

Watergate Jury Seeks Truth, But It Gets Only Approximation

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The jury at the Watergate cover-up trial has now heard 24 witnesses and 11 tape recordings in five weeks of testimony. It has heard squabbles among the attorneys. And it has heard Judge John J. Sirica say that the point of the trial is to get "the truth" and "the complete picture."

But by the time the trial ends in six to eight weeks, the jury will have heard what James F. Neal, the chief prosecutor, described last Friday as "merely an approximation of the truth."

Witnesses may lie so that absolute truth is difficult, if not impossible to ascertain.

There are also such factors as the role of the jury, prosecutorial discretion, constitutional safeguards and the basic structure of the American legal process—the so-called "adversary system," in which each side presents its case pretty much as it sees fit, with only limited direction from the presiding judge.

Distaste for Statute

Ten days ago, the judge and the chief prosecutor expressed distaste for the statute on which two of the counts in the indictment are based—the counts that charge John D. Ehrlichman, once Richard M. Nixon's chief domestic affairs adviser, and John N. Mitchell, the former Attorney General, with making false statements to the Federal Bureau of Investigation.

That law is, as Judge Sirica put it, "not a very popular statute," because it does not require the statements to have been made under oath. It could thus subject someone to a five-year prison term for remarks made in a casual conversation.

The jury, however, did not hear the discussion.

The jury's job is to judge the facts, not the law. Its decision must be based on the law as explained by the judge, not on what it thinks the law should be.

Judge Sirica has the option of dismissing the two counts in question or of directing a verdict of acquittal on them. But if he sends them to the jury, the jury is supposed to decide them only on the basis of whether the statements were false.

Out of Hearing

Much of what goes on at the trial occurs out of the presence of the jury.

The jury does not yet know, for example, that Judge Sirica has appointed three doctors to examine former President Nixon and his medical records to determine whether he is physically able to provide testimony for the trial.

Mr. Nixon is under subpoena

by the prosecution and by Mr. Ehrlichman, who is basing his case on his alleged "deception" by Mr. Nixon. William S. Frates, Mr. Ehrlichman's chief counsel, raised with the jury in his opening statement the possibility that Mr. Nixon would testify.

The issue of Mr. Nixon's testimony is thus before the jury, and if he is unable to testify because of his health, the judge will probably have to give the jury some explanation.

But the appointment of the doctors is collateral to that. The jury is not supposed to consider collateral matters.

Another major development at the trial that has been kept from the jury is the prosecution's disclosure that one of its supposed witnesses, William O. Bittman, had lied about and withheld a crucial memorandum prepared by one of the seven original Watergate defendants, E. Howard Hunt Jr. The memorandum describes "commitments" of money and pardons that were allegedly made to the defendants in return for their silence.

But Not to Jury

Mr. Neal made the disclosure in court on Nov. 4; Richard Ben-Veniste, an assistant special prosecutor, then read the Hunt memorandum to the judge, defendants, lawyers and spectators, but not to the jury.

Judge Sirica has not yet decided whether the memorandum can be disclosed to the jury. The Constitution's guarantee of a fair trial has led to rules of evidence setting up standards of what is admissible and what is not. Judge Sirica has said he wants to see whether the prosecution can meet those standards.

Whether Mr. Bittman will testify is another pending issue.

Mr. Frates raised the question last Friday, saying he thought Mr. Bittman should be called. Mr. Neal said he no longer wanted to call Mr. Bittman. Jacob A. Stein, attorney for Kenneth Wells Parkinson, a defendant who is a former attorney for the Nixon re-election campaign, said he did not want to call Mr. Bittman either. The prosecution contended that Mr. Bittman relayed the Hunt memorandum to Mr. Parkinson.

"We have no desire to conceal anything, your honor, and I do not want to make a long speech about our desire for all the evidence to come out," Mr. Stein said. "But we can't use as a guide in defending this case an unlimited exploration of the truth."

Mr. Frates persisted that Mr. Bittman should be called.

Mr. Neal replied, "We now get kind of down to the heart of the adversary system."