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Sirica, Defense Clash

Haldeman's Lawyer Calls Ruling Unfair

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U.S. District Court Judge John J. Sirica got into a near-shouting match at the Watergate cover-up trial yesterday when a defense lawyer protested that Sirica was being "palpably unfair."

The fireworks came when H. R. Haldeman's chief defense attorney, John J. Wilson, began cross-examining former White House counsel John W. Dean III about discrepancies between the White House tape and Dean's testimony before the Senate Watergate committee last year.

Before it all ended, Judge Sirica, pounding his fist on the bench, pressed defense lawyers to agree to let the tape—and several others that were dragged into the dispute—be played before the jurors. But Watergate prosecutors then decided that they weren't ready to do that.

Finally, Dean amended his testimony, claiming that Wilson had cut him short in the first go-round. Dean insisted that the discrepancies he had just conceded were more apparent than real.

The dispute began yesterday morning with the jurors listening intently. Under questioning by Wilson, Dean said Watergate prosecutors had asked him to listen to the tape earlier this month so he could vouch for its accuracy.

Dean said he told them that "this isn't the way I remembered the meeting . . . that's why the government told me they were not going to put this tape in evidence," he explained.

Moments later, after a whispered bench conference, Sirica sent the jurors out of the courtroom so he could decide whether to permit the line of questioning to continue.

In effect, Wilson was attacking both Dean and the White House tapes—on the basis of a recording the government did not plan to introduce.

With the jury out of the room, Dean held firm to his recollection of the meeting in question—a taped conversation with President Nixon on Feb. 27, 1973. But Dean said the key remarks he recalled Mr. Nixon making about the Watergate scandal did not appear on the recording that the Nixon White House had turned over to Watergate prosecutors this summer.

The witness said he had not listened to the entire tape but he had read a complete tran-

See TRIAL, A10, Col. 1

script of it that the prosecution had prepared. He said there were several "things missing from the transcript I read."

Among them, Dean said, was a statement by Mr. Nixon labeling Haldeman and former White House aide John D. Ehrlichman as "principals" in the Watergate scandal. Dean said he still clearly remembered Mr. Nixon telling him that.

Chief trial prosecutor James F. Neal jumped up to point out that Dean had also told him earlier this month that his memory of three successive meetings with Mr. Nixon—on Feb. 27, Feb. 28, and March 1, 1973—was not distinct enough for Dean to state exactly what Mr. Nixon told him on any given day.

At that, Sirica announced that he would let Wilson make his points in the presence of the jury and then let the prosecution step in, out of normal turn, and question Dean on the same issue—without waiting until the lawyers for all five defendants at the conspiracy trial complete their cross-examination.

Normally, at a criminal trial, when one side makes a point, the other side has to sit and simmer, sometimes for days, before resuming its own questioning of a witness.

The 73-year-old Wilson, who once worked side by side with Sirica in the U.S. attorney's office here, protested sharply.

"I always want to be respectful," Wilson told the judge, "but I think that's palpably unfair."

His face starting to flush, Sirica leaned forward. "They'll listen, Mr. Wilson," he said, referring to the jurors. "You know me, you've known me for years. I'm just as interested in getting the truth out as you are."

Wilson started to protest again. The judge cut him off.

"We're going to do it my way, not your way," Sirica told him. "If I've committed an error, and the case reaches the Court of Appeals someday, the Court of Appeals will correct the error."

The short, baldish defense lawyer said he still thought "this matter of spot, redirect examination, when something gets sensitive to the government, is improper."

The judge denied it, saying he didn't think the jury should get the story "in dribs and drabs." He said Dean "can't be expected to remember what was on every tape."

The jurors were still absent when Wilson picked up his dry-run questioning of Dean again.

The former White House aide said he was "very adamant on my recollection" of Mr. Nixon's remarks when Watergate prosecutors had questioned him about the Feb. 27 meeting. He said he told them there were "parts missing."

"Were you conscious of the fact that there were discrepancies?" Wilson pressed.

"Yes, I was," Dean replied. "I don't know exactly how I phrased it to Mr. Neal. I told him that the (Feb. 27 tape) transcript was not the way I recalled the conversation."

Neal complained that Wilson was leaving the impression that "I deliberately refused to play a tape because I didn't like its contents." He said he told Dean that the prosecution would play any tape that Dean could "recollect and vouch for."

At that point, the judge proposed to settle it all by letting the jury hear the tapes of all three meetings—Feb. 27, Feb. 28 and March 1, 1973 — that Dean had apparently blended in his mind. Neal said the Watergate prosecutors didn't have the March 1 tape, but he nominated a Dean-Nixon meeting of March 13, 1973, in its place.

