

Defendants in Watergate Cover-up Case Are Turning Against One Another as Trial Enters Fifth Week

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WASHINGTON, Oct. 28—The Watergate cover-up trial goes into its fifth week tomorrow in an atmosphere in which each of the five defendants are turning more and more against one another.

The week will begin with testimony by E. Howard Hunt Jr., one of the seven men who pleaded guilty or were convicted in the break-in at the Democratic party's headquarters in the Watergate office and apartment complex on June 17, 1972, and now one of the alleged co-conspirators in the cover-up. At least one other alleged co-conspirator is also expected to testify.

Each witness will be questioned first by the special Watergate prosecution and then by various defense attorneys.

If the pattern of the first few weeks of the trial holds, the questioning by defense attorneys and their objections during the questioning by the prosecution will contain a certain amount of what one defense attorney described last week as "finger-pointing."

The attorney, William S. Frates, was arguing before Judge John J. Sirica, out of the presence of the jury, that he should be able to cross-examine John W. Dean 3d, the former Presidential counsel who is the Government's chief witness, on certain matters even though attorneys for other defendants had touched on the same matters in their cross-examination of Mr. Dean earlier.

"I realize that there is some overlap of necessity," said Mr. Frates, who is representing John D. Ehrlichman, once President Nixon's chief adviser on domestic affairs. Mr. Frates added:

"That is the problem, your honor, when you get us all in here together, and there has been finger-pointing in this courtroom, and there will probably be more of it and I don't want to rely on anyone else."

The other defendants are H. R. Haldeman, the former White House chief of staff; John N. Mitchell, the former Attorney General; Robert C. Marjidian, once an Assistant Attorney General, and Kenneth W. Parkinson, who was hired as an attorney by the Committee for the Re-election of the President immediately after the break-in to handle any subsequent litigation.

All five defendants are charged with a single conspiracy count, alleging that they plotted to obstruct the investi-

gation of the Watergate break-in by interfering with the original prosecution through such means as destruction of evidence and the giving of false testimony to conceal the facts concerning the break-in. All but Mr. Mardian are also charged with actual obstruction.

In some conspiracy cases, especially "political" cases, defendants put on joint defenses. In this case, there are some areas where the defendants have joint interests—for example, discrediting Mr. Dean, who is serving a Federal prison sentence after pleading guilty to charges of conspiracy to obstruct justice in the Watergate cover-up.

But almost from the start, it has been clear that the defendants in the cover-up case would seek to put on separate defenses. Each asked Judge Sirica months ago, in vain, for a separate trial.

The opening statements by attorneys for three of the defendants—Mr. Mitchell and Mr. Haldeman reserving the right to make statements later—and the cross-examination of Mr. Dean by attorneys for four of the defendants—one defendant declining to cross-examine—made it clear that the defense would be not just separate but often antagonistic.

In the opening statements, for example, Jacob A. Stein, Mr. Parkinson's attorney, depicted his client as a totally nonpolitical person who had had no connection with the others until he was hired after the break-in.

Mr. Stein said Mr. Parkinson was in "awe" of Mr. Mitchell, that he went in to meet the former Attorney General like "a ballplayer who wants to meet Babe Ruth or Hank Aarow." So, Mr. Stein said, it was understandable that Mr. Parkinson believed Mr. Mitchell when the former Attorney General said the re-election committee had had nothing to do with the break-in, and that Mr. Parkinson should proceed accordingly.

David G. Bress, one of Mr. Mardian's attorneys, also sought in his opening statement to disassociate his client from the supposed political status of some of the other defendants. He said Mr. Mardian had been set to go home to Arizona in 1972, that he had once turned down an offer for a judgeship on the United States Court of Appeals, and that he stayed to work on the campaign only at the urging of Mr. Mitchell.

Mr. Bress, too, shifted the blame to Mr. Mitchell.

Mr. Frates said in his opening statement that Mr. Ehrlichman had been duped by the former President, and that this was proved by the tape of a conversation on June 23, 1972, between Mr. Nixon and Mr. Haldeman.

The pattern became clearer

during Mr. Dean's eight days on the witness stand, especially during the cross-examination conducted by attorneys for all the defendants except Mr. Parkinson.

William G. Hundley, representing Mr. Mitchell, elicited from Mr. Dean testimony that the former Attorney General had once warned Mr. Dean that, if he went to work at the White House, he might get "eaten alive" by some of the Nixon aides there. Mr. Dean also testified that Mr. Mitchell, in February of 1973, had contended that the problem of getting money for the defendants in the Watergate break-in case was a problem for the White House and not for Mr. Mitchell.

John J. Wilson, one of Mr.

Haldeman's attorneys, sought in his cross-examination to shift the blame to Mr. Mitchell, drawing from Mr. Dean the testimony that it was the former Attorney General, as well as Mr. Dean and Fred C. LaRue, another campaign committee official, who came up with the idea of using some of the \$330,000 cash fund controlled by Mr. Haldeman to pay off the seven defendants in the break-in case.

Likewise, Mr. Frates sought to focus responsibility on Mr. Mitchell, questioning Mr. Dean repeatedly about the meetings in Mr. Mitchell's office in the winter of 1972, when plans

were first discussed for the political intelligence activities that allegedly led to the Watergate break-in.

On occasion, attorneys for one defendant objected to questions by attorneys for another defendant. Mr. Hundley, for example, repeated his request for a separate trial for Mr. Mitchell after Mr. Frates questioned Mr. Dean.

"I think it is now crystal clear that the defenses here are so antagonistic that we are faced with the situation, as we were in the past cross-examination, where we have two prosecutors," Mr. Hundley said.

Various defense attorneys have expressed concern about

the effect that some of their questions or other acts may have on the other defendants. However, they feel they have little choice, under the circumstances.

The prosecution and Judge Sirica have also expressed some concern about the problem. Last week, Mr. Frates wanted to have the June 23 tape played to the jury. James F. Neal, who is in charge of the prosecution, said the Government also wanted the tape played, but only after the proper "foundation" had been prepared.

"I have an obligation that Mr. Frates doesn't have," Mr. Neal said. "He has an obliga-

tion to represent his client to the best of his interest. I have the obligation to do my best that every defendant in this cause gets a fair trial."

Judge Sirica expressed a similar sentiment. He asked for comments from the other lawyers; then, after an objection by Mr. Wilson, whose client was mentioned on the tape, it was agreed that the tape need not be played at that point.

The judge, however, has consistently refused to grant separate trials to any of the five defendants. Last July, when he denied the first set of requests for severance, Judge Sirica said he could "order the proper re-

lief" should "good cause for severance arise at any time during the trial. Last week, he made it clear he still did not think "good cause" had been shown.

Mr. Hundley had just made his request for a severance on the basis of Mr. Frates's questioning; Mr. Frates had joined with a request of his own for severance, saying, "We are thrown into an impossible situation that none of us necessarily like to be in, in utilizing tactics for bringing out the facets of the other defendants."

Judge Sirica replied: "There are many, many cases in the law books where people—10 or 15—are charged with a con-

spiracy. One says, "You did it." The other says, "You did it," and so forth. And I don't think this is the type of case to sever, frankly."

"I can't see that we should try five different cases," he added.

For its part, the prosecution wants the case tried as one

sace, too. It has consistently opposed motions for separate trials—the one exception being the severance given to Gordon C. Strachan, a former aide to Mr. Haldeman. Mr. Strachan was originally indicted in the case, but his case was severed after various legal problems developed regarding him. His case is still pending.