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WATERGATE

Arguments on the Eve of a Verdict

At 2:47 p.m. last Thursday, Judge John J. Sirica adjusted his black robe, settled himself in his red leather chair and ordered: "Call the jury." With that began the penultimate public act of the Watergate trial. In ten weeks, the jury had heard complicated and often contradictory testimony from more than 80 witnesses, the playing of 34 White House tapes and the presentation of more than 200 documents. Now it was time for the lawyers' final arguments before Sirica turns the case over to the jury, probably on the day after Christmas.

First up was Chief Prosecutor James F. Neal, who put on a virtuoso performance, weaving together the myriad strands of evidence into a cohesive case that the five former political associates of Richard Nixon conspired to cover up the facts of the Watergate bugging and burglary. His voice rising and falling and his arms chopping the air for emphasis, Neal described an illegal cabal "on a massive scale by the highest officials of the land," involving perjury and the payment of nearly $500,000 to buy the silence of the Watergate burglars. He concluded: "One red cent paid to keep somebody from talking, whether it went for attorneys' fees or for a haircut —that's obstruction of justice."

Times of Trouble. The apparent impact of Neal's summation so distressed one defense attorney that he asked a reporter only half facetiously: "Could you hear the prison doors clanking shut?" Nonetheless, the defense lawyer, John J. Wilson, was no less impassioned in attacking the Government's chief witnesses, Jeb Stuart Magruder and John Dean. Wilson described Magruder as a "professional liar" and Dean as a "mastermind of chicanery, of monkey business, of flouting the law, of having no conscience." The defense attorney dismissed the White House tapes as having recorded nothing worse than the sort of talk that takes place in any family at times of "trouble . . . or tragedy." Said he: "I'm telling you about normal human conduct that is not necessarily designed criminality."

The case for the defense was completed earlier in the week by testimony from Defendants Robert C. Mardian, 51, and Kenneth W. Parkinson, 47. Both emphatically denied that as attorneys for the Committee for the Re-Election of the President in 1972, they had participated in the cover-up. Compared with the other three accused, John Mitchell, H.R. Haldeman and John Ehrlichman, Mardian and Parkinson have been relatively minor figures in the case, though Neal described them as "a necessary part of the orchestration."

On cross-examination, the dour Mardian came on strong. He tried to overwhelm Assistant Special Prosecutor Jill Wine Volner by sneering contemptuously at her questions. To one, he replied: "Go ahead and make a speech, Mrs. Volner." When she asked a follow-up question, he shot back: "Do you want me to say yes-yes?" Ignoring rebukes from Judge Sirica, Mardian frequently turned to the jury to deliver his own version of the evidence.

Despite the gibes that occasionally

seemed to rattle her, Volner poked several holes in Mardian's defense. For example, he denied that fear of self-incrimination had caused him to leave a July 6, 1972 meeting of C.R.P. honchos who were discussing Burglar E. Howard Hunt's demand for $25,000. Insisted Mardian: "I left because I didn't want to be further involved in the representation of the committee vis-à-vis these people." But Volner produced a transcript of Mardian's 1973 grand jury testimony in which he said that he had ducked out of the meeting because it "might incriminate" him.

Similarly, Volner caught the more restrained Parkinson in some contradictions with his grand jury testimony. Parkinson claimed that his only role had been as an innocent and remarkably gullible go-between, who had been kept in ignorance of the facts of Watergate. He admitted that Magruder had told him in July 1972 of the committee's involvement in the break-in. But Parkinson said that Mardian and John Mitchell, who then headed the Nixon campaign, had persuaded him that Magruder was lying. Parkinson also conceded that he had received from Hunt's

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attorney, William Bittman, a memo listing the sums of money that the burglars needed to pay for their legal defense. But Parkinson claimed that he had not read the memo, though he had made a Xerox copy, shown the memo to Dean and finally given it to another official.

Weaknesses in the cases of all the defendants seemed to leave them with only two avenues of hope—that their lawyers' eloquence in closing arguments might persuade a few jurors to hold out against conviction, or that errors by Sirica might cause a conviction to be reversed on appeal. This latter possibility has weighed heavily on the minds of all participants and, in fact, has been the subject of some of the banter among the judge and lawyers that has been one of the distinctive features of the trial.

In the Bag. One day, after the jury had left the room, Wilson rose to make a constitutional point to add to others in his "error bag [which had] burst a seam already." The request prompted Neal to share a memory from his boyhood: "There is an old expression in Tennessee, a term, fertie bag, and it is two pounds of manure in a one-pound bag. And I would like to believe rather than an error bag, Mr. Wilson is carrying around a fertie bag."

Early on, legal experts criticized Sirica for some of his gratuitous remarks in the courtroom. The judge became more cautious, though he has never been overly concerned about what might be in Wilson's mythical bag. Near at hand throughout the trial has been a copy of the Supreme Court's 1953 opinion on what constitutes a fair trial. During one exchange at the bench, Sirica offered to read it to the lawyers, then gave them an impromptu paraphrase: "Harmless error[s] ... are bound to creep into a case like this; so there is no such thing as a perfect trial."