

Jury Hears Tape of Nixon Urging Aides to 'Stonewall'

Balking of Watergate Inquiry Advised in March, 1973, Meeting With Mitchell — Defense Objects to Recording

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WASHINGTON, Oct. 21 — Over the heated objections of defense counsel, the jury in the Watergate case heard today the tape recording in which Richard M. Nixon said he wanted his aides to "stonewall it"—plead the Fifth Amendment, cover-up or anything else, if it'll save it—save the plan.

Mr. Nixon made the remark on March 22, 1973, to John N. Mitchell, his former Attorney General and re-election campaign director and now one of the five defendants on trial.

Mr. Mitchell's chief attorney, William G. Hundley, told Judge John J. Sirica repeatedly in United States District Court today that should the tape not be played unless either Mr. Nixon identified the tape or the prosecution presented certain proof of the tape's authenticity. He cited a legal memorandum submitted by the prosecution one month ago on admissibility of tapes to back his point.

Identification by Dean

But James F. Neal, the assistant special prosecutor in charge of the case, told Judge Sirica that additional legal research indicated that, in this case at least, it was sufficient for the tape to be identified by John W. Dean 3d, the Presidential counsel who had been present at an earlier portion of the March 22 meeting.

The statements made in that memorandum, Mr. Neal said, borrowing one of the more notable phrases of the Watergate scandal, "are no longer operative."

And Judge Sirica, who has overruled a variety of other defense objections to the tapes introduced so far at the trial, turned Mr. Hundley down.

The jury also heard another tape today, of a conversation on the afternoon of March 21, 1973, between Mr. Nixon, Mr. Dean, and two of the other defendants in the case, John D. Ehrlichman, then the White House adviser on domestic matters, and H.R. Haldeman, Mr. Nixon's chief of staff.

Tapes Disclosed Earlier

Both tapes had been disclosed previously, some parts in the edited transcripts Mr. Nixon released last spring and the remainder, including the "stonewall" section, by the House Judiciary Committee.

The two tapes were played to the jury in conjunction with testimony by Mr. Dean, now a Federal prison inmate as a result of his guilty plea last year to conspiracy in the cover-up.

Mr. Dean, on the witness stand for the fourth day, told the jury about various meetings at the White House on March 21 and March 22, 1973, the period when the cover-up seemed about to come apart under an assortment of strains—the upcoming Senate Watergate hearings, for instance, and the increasing threats that the original Watergate defendant



Associated Press

John D. Ehrlichman leaving courthouse yesterday during recess for lunch in the Watergate trial.

might tell the true story about Watergate unless they received further money and assurances.

Mr. Dean told the jury, among other things, that he and others at the White House had briefly considered asking Mr. Mitchell to "step forward" and take the blame for the events that culminated in the break-in at the Democratic national headquarters at the Watergate complex here on June 17, 1972, in the hope, Mr. Dean said, that the events at the White House after June 17—the cover-up—would thus escape investigation.

The prosecution plans to question Mr. Dean for about an hour more tomorrow morning. Then the defense counsel will begin their cross-examination.

Several of the lawyers have already indicated that they consider Mr. Dean's credibility to be one of the major issues in the case, and the cross-examination is thus expected to be long.

Complaint About Publicity

In other development's at the trial, William S. Frates, one of Mr. Ehrlichman's defense attorneys, complained to the court in a bench conference about prosecution-engendered publicity about the case.

The incident that prompted his complaint was an appearance on television yesterday by Leon Jaworski, the special prosecutor, in which Mr. Jaworski said he expected the trial to disclose the rest of the evidence regarding Mr. Nixon's role in the cover-up.

Both the March 21 and the March 22 conversation played to the jury and the rest of the

people in Judge Sirica's court today were essentially discussions of the various options Mr. Nixon and his aides could exercise either to end or to continue the cover-up.

The options discussed at the March 21 meeting, among Mr. Nixon, Mr. Dean, Mr. Haldeman and Mr. Ehrlichman, included summoning White House and campaign aides before a grand jury and giving them immunity, thus preventing their convictions; having them testify in front of a specially created panel instead, again with immunity; and having them testify without immunity.

The third option—testifying without immunity—was not considered at great length, however.

"It leads to some very drastic results," Mr. Ehrlichman said to the others at the meeting. "Counsel over here," he went on, presumably gesturing toward Mr. Dean, "has been reading some statutes, and, uh, there are awful opportunities for indictment."

At the March 22 meeting, most of the discussion centered on another option: Having Mr. Dean write up some kind of general report for Mr. Nixon on Watergate, pretty much absolving the White House staff of any involvement in it, and then having Mr. Nixon refer to this report should the question of his own knowledge and actions in the cover-up come up subsequently.

The discussion on March 22 also turned to how White House staff members should respond to requests for their testimony at the Watergate com-

mittee hearings.

The crucial exchange came toward the end of the meeting, when Mr. Haldeman and Mr. Ehrlichman were gone, Mr. Dean was walking out, and Mr. Nixon was left alone with Mr. Mitchell.

Mr. Nixon, speaking quickly and in a low voice, told Mr. Mitchell that he did not want to treat his staff the way Sherman Adams, an aide to President Eisenhower who had been dismissed after a scandal, had been treated.

And for that reason, Mr. Nixon said, he did not care what happen. **'Stonewall It'**

"I want you all the stonewall it, let them plead the Fifth Amendment, cover up or anything else, if it'll save it 'save the plan,' Mr. Nixon said, according to the transcript of the conversation prepared by the prosecution. "That's the whole point."

Mr. Nixon immediately adds that he would, however "prefer" that "you do it the other way," revealing the truth.