Sirica agreed so long as all the defense lawyers would waive any objection to the playing of tapes that no witness had vouched for. Wilson objected, once again incurring the judge's displeasure.

"I don't want to put you in the position of taking unfair advantage over anybody," Sirica told him sternly.

"I object to it," Wilson persisted.

His voice rising, the judge pounded his hand on the bench.

"Now listen, just a minute, you just stop talking until I get through," Sirica told him. "You're not going to argue to this jury that this man (Dean) went up to the Senate committee and (that) he gave false information when you will not let the tapes be played. I think those tapes ought to be played . . . I ask you, as an officer of this court, do you object to these tapes being played in view of the testimony of this witness?"

Wilson said he did. He said he considered the judge's remarks "a nonsequitur."

The lawyers for the four other defendants—Ehrlichman, former Attorney General John N. Mitchell, former Assistant Attorney General Robert C. Mardian and Nixon reelection committee lawyer Keneth Wells Parkinson—indicated, however, that they would not protest. At that, Wilson finally relented, and dropped his objection.

Prosecutors, in turn, changed their stance during the lunch hour, indicating privately that transcripts of the three meetings in question were not all ready. When court resumed, Neal told the judge in a bench conference that the government would drop its objections to Wilson's line of questioning.

With the jury back in the room, Dean returned to the witness stand. His testimony was not the same as it had been in the morning.

Wilson began confidently, reciting what Dean had told the Senate Watergate committee about the Feb. 27 meeting. The 36-year-old former White House counsel had said then that Mr. Nixon told him to report directly to the President

on the Watergate matter, that it was taking too much of Haldeman's and Ehrlichman's time, and that Dean could be "more objective" since Haldeman and Ehrlichman "were principals in the matter."

Even before the jurors had been sent out of the room for the morning squabble, Dean had testified that there were "variances" between his Senate testimony and the prosecution's transcript of the Feb. 27 meeting. He said then that "there were certain things I remembered at the end of the meeting that I could not find in the transcript."

Now, however, as Wilson asked him about those excerpts, Dean suggested that they were, at least in substance, on the tape after all.

Asked about Mr. Nixon's reported statement that Haldeman and Ehrlichman were "principals" in the Watergate scandal, for example, Dean said evenly:

"I believe there is something in that transcript that is similar, Mr. Wilson."

Caught by surprise, Wilson asked the witness about the testimony that the jury had not heard. He asked Dean whether he had not said then, without any qualification, that three specific sets of remarks he had attributed to Mr. Nixon, including the one about Haldeman and Ehrlichman being "principals," did not appear on the prosecution transcript.

Dean said he had done so, but added that he had been referring "to the precise language" he had been asked about.

"You made no qualification, did you?" Wilson asked him.

Dean maintained that he didn't get a chance. "I believe I was stopped short," he replied.

Wilson: "I didn't stop you, did I?"

Dean: "I believe you did, sir."

Wilson said he would let the record speak for itself.

During his cross-examination of Dean, the Haldeman lawyer also dwelt at length on the former White House aide's so-called "honeymoon money"—some $4,850 that Dean had taken out of a secret $350,000 White House fund in the fall of 1972 when he got married. The secret cash fund, he has testified, was controlled by Haldeman and was later used to pay hush money to the original Watergate defendants.

Before that, however, $22,000 had been taken out to pay for advertisements that former White House special counsel Charles W. Colson had arranged. Only $6,800 was spent and the remaining $15,200, Dean said, was turned over to him for safe-keeping.

Dean said he withdrew $4,850 in October of 1972 on the night before he was married, and left a check made out to "cash" in that amount in place of the cash.

Repayment was finally made in April of 1973, Dean said, when he hired a criminal lawyer and began secret discussions with Watergate prosecutors about the Watergate cover-up. He said the entire $15,200 was still at a Rockville bank in escrow accounts that his lawyer set up, waiting for someone to claim it.

"So for six months, you had use of a sum of money that didn't belong to you?" Wilson asked him.

"Yes sir," Dean readily replied. He admitted that he didn't have enough money in his checking account to make good on the chit for "cash" that he originally left in place of the $4,850. He also acknowledged that he could have repaid the money at any time during the six-month period from a personal stockbrokerage account that once had as much as $80,000 in assets.

Dean said it was from this account that he finally made the repayment.

Former Attorney General Mitchell's lawyers began their cross-examination of Dean in midafternoon. They suggested that Mitchell had been made a scapegoat in the scandal and that it had been Colson—not Mitchell—who had really been responsible for the June 17, 1972, Watergate bugging and break-in at Democratic National Committee headquarters here.

