

# Dean Is Immune on Senate Testimony

Special to The New York Times

WASHINGTON, June 27—

In any criminal prosecution of John W. Dean 3d, neither the former White House counsel's Senate testimony nor any evidence derived from it can be used against him in court.

In return for this immunity, Mr. Dean must answer all questions asked by the Watergate committee. He cannot invoke his Fifth Amendment right against self-incrimination without risking contempt-of-court penalties.

The arrangement under which Mr. Dean has testified was sought by the committee and formally established in an order signed June 12 by Chief Judge John J. Sirica of the United States District Court.

The Judge acted under Sections 6002 and 6005 of Title 18, United States Code, which

provides that after a witness invokes his privilege against self-incrimination, as Mr. Dean had done in a closed session, the court can strip him of the right.

## Prosecutors Opposed Immunity

The law provides:

"No testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order."

The special prosecutors in the Watergate case, who opposed the Senate immunity for Mr. Dean, have made it apparent that they intend to prosecute him.

Mr. Dean also sought immunity in the criminal proceedings, but it was formally denied to him and he invoked the Fifth Amendment before the grand jury. If he is in-

dicted, the following developments are likely:

His defense counsel will file, among a number of other motions, a motion to quash the charge on the ground that the prosecution benefited from the Senate testimony.

## Moves in Anticipation

In anticipation of this, the Watergate special prosecutor, Archibald Cox, filed with Judge Sirica a sealed package of documents designed to show that he was prepared to proceed against Mr. Dean before he testified on Capitol Hill.

But if the prosecutors win this argument, the defense can raise a second objection in the same area. Mr. Dean hinted at it in his Senate testimony on Monday.

Beginning on April 2, Mr. Dean said, he and his attorneys discussed the Watergate case with the United States Attorneys then in charge, Earl J. Silbert, Seymour Glanzer and Donald E. Campbell.

"My attorneys had been discussing my testimony with the prosecutors, and they had worked out an arrangement whereby I could give the prosecutors my knowledge directly and what I told them would not later be used against me if they should prosecute me." Mr. Dean also said:

"The meetings I had with the prosecutors were initially focusing on the activities which had led up to the June 17 break-in.

But as our discussions evolved and I began telling them more and more of the cover-up, their interest began to focus more and more in that area.

"The more I told the prosecutors about the cover-up, the more interested they became in it."

This is a crucial assertion because an oral agreement be-

tween Mr. Dean and the prosecutors—if a judge finds it existed—could be as binding as a formal court order granting immunity.

Alfred C. Baldwin 3d, who helped the Watergate conspirators by monitoring their telephone wiretapping, testified at the trial in January under an oral agreement that he would not be prosecuted if he talked.

The special prosecutors apparently have examined closely the details of the contacts with Mr. Dean in an attempt to establish exactly what commitments have been made by their predecessors in the case. A spokesman for Mr. Cox declined to go into the substance of the matter, but he said that "it is the position of the special prosecutor that Dean is not immune from prosecution."

## Apparent Contradiction

Later in his Senate testimony, Mr. Dean seemed to contradict his assertion of an "arrangement" by noting that he told President Nixon on April 15 that in fact "I had no deal with the Government."

Even if a judge should find that immunity had been granted orally, the prosecutors could argue that Mr. Dean had given them nothing that would be used in their prosecution of him.

This debate, should it ever be reached, might be more difficult for the prosecutors. They would face the burden of proving, as they will on Mr. Dean's Senate testimony, that their case is "untainted" by the defendant's own words.

Mr. Cox appears confident that that point will never be reached and that he can win the immunity arguments. But an argument over an oral arrangement and its fruits would be likely to mean extended testimony and pleadings before trial.

6-28-73

NYT