"And I would particularly prefer to do it that other way if it's going to come out that way anyway," he said.

Mr. Nixon makes a few more remarks about the likelihood of the story coming out, Mr. Mitchell says, "Well—"

"I don't know," Mr. Nixon interjects, "but that's, uh, you know, up to this point the whole theory has been containment, as you know, John."

The legal argument over the admissibility of this portion of the tape arose because only Mr. Nixon and Mr. Mitchell participated in the exchange.

Judge Sirica, in his rulings on previous tapes, has made it clear that he believes a tape is admissible if one of the participants in the conversation can recall the conversation and verify the tape as a recording of the conversation.

But neither Mr. Nixon nor Mr. Mitchell was available today to the prosecution to verify the accuracy of the March 22 tape—Mr. Mitchell because he cannot be compelled to testify against himself. Mr. Nixon because, although the prosecution has subpoenaed him, he has contended that he is too sick to appear at the moment.

'Live' Witness Noted

Mr. Hundley, who is handling Mr. Mitchell's defense with Plato Cacheris, pointed out to Judge Sirica that there was a "live" witness to the conversation who was under subpoena. And, though Mr. Hundley did not remind the court of it, Mr. Nixon's attorney suggested last week that the former President would probably be well enough in three or four weeks to appear.

Then Mr. Hundley pointed out that the prosecution itself, in a memorandum last Sept. 16, had outlined the usual alternative procedure for "laying a foundation," as it is called, for a tape recording before it is admitted into evidence.

The procedure requires presentation of evidence about three things—the circumstances surrounding the conversation being taped, the method by which the tape was made, and the chain of custody of the tape. Mr. Hundley contended that Mr. Dean could testify only about the first.

Prosecutors Tell of Precedents

The prosecutors, though, both Mr. Neal and one of his colleagues, Richard Ben-Veniste, said that they had recently

found precedents in other court rulings for putting a tape into evidence without all this proof.

Judge Sirica thereupon permitted both prosecution and defense lawyers to question Mr. Dean about the circumstances of the conversation—the prosecution seeking to show that no one else could have entered the Nixon-Mitchell conversation without Mr. Dean's knowledge; the defense trying to show the opposite.

When the tape was played, it included the disputed section—despite objections by Mr. Hundley and also by John J. Wilson, one of Mr. Haldeman's lawyers. Judge Sirica did not make his reasoning public.

Mr. Dean testified for three days last week, giving a chronological account of the cover-up, and he resumed his testimony this morning by picking up from the conversation he had described Friday—his conversation on the morning of March 21, 1973, with Mr. Nixon and

Mr. Haldeman, in which he told Mr. Nixon that he thought the cover-up was a "cancer" growing on the Presidency.

Mr. Dean said today that he met with Mr. Haldeman and Mr. Ehrlichman later on the 21st to discuss further the problems brought up in that conversation with Mr. Nixon.

Together, he said, the three evolved an "approach": that there would be no investigation of the events following the Watergate break-in. — of the cover-up, in other words—if only "Mr. Mitchell would step forward and admit his guilt" about the events leading to the break-in.

Meeting With Haldeman

Mr. Dean said that he had another meeting that day with Mr. Haldeman, a brief one in the hallway just before the two went into Mr. Nixon's office in the Executive Office Building for their meeting with the President and Mr. Ehrlichman.

At that quick meeting, Mr. Dean said, he told Mr. Haldeman that there were two "alternatives" for dealing with the growing problems confronting the cover-up: Either, "Let this thing go all the way and unravel, and lay it out for what it is," or, "Draw the wagons around the White House."

James F. Neal, the prosecutor in charge of the case, asked Mr. Dean who was to be inside the wagons.

There was a brief colloquy in which Mr. Frates objected, Judge Sirica asked for the meaning of the phrase and Mr. Dean replied that it was "sort of a cowboy-Indian phrase," meaning a plan "to protect the White House from everyone else, to protect ourselves."

And then Mr. Dean gave his answer to Mr. Neal: Mr. Dean, Mr. Haldeman, Mr. Ehrlichman and the President were to be protected. Mr. Mitchell and Jeb Stuart Magruder, the deputy director of the Committee for the re-election of the President, were not to be protected.

Mr. Magruder is serving a prison term as a result of his guilty plea to conspiracy to obstruct justice in the Watergate affair, and is expected to be one of the prosecution's major witnesses at the trial.

Mr. Dean's testimony about these meetings was a somewhat more detailed and precise version of the account he gave the Senate Watergate committee in his opening statement at the committee's hearings in 1973.

Mr. Dean's testimony to the

jury today also covered the late afternoon meeting on the 21st between Mr. Dean, Mr. Haldeman, Mr. Ehrlichman and Mr. Nixon—the conversation recorded on the first tape played to the jury today.

This meeting, like various others at the White House in that period, was held to discuss ways to deal with the upcoming hearing by the Watergate committee.

As the tape showed, the men at the meeting were especially worried about the hearings because of several factors, such as the growing pressure from the original Watergate defendants for money or other assurances and the possibility that Judge Sirica, who had been the presiding judge at the trial of those original defendants, might try again to unravel the cover-up.

Mr. Dean, who for the most part was repeating testimony he had given earlier before the Senate Watergate committee, told the jury that he met on the morning of March 22 with Mr. Ehrlichman, Mr. Haldeman and Mr. Mitchell.

The purpose of the meeting, he said, was to carry out the discussions of the previous day—"to have Mr. Mitchell step forward" and take the blame.

But, he added, no one mentioned the plan. The group subsequently went back to its other options, "for want of a live body," he said.