

Mitchell Denies Cover-up

Defense Opens By Cautioning Jury on Tapes

By George Lardner Jr.
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Former Attorney General John N. Mitchell kept his silence in the Watergate scandal only out of loyalty to President Nixon—which was “not reciprocated,” his lawyers said yesterday.

Opening the defense at the Watergate cover-up trial here, Mitchell's chief counsel, William G. Hundley, maintained that Mitchell never approved the Watergate bugging at Democratic National Committee headquarters here and had nothing to hide himself.

The defense lawyer contended instead that the real blame for the illicit political espionage lay with men such as former White House special counsel Charles W. Colson and Nixon campaign deputy Jeb Stuart Magruder, “the White House man at the Committee to Re-Elect the President.”

The 61-year-old Mitchell kept quiet when he realized this, Hundley said, but the only thanks he got was an attempt by White House officials to make him “the Big Enchilada” in the scandal in a final effort to make it disappear.

The opening statement on Mitchell's behalf came shortly after the government rested its case against Mitchell and four other defendants with chief trial prosecutor James F. Neal declaring that “a conspiracy has been established beyond any doubt.”

U.S. District Court Judge John J. Sirica agreed and ordered the defense lawyers to start putting on their case.

Sirica, however, did dismiss two of the charges in the cover-up indictment, both involving allegations that Mitchell and former White House aide John D. Ehrlichman had lied to the FBI.

Expressing his distaste for the statute that threatens a five-year prison term for unsworn false statements to FBI agents, the judge made clear that he was dismissing the charges strictly “as a matter of law.”

As a result, Watergate prosecutors will still be free to contend that Mitchell and Ehrlichman did in fact lie to the FBI in July of 1972 in furtherance of the cover-up conspiracy itself.

Speaking up for Mitchell, who is expected to take the

witness stand today, Hundley urged the jurors to keep an open mind “until all the evidence is in.” He was especially critical of the presumptions of Mitchell's guilt that were voiced so often by Nixon and his White House aides on the former President's Watergate tapes.

“Don't you judge John Mitchell the way you heard him judged on those White House tapes by that White House jury,” the defense lawyer exhorted.

One of the prosecution's key witnesses, Magruder has said that Mitchell approved “Project Gemstone,” including plans for the Watergate bugging, at a March 30, 1972, meeting with Magruder and Nixon campaign strategist Frederick C. Laue.

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Hundley, however, said Mitchell Disapproved earlier schemes for illegal buggings and break-ins, such as the so-called “Houston plan” in 1970 and “Operation Sandwedge,” another abortive round of political espionage that was proposed in 1971.

Similarly, Hundley maintained that Mitchell rejected “Project Gemstone” when Watergate spy G. Gordon Liddy first presented it to him at meetings in January and February in 1972 in the presence of Magruder and White House counsel John W. Dean III.

