau of Investigation, must be stopped in his pursuit of the truth about Watergate.

Mr. Dean, under questioning by James F. Neal, the assistant prosecutor in charge of the case, quoted Mr. Mardian as saying, "For God's sake, John, somebody's got to slow Pat Gray down. He's going like a crazy man."

Mr. Dean said that Mr. Mitchell had told him to ask Mr. Haldeman to use some of the funds in the secret \$350,000 cash fund controlled by Mr. Haldeman to meet the increasing demands of the original Watergate defendants. He said, too, that Mr. Haldeman then authorized the use of between \$40,000 and \$72,000 from his fund.

The witness also testified, in effect, that Mr. Ehrlichman had given false statements to the F.B.I., as is charged in the indictment. He testified that he had given Mr. Ehrlichman certain information about the break-in, and that Mr. Ehrlichman subsequently told the F.B.I. that the only information he, Mr. Ehrlichman, had was what he had read in the newspapers.

Mr. Dean, who in his testimony today was for the most part repeating testimony he gave earlier before the Senate Watergate committee, also said that he had seen F.B.I. reports of the investigation and that he had shown some of these reports, all marked with such warnings as, "for internal Government use only," to all five defendants.

#### 'Promises the Moon'

He said, too, that at one point he told Mr. Parkinson, who was working for the reelection campaign as a lawyer, that the original Watergate defendants had been "promised the moon."

In another development today, the special Watergate prosecution disclosed that it had received another Nixon tape recording from the White House, one of a conversation between Mr. Nixon and Richard A. Moore, his former special counsel, on April 19, 1973. Mr. Moore recently resigned from the White House after the prosecution informed the court and the defense that it might seek to prove at the trial that Mr. Moore was one of the conspirators.

For the day, Judge Sirica heard arguments on whether Mr. Nixon must comply with subpoenas for his testimony at the trial. Judge Sirica decided to postpone his decision for three weeks after Mr. Nixon's lawyer said that the former President's physical condition was improving.

The judge said that the defense was "not going to need him for few weeks" and asked for a further report from Herbert J. Miller, Mr. Nixon's attorney. Judge Sirica also asked the defense and prosecution lawyers to submit the names of doctors the court might appoint to examine Mr. Nixon.

"The prognosis is very good

at the moment," Mr. Miller told the court. He also said that he "would expect" to have a better report on Mr. Nixon's health within the next three weeks.

Judge Sirica said, "I don't see proceeding with interrogatories or depositions." He added that "I think it would be helpful to the jury, if he progresses to the point" that his health is stable, that he "make an appearance here."

The former President is recuperating from a phlebitis condition that has caused blood clots in his left leg and right lung.

The day began with a heated legal argument, out of the presence of the jury, in which one after another defense counsel argued that Judge Sirica was allowing Mr. Dean to give testimony that was forbidden by the laws of evidence.

#### Argument by Defense

Yesterday, Mr. Dean testified at length about statements to him by L. Patrick Gray 3d, then head of the Federal Bureau of Investigation, including such matters as Mr. Gray's theories immediately after the Watergate break-in about the causes of the break-in. Mr. Dean also testified on statements by Gen. Vernon A. Walters, then deputy director of the Central Intelligence Agency, about such things as the agency's reaction to White House requests that the agency "covertly" help out the Watergate burglars.

Today the defense lawyers argued in essence, that Mr. Dean should not be permitted to testify about statements by persons like Mr. Gray and General Walters who had not been named as unindicted co-conspirators.

They based their argument on the general legal principle that second-hand out-of-court statements are inadmissible as "hearsay" on the ground that they are suspect unless they come within one of the various exceptions to the hearsay rule.

#### Legal Lecture for Judge

Under one exception, statements by alleged conspirators may be recounted by a witness. That, in fact, is a main reason that the Government has identified so many persons as co-conspirators in the case. But, the defense lawyers, led today by John J. Wilson, Mr. Halderman's attorney, who gave Judge Sirica a long lecture on legal authorities, contended that there was no exception to cover the testimony Mr. Dean gave about Mr. Gray's and Mr. Walters' statements.

The prosecution argued otherwise, in a legal brief filed late yesterday.

The prosecution contended that it was offering the Gray and Walters statements not as

proof of the truth of those statements, but to show the jury the effect of these statements on Mr. Dean's state of mind and on the subsequent actions of the defendants.

Mr. Wilson labeled this argument "legal hearsay." But Judge Sirica accepted the prosecution argument and went on to chastise Mr. Wilson for not giving the court a written argument on the point.

#### Objections to Tapes

The lawyers argued a number of other points as well, including the instructions that the Government suggested Judge Sirica gave the jury regarding the transcripts of the tapes, instructions the judge subsequently adopted over defense objections. They also argued the right of offense counsel to raise objections to the tapes while they were being played in court.

Judge Sirica rejected almost all the arguments defense counsel made, saying, among other things, that he would allow no interruptions during the playing of the tapes. He told the

lawyers that their objections were on the record and that they were thus "protected." Then he called the jury in and for 20 minutes repeated to them the mini-lecture he gave two days earlier on the law of conspiracy.

That lecture prompted another objection by Mr. Wilson. The judge again overruled him. Mr. Wilson, who like some of the other defense counsel has made it clear he is collecting what he considers to be errors that he can raise on appeal should the case end in convictions, commented, "I'll put it in my error bag."

mer White House aide—appeared to agree. All listened intently, Mr. Mitchell holding his headphone to his left ear, the others with the set firmly atop the head.

The transcript provided by the prosecution today for the Sept. 15 tape was almost identical with the transcripts released by Mr. Nixon last spring and by the House Judiciary Committee this summer.

There were, however, some differences, such as a passage in which Mr. Nixon referred to Democratic Senators who were running in the 1972 election. In the prosecution's transcript, Mr. Nixon is quoted as saying—and in fact can be heard on the tapes to say — "They're, they're crooks, they've been stealing, they've been taking (unintelligible)."

#### Comment Is Lacking

The White House transcript contained no such comment. The judiciary committee transcript merely says, "characterization omitted."

In several other places, the prosecution transcript mirrors the Judiciary Committee transcript in disclosing a phrase or a line that the President's transcripts did not.

Mr. Dean, in his second day on the stand, provided the jury with still more incriminating testimony today, against all five defendants.

He said among other things that Mr. Mardian, a former Assistant Attorney General who was later a political coordinator for the Nixon reelection campaign, told him at one point that L. Patrick Gray 3d, then head of the Federal