

# Pardoning Stressed At Trial

12/24/74  
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Former White House aide John D. Ehrlichman's lawyer yesterday raised the specter of a missing "orchestra leader" at the Watergate cover-up trial: former President Nixon himself.

In a final summation to the jurors at the prolonged trial, Ehrlichman's chief counsel, William S. Frates, suggested strongly that there was a basic unfairness to continued prosecution of this scandal after Nixon had been pardoned.

Speaking out in a booming voice, Frates maintained that it was Nixon—and not any of the five defendants at the cover-up trial—who had "dragged down" men like former White House Counsel John W. Dean III without being called to account for it.

Meanwhile, the defense lawyer observed, Watergate prosecutors were still pressing charges against men as far down the ladder as Nixon re-election committee aides Robert C. Mardian and Kenneth Wells Parkinson, men whom the prosecutors themselves called the "cymbal players" of the alleged conspiracy—people who had a small role in an orchestrated effort.

"Ladies and gentlemen, we're missing one person here, the orchestra leader," Frates declared. "That's who we're missing in this case."

After the jurors had been dismissed yesterday for a two-day Christmas holiday, U.S. District Court Judge John J.

See TRIAL, A4, Col. 1

# Nixon Pardon Is Cited By Watergate Defense

TRIAL, From A1

Sirica told Frates he found the lawyer's theme troublesome.

"I don't think the fact that he is not here makes any difference," the judge said of Nixon. "Assume the President says I want you to do this, I want you to cover up. I want you to stonewall it, that doesn't make these people innocent."

"They don't have to do what he tells them . . . if they went into it with their eyes open," Sirica added. "They're over 21. Some of them are lawyers . . . If they did it knowingly, it doesn't make any difference if the President was pardoned."

At one point, the judge seemed on the verge of voicing his own reservations about the pardon, or at least the timing of it, saying, "It's too bad—well, I better not say what I'm thinking." Sirica emphasized, however, that he wanted a fuller explanation from Frates Thursday morning—before the jury arguments are resumed—of how far he plans to pursue the issue.

Some of the jurors have reportedly indicated in secret pre-trial questioning that they thought it unfair to prosecute

Nixon's former top aides and campaign advisers in light of the pardon that the ex-President got.

Hammering away at the musical analogy throughout the day, the attorneys for former Attorney General John N. Mitchell as well as for Ehrlichman protested that their clients weren't even members of the cover-up band.

Mitchell's chief defense counsel, William G. Hundley, charged that former White House special counsel Charles W. Colson actually ramrodded the Watergate break-in and that the Nixon White House then tried to cover up the secret by making Mitchell "the fall guy."

"While the maestro of the White House band may have been orchestrating some pretty strange tunes down there," Hundley said, "it is clear that John Mitchell was not one of the boys in the band."

President Nixon and his top aides always suspected Colson themselves, Hundley declared, but were never willing to blame him, because that would have demolished their repeated contentions that no one in the White House was involved.

As a result, Hundley contended, they eventually turned on Mitchell—whose only sin was unquestioning, misplaced loyalty to Nixon himself.

Now in its 13th week, the trial opened yesterday with former White House chief of staff H.R. (Bob) Haldeman's lawyers winding up their presentation with a concerted attack on John Dean, the "one main accuser" against Haldeman.

"Watergate was one of the most gigantic, stupid pieces of idiot action this country has ever seen," Haldeman attorney Frank H. Strickler told

the jurors. But he said there was no evidence Haldeman was aware of the plan to bug Democratic National Committee headquarters here during the 1972 campaign and, Strickler submitted, no proof that Haldeman had any corrupt purpose or evil intent in the subsequent episodes that resulted in his indictment.

The defense lawyer protested that the steady stream of prosecution testimony and White House tapes during long trial might make it appear that Haldeman was almost exclusively preoccupied with the Watergate case since the arrest at Democratic headquarters here on June 17, 1972.

Actually, Strickler declared, "in this critical time, Watergate matters were no more than a pimple on the mound of his other duties"—during a crucial period that included the settlement of the Vietnam war and Nixon's historic trip to China.

Singling out a \$350,000 White House cash fund that was eventually used to provide some of the final payments to the original Watergate defendants, Strickler contended that Haldeman had little to do with it, but approved its transfer back to officials at the Committee for the Re-election of the President.

By contrast, the defense attorney said, Dean "did pilfer" a portion of the money for his honeymoon, a fact that he did not disclose until 1973 when he began talking to Watergate investigators.

Blaming the Watergate spy work on a "poor choice of personnel" such as the "completely irresponsible" G. Gordon Liddy, Strickler said in harsh, nasal tones that the prosecution had tried to blame Haldeman for the action of underlings that he knew nothing about.