

Lawyers' Squabbles at Judge's Bench Enliven Cover-Up Trial

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WASHINGTON, Nov. 10—Richard Ben-Veniste, a 31-year-old assistant special prosecutor, was arguing a point of law at the bench before Judge John J. Sirica one day last week at the Watergate cover-up trial.

John J. Wilson, the 73-year-old chief defense counsel for H. R. Haldeman, the former White House chief of staff, interrupted.

"Why do you want to have the judge run the risk of error asked."

"Mr. Wilson, that is just bogus of you saying that," Mr. Ben-Veniste replied.

"Let me answer this youngster, your honor," Mr. Wilson said, "you tell me what is bogus."

"Son," he continued, "I have tried more cases in my life than you are ever going to try. Don't tell me what is bogus. I could start criticizing you until doomsday."

Squabbles between attorneys sometimes friendly and sometimes not, have become familiar fare at the trial. After six weeks, the patterns are clear.

Mr. Wilson lectures the young assistant prosecutors as if they were clumsy children, telling Mr. Ben-Veniste, "Sit down until I get through," or Jill Wine Volner, also 31, "Why do you shake your head, Mrs. Volner? I'm correct."

Feels Like Alice

James F. Neal, the chief prosecutor, rises, shakes his head and says he feels "like Alice in Wonderland."

William S. Frates, chief defense counsel for John D. Ehrlichman, the former chief White House adviser on domestic matters, stands and, with a similarly exaggerated expression of outraged innocence, asks how his "esteemed colleague" can say such a thing.

Mr. Ben-Veniste points out that the defense lawyers have not cited any legal precedents for their position, and usually adds, "I suggest there is a pretty good reason for that."

Every afternoon when the jury is sent back to its motel, the lawyers for the prosecution and the five defendants usually engage in bickering, joking and, often, yelling.

One favorite late-afternoon topic is who the next day's prosecution witness is to be. The defense lawyers demand to know who the next several witnesses will be. The prosecution says it is enough for them to know who the next one will be.

"It is just part of the games we play," Mr. Frates said during one such squabble.

Judge Sirica tries to cut the lawyers off politely, "telling them 'Let's keep away from personal comments' or 'All right, let's proceed.' Sometimes he loses his temper, telling the lawyers, as he did last Friday, that he will not 'tolerate' them trying to take 'control' of the courtroom from him."

Have Their Reasons

But the arguments continue because the lawyers have their reasons.

For example, Thomas C. Green, representing former Assistant Attorney General Robert C. Mardian, was cross-examining Powell Moore, a public information officer in 1972 of the Committee for the Re-election of the President. In an effort to discredit Mr. Moore, Mr. Green was reading a transcript of Mr. Moore's earlier and somewhat different testimony before the grand jury.

"Your honor," Mr. Neal interrupted, "I sort of feel this is like a midnight rerun movie I hear."

Mr. Neal's objection had to be discussed—by Judge Sirica, by Mr. Green and by Mr. Neal. Mr. Green was eventually allowed to proceed. By that time, the continuity had been broken and, perhaps, the jurors' concentration as well.

It also helps, the lawyers apparently think, if a defendant can be made to appear to the jury to be unfairly prejudiced by something the prosecution has done; hence, the angry or hurt expressions on the faces of defense lawyers as they rise to object.

Persuading Judge

When the lawyers argue out of the jury's presence the purpose is to persuade the judge to rule a certain way on an objection or other point of law.

On Friday, Mr. Frates complained to Judge Sirica that the prosecutors were talking among themselves, loud enough for the jury to hear, while defense lawyers cross-examined witnesses.

"Again we have what I consider highly improper conduct on the part of the prosecutor and I am not nitpicking," Mr. Frates said, in a conference at the judge's bench.

Mr. Ben-Veniste counterattacked.

"I think," he said, "Mr. Frates is trying to get on me in this trial."

"Mr. Ben-Veniste, I'm not trying to get on you, I'm not trying to be personal about it," Mr. Frates replied.

Mr. Ben-Veniste continued: "We had an example of that yesterday when out of the blue Mr. [George T.] Frampton, [an assistant prosecutor] made an argument and Mr. Frates said that is a trick Frampton must have learned from Mr. Ben-Veniste. I don't mind if Mr. Frates wants to get on me, I have been gotten on by lawyers

in cases before and it doesn't bother me, but it will probably hurt Mr. Frates's case if he wants."

The argument ended with Judge Sirica saying, "Let's try to watch this."

Another reason for the disputes is to try to distract the other lawyer from a point. Some of the arguing is good-natured and often funny. There are reasons for this, too. If the lawyer seems a relaxed, friendly person, the jury might identify those qualities with the lawyer's case.

William G. Hundley, the chief

counsel for former Attorney General John N. Mitchell, smiles benevolently at whomever he sees in the courtroom, questions prosecution witnesses politely and never shouts.

On one occasion, Mr. Frates tried to get the testimony of three witnesses postponed because he had not been forewarned that they were to appear. Mr. Neal argued that the witnesses should be called because he had told Mr. Hundley about them and Mr. Hundley, as liaison counsel, was supposed to tell the other defense lawyers.

Mr. Hundley said he'd be happy to resign as liaison.

"I sure would like to play out my option," he said.

With Mr. Hundley's help, Mr. Frates eventually won his point.

When court ends, so does most of the bickering. One lawyer remarked about an opponent, "The problem with him is, he's an alley fighter."

The lawyer was asked whether he wasn't one, too.

"Of course," he said. He laughed and added, "But not as bad as him. He's terrible." He laughed again.