Watergate prosecutors have charged that Mitchell authorized a political espionage plan that included the Watergate bugging during a meeting at Key Biscayne, Fla., on March 30, 1972. Mitchell has denied it.

Under questioning by William Hundley, Mitchell's chief defense lawyer, Dean acknowledged that he himself had first suspected Colson after learning that E. Howard Hunt Jr. had been involved in the burglary.

Dean said he had often seen Hunt in Colson's White House office in the months before the break-in. Afterward, Dean said he found that the contents of Hunt's safe included "innumerable" memoranda between him and Colson on "various sensitive political matters." It was Colson, Dean added, who had warned him, right after the break-in, that the documents in Hunt's office at the Executive Office Building could prove embarrassing.

Beyond that, Dean said he was later told by Nixon campaign deputy director Jeb Stuart Magruder of being pressured by Colson to reach a decision on whatever Hunt and Watergate burglar G. Gordon Liddy wanted to do.

"Mr. Magruder had reported to me on several occasions," Dean said, "that he had received pressure from Mr. Colson and his staff to get Hunt and Liddy going on whatever they were doing."

Dean said Magruder told him that "one of the reasons he [Magruder] had gone ahead was because he was afraid Mr. Colson was going to take over the operation."

Colson, however, has denied knowing just what Hunt and Liddy were up to. Dean acknowledged that he remained skeptical, citing one "self-serving" memo that Colson sent him in August of 1972 about his contacts with Magruder.

Asked why he thought it "self-serving," Dean replied: "Because Mr. Colson was protesting too much."

Dean has testified that the espionage plan, including the bugging, was discussed at meetings he attended with Mitchell, Magruder and Liddy in January and February of 1972, but the witness said he protested sharply at the last get-together and thought the scheme had been dropped.

The ex-White House counsel acknowledged that Mitchell had seemed "amazed" when Liddy first presented his plan—which then also included kidnapings, muggings, and the use of prostitutes—in January of 1972. Dean also admitted drafting a report in March, 1973—when the cover-up was starting to crumble—which said in part that Mitchell was "very upset" at the February meeting when Liddy came back with a scaled-down proposal.

Dean, however, described that as "an overstatement.'

"I was trying to make everybody look as good as possible and minimize their problems," he said of the report, which he never completed. "I was trying to do as little damage to everybody as I possibly could."

Hoping to challenge that account, Hundley asked Dean whether Mitchell had not told

him at the January meeting with Liddy that the espionage scheme was "out of the question."

Dean replied that the then-Attorney General had said that to him after the meeting was over.

"He said that to me, not to Mr. Liddy," Dean responded.

Once a protege of Mitchell at the Justice Department, Dean acknowledged that he joined Haldeman and Ehrlichman in March of 1973 in a short-lived plan to blunt any investigation of the Watergate cover-up by getting Mitchell to "admit his guilt" for the break-in itself. At the time, Dean also admitted, he had no direct evidence that Mitchell was to blame.

Q. Yet you joined in a plan to have him step forward—to save yourself?

A. No sir. It would have saved everyone in the White House—Mr. Haldeman, Mr. Ehrlichman, myself and others.

Seconds later, however, Hundley put this same question to him and this time Dean gave up the distinction. He admitted that he was interested in saving himself.

Dean said Mitchell did warn him on March 28, 1973, that his testimony could be "very harmful" if he started talking to the Watergate grand jury, but he agreed that Mitchell had said it would be "harmful for President Nixon."

Q. John Mitchell never asked you to bite the bullet for him, that's my point. My point is, did he ever ask you to step forward that he might be saved?"

A. No sir, he didn't.

The acrimony over the Feb. 27 tape was not the only dispute of the day.

At another point, Judge Sirica perplexed the prosecutors by explaining to the jurors how the government, by calling Dean as a witness, was vouching for his credibility and telling the jury, in effect, that "we would like you to believe everything the witness is telling."

Later, with the jury in a waiting room, prosecutor Neal said he didn't mind the judge saying that about Dean. But he indicated there might be some government witnesses whom prosecutors suspect will be "telling 85 per cent truth and 15 per cent not."

Sirica had indicated to the jury that the only witnesses neither side was vouching for would be those that he might call to the stand as "court witnesses."

Ehrlichman's chief lawyer, William S. Frates, who has subpoenaed Mr. Nixon as a defense witness, promptly asked the judge if he might include the former President in that category.

"It could happen," Sirica replied. "In that case, nobody would have to vouch for his credibility."

Associated Press

Former White House adviser John D. Ehrlichman arrives at U.S. District Court for another day of Watergate trial.