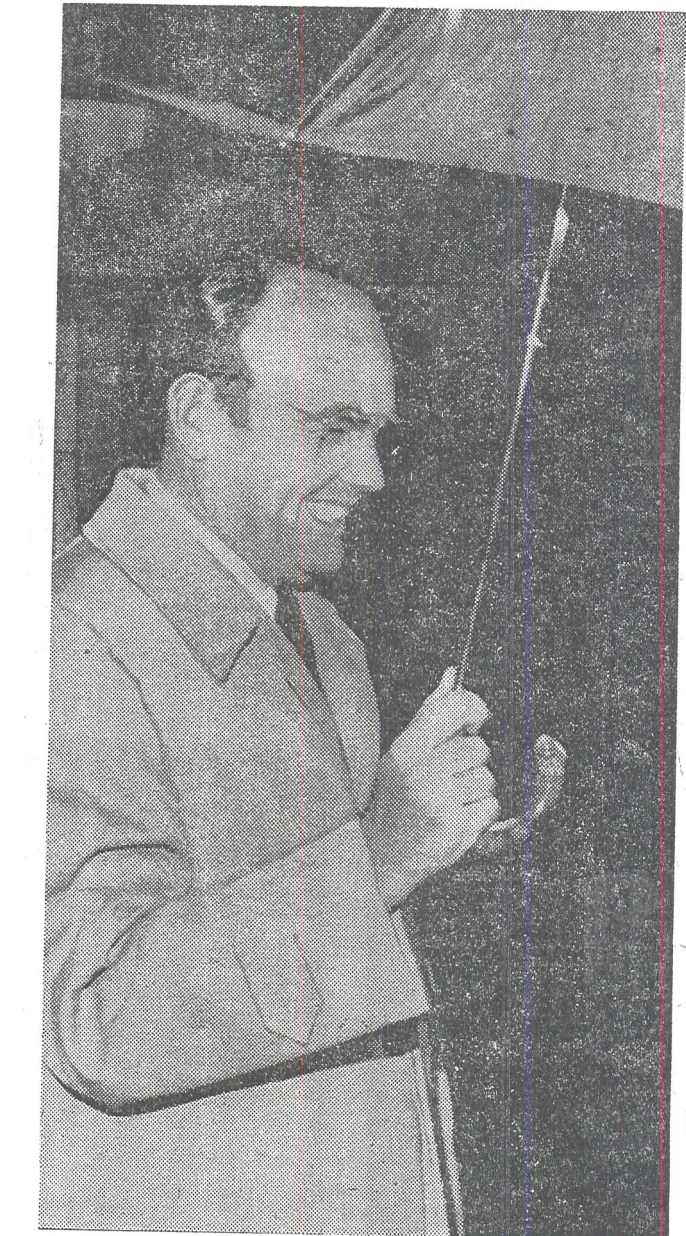
“Mr. Mitchell flat out rejected those proposals with such expletives as “Take that stuff out of here and burn it,” the jurors were told.

Turning to the crucial meeting on Key Biscayne, the defense lawyer insisted that the third time, even telling Mitchell turned it down for Magruder in final exasperation, “not again.”

Hundley contended that Magruder then secretly authorized the spy work without telling Nixon campaign director Mitchell about it. The defense lawyer charged that Magruder had already approved the expenditure of several thousand dollars on Project Gemstone before the Key Biscayne meeting ever took place.

“Magruder was the White House man at the Committee to Re-Elect the President,” Hundley charged. “He was under tremendous pressure from Charles Colson and other White House sources to have the plan approved. He could not and would not take another turnaround from John Mitchell.”

Prosecution witnesses have suggested that Magruder could never have nailed down a \$250,000 budget for the spy work without Mitchell's consent. But Hundley contended that Magruder was able to do



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Watergate defendant John D. Ehrlichman leaves court.

just that because of “the unique position” he occupied at the re-election committee.

Hundley flatly denied that Mitchell approved the destruction of documents in the wake of the Watergate arrests or that he told his aides to try to get the Watergate burglars out of jail, as the government has charged.

Mitchell, the lawyer acknowledged, was told four days after the June 17, 1972, arrests of Liddy's involvement not only in the break-in but other clandestine work for the White House such as the 1971 Ellsberg break-in.

But the former Attorney

General, Hundley insisted, remained skeptical until the fall of 1972 when Dean began filling him in with more detail.

“Unquestionably at that time, John Mitchell formed a strong belief that at least Colson and Magruder were involved and that other activities had taken place at the White House which would seriously jeopardize Nixon's re-election hopes,” Hundley declared.

But he said Mitchell still felt certain that the President knew nothing of these “reprehensible” undertakings.

As a result, Hundley said, Mitchell, “out of a complete

sense of loyalty and belief in his President and former law partner, made a conscious decision not to volunteer his very strong suspicions . . . to other law-enforcement agencies, Nixon or anyone else."

