After Suspense of Investigation, Rules of the Courtroom Now Come Into Play

Both Sides Will Employ Time-Tested Strategies

SATURDAY, MARCH 2, 1974

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Special to The New York Times

WASHINGTON, March 1 — For all the drama of the Watergate grand jury's announcement today, for all the day-by-day build-up of suspense, it is only an indictment. It will take months to turn the indictment into anything more-months of legal motions and jury selection and trial, months of battling in the courtroom.

And each will spend those months following strategies testef over years in the courtroom—the prosecution atempting to try all the defendants in a single trial, attempting to get co-conspirators to testify against one another; the defense attempting to discredit the prosecption witnesses and making sure that the trial record provides grounds for an appeal, should the trial end in conviction.

There will be some less-than-commonplace elements in each side's strategy, for the case is undeniably unique. It is possible, for instance, that one or another of the defendants may try to subpoena the President and bring about, in the midst of the trial, a constitutional confrontation.

Rules of the Courtroom

But, essentially, what the indictment means, at least for the seven men named in it and the battery of lawyers who will defend them, is that the Watergate cover-up has turned from a national scandal into a plain criminal case.

The final outcome, like the outcome of thousands of other cases filed each year, will be tetermined in the end under the rules of the courtroom.

None of the lawyers involved was willing today to describe publicly the strategies now being worked out. But the indictment itself and the behavior of the special Watergate prosecution to date indicate at least some prosecution strategy. From that strategy can be drawn some conclusions about the defendants' responses.

The indictment, for instance, charges all seven defendants with a single count of conspiracy, in addition to other charges against some of the seven. It is clear that the prosecution thus wants to try all seven defendants in a single proceeding—a tactic that benefits the prosecution in a number of ways.

"It enables you to circumvent the normal rules of hearsay," one prominent Washington lawyer, Daniel A. Rezneck, who is not connected with the case, pointed out today. Testimony that might not be admissable if a defendant was on trial by himself can sometimes be admitted if he is on trial with others.

This could happen in the following manner: A witness is willing to testify that he heard Mr. A make a certain statement. If Mr. B is on trial by himself, the witness's testimony might be barred as hearsay. But if Mr. B is on trial with Mr. A, the witness's statement might be admitted.

Also, evidence of acts committed by one defendant might not be admissable against a second defendant if the second defendant was on trial by himself. If the two defendants were on trial together, charged with conspiracy, Mr. Rezneck said, the evidence regarding the acts of the first could be admitted.

The indictment hints at another prosecution strategy: To use co-conspirators as witnesses against the defendants. The indictment mentioned a number of individuals in its discussion of the alleged crimes; it did not, however, charge them with any crimes.

Testimony Sought

The logical explanation of this, according to lawyers, is that the prosecution is trying to work out some kind of agreement with those persons—such as letting them plead guilty to minimal charges in return for their agreement to testify.

The prosecution has already gained such agreements from some co-conspirators, such as John W. Dean 3d and Jeb Stuart Magruder.

The fact that the prosecution's chief witnesses are confessed criminals—and the additional fact that most of them have had their sentencing deferred until after they give their testimony — is, however, one of the prosecution's chief problems in the case.

For the defendants' attorneys will be able to point out this fact to the jury. The legal terminology for this tactic is "impeaching the credibility" of the witness and, in the case of the cover-up, it is expected to be a major part of the defense of each of the seven men under indictment.

The prosecution will thus have to try to bolster its witnesses' credibility in any way possible. One technique is to bolster its witnesses' credibility in any way possible. One technique is to introduce prior statements that a witness has given and that are consistent with his or her testimony at the trial.

Long before the trial begins, however, lawyers for the defendants are expected to make a number of moves designed to foil the prosecution.

At least some defendants are expected to ask that their cases be severed from the cases of their co-defendants—or, at least, that the charges that do not relate to them, such as a perjury count against a co-defendant, be tried separately. The argument for such a motion could be that massive publicity about Defendant A might hurt the chances for acquittal of Defendant B, should they be tried together.

Publicity about Watergate is expected to be the basis of a variety of pretrial motions by most if not all th defendants, in fact.

May Ask Shift of Sit

One possible motion is a request for dismissal of the charges on the ground that there has been so much publicity—some of it contributed to by the prosecution—that it is impossible o empanel an. unbiased jury.