In addition to the conspiracy and obstruction of justice charges, Mitchell is standing trial on two counts of lying to the Watergate grand jury and one count of perjury before the Senate Watergate committee. He told the Watergate grand jury, for example, that he had "no recollection" of either LaRue or Nixon campaign coordinator Robert C. Mardian telling him shortly after the break-in that "Liddy had confessed" to them.

Hundley insisted however, that Mitchell did not lie. All he was guilty of, the lawyer suggested, was a decision that he would not run to the police" and volunteer the information that had come to him.

"His position was that if there were problems, they were other people's problems, not his," the lawyer said.

Similarly, Hundley contended that Mitchell steadily spurned the entreaties of Dean and others to help out in raising funds for the original Watergate defendants.

"If you think John Mitchell had any control or power over this money after he resigned from CREEP," the lawyer added, "you should consider how certain people started to set him up."

The only time Mitchell was consulted on a disbursement for the Watergate burglars before it was made, Hundley asserted, was on March 21, 1973, when LaRue called him in New York and told him E. Howard Hunt Jr. wanted \$75,000.

According to LaRue's own testimony, the defense lawyer pointed out, Mitchell simply asked what the money was for and, on being told it was for attorney's fees, advised LaRue simply: "If I were you, I'd pay it."

Nixon, Dean and former White House chief of staff, H.R. (Bob) Haldeman discussed Hunt's "blackmail" demand around the same time that day. According to a tape of that conversation, the President approved the payoff, saying that "We have to keep the cap on the bottle that much . . ."

But Mitchell, the defense

lawyer said, knew nothing of this or of Ehrlichman's subsequent suggestion at a White House meeting that the scandal might die down if a "Big Enchilada" like Mitchell would come forward and confess.

"Considering the role they planned for the 'Big Enchilada' at the time, they kept John Mitchell totally in the dark," Hundley protested. Even after Mitchell refused "to confess to a crime he didn't commit," the lawyer said of a meeting with Ehrlichman on April 14, 1973, Mitchell was still concerned about Nixon but not himself.

"The evidence," Hundley said, "will show clearly that this loyalty was not reciprocated."

The Mitchell defense statement contrasted sharply with prosecutor Neal's stinging cap-

sule summary earlier in the day of the Government's evidence over the last eight weeks.

Arguing against the flurry of defense motions for verdicts of acquittal, Neal told the court after the jurors had been excused from the room that a solid case had been made against all five defendants: Mitchell, Haldeman, Ehrlichman, Mardian and Nixon re-election committee lawyer Kenneth Wells Parkinson.

Mitchell, the prosecutor charged, had every reason to take part in the cover-up since he "approved the Liddy plan" and was told a few days after the Watergate break-in of other "White House horrors" ranging from the Ellsberg burglary to a proposed firebombing of the Brookings Institution to spurious State Depart-

ment cables that Watergate spy Howard Hunt had forged in an effort to blacken the image of the Kennedy administration.

In short order after that, Neal said, Mitchell was told by Dean that the FBI was hot on the trail of the telltale checks which could link the Watergate bugging to the Nixon campaign. The former Attorney General, the jurors were told, then discussed the use of CIA funds for the Watergate burglars.

According to still other testimony, the prosecutor said, Mitchell told Magruder to "have a good fire" with his Gemstone files and later approved a veiled offer of executive clemency to Watergate burglar James W. McCord Jr.

Turning to Haldeman, Neal said he was involved in misuse of the CIA to block the Water-

gate investigation and in the flow of hush money to the Watergate burglars. The prosecutor said the "clincher" on Haldeman's awareness of the hush money payments was a taped White House meeting at which Ehrlichman told Mr. Nixon — with Haldeman present — that the money had been intended to keep the original defendants "on the reservation."

Incriminating evidence against Ehrlichman, Neal said, included his telling Dean to "deep six" into the Potomac a briefcase found in Hunt's White House safe; Ehrlichman's telling Colson to give Hunt "a general assurance" of executive clemency, and Ehrlichman's instructions to Dean to push the CIA harder for bail money for the Watergate defendants.