Courts generally reject such motions, however. Ways can be found to find an unprejudiced jury, they reason. Beyond that, they say, modern technology has made a certain amount of pretrial publicity inevitable in many cases, and the justice system must find some way of coping other than simply throwing the case out.

The defendants will thus probably have more luck if they merely ask, as some are expected to, that the trial be held in some area other than the District of Columbia.

Even if they limit their motions to a request for a change of venue, of course, it is not at all clear that the court will consent. As one lawyer put it today, judges doe not want to admit that they cannot find a fair jury.

Judge John J. Sirica officially assigned himself today as the judge in the case, and that move riased the possibility of yet another defense motion—a request that the judge disqualify himself on the ground that he has had much to do with the discovery that a cover-up took place.

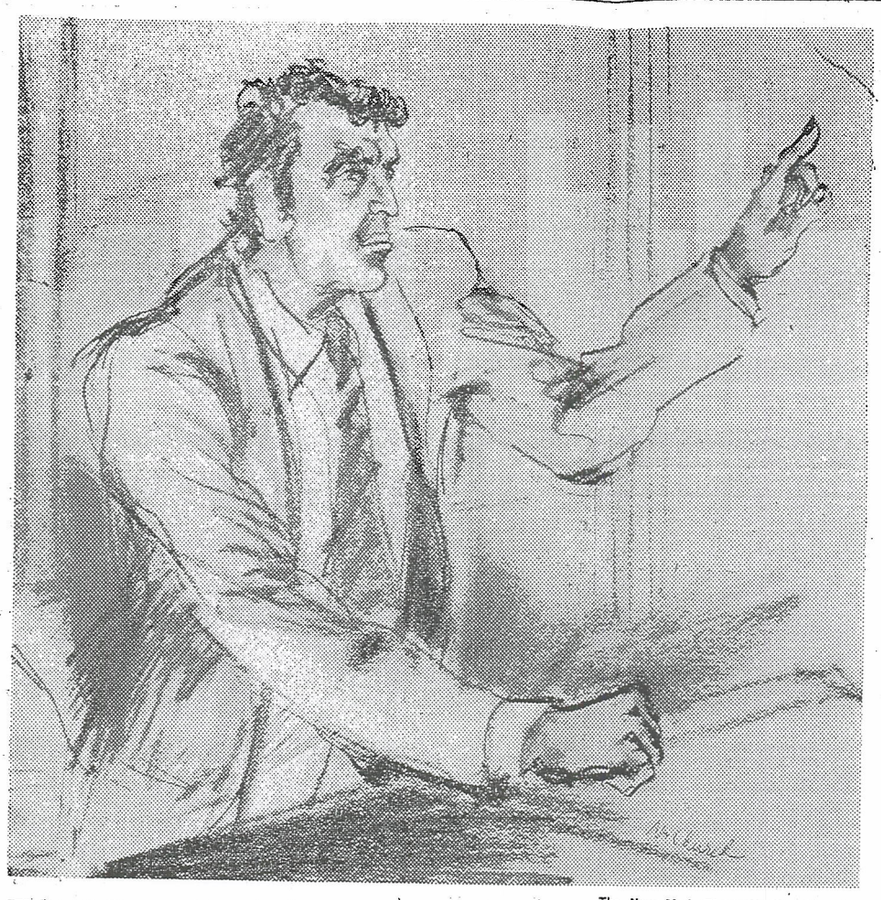
Options for Defendant

If a defendant made such a motion and Judge Sirica refused, the defendant would then have two options—he could either appeal the matter, or he could "keep it in reserve," as a lawyer said today, and use it as a ground for appeal should he eventually be convicted.

In addition to these motions, the defendants will certainly make formal requests for disclosure of prosecution evidence—a procedure called "discovery" in which the prosecution will be required to make certain information available.

Mut, beyond that, it is conceivable that one or another of the defendants will seek to subpoena President Nixon, as John D. Ehrlichman, one of the defendants charged today, has already tried to do in his separate trial in California.

If the President refuses, lawyers here said today, the defendant could then argue that he was being denied his right under the Sixth Amendment to have "compulsory process for obtaining witnesses in his favor."



The New York Times/Marilyn Church

Walter J. Bonner, lawyer for Maurice H. Stans, objecting to remarks in the opening statement of Assistant United States Attorney James W. Rayhill.