

WATERGATE

The Band That Lost the Beat

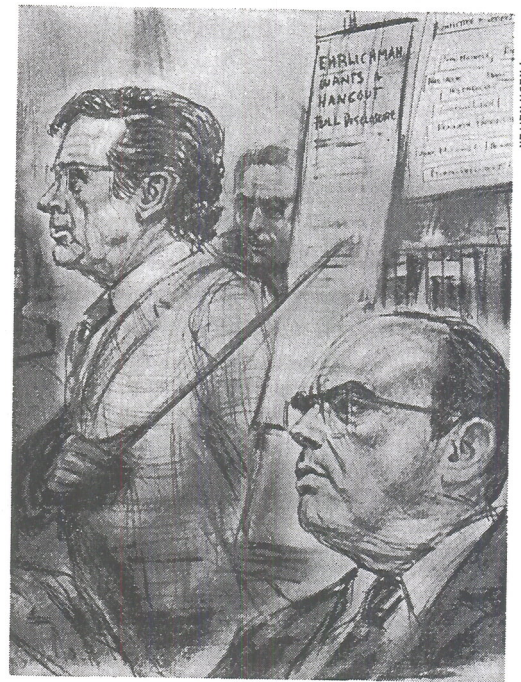
"Sometimes people are inclined to go along with the crowd. Please . . . you decide, and if it's your firm conviction, stick with it. Stick with it."

Addressing the Watergate jury last week, Defense Lawyer William Frates virtually conceded that the best hope for his client, John Ehrlichman, was that one or two jurors might hold out for acquittal and thereby produce a hung jury. As the arguments finally ended on the trial's 61st day and the panel awaited only Federal Judge John J. Sirica's instructions, the Government had drawn its case tightly around each of the five defendants. So effective had been the final summation by Chief Prosecutor James Neal that Frates warned the jury against being swayed "by the silver tongue of a great lawyer."

Defense attorneys in their final arguments picked up on Neal's vivid description of the cover-up conspiracy as being akin to a symphony orchestra in which each player, no matter how minor, was essential to the complete performance. Frates protested, "We're missing one person here—the orchestra leader." That implied another desperate defense hope: because former President Richard Nixon had been pardoned by Gerald Ford and had then been judged too ill to testify, the jury might find it unfair to convict Nixon's men.

The good-humored William Hundley, summing up for John Mitchell, conceded that "the maestro of the White House may have been orchestrating some pretty strange tunes." But Hundley contended that "it is obvious that John Mitchell was not one of the boys in that band." Though Neal had referred to Defendants Robert Mardian and Kenneth Parkinson as "cymbals" in the

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FREDA REITER

FRATES ARGUING EHRlichman's INNOCENCE
The case of the missing maestro.

ensemble, Mardian's attorney, Thomas Green, insisted that his client "never sat in the orchestra—he sat down in the seats . . . finally got up and walked out." H.R. Haldeman, who might have been described as first violin, was not assigned a rhetorical instrument.

Although the case was complex and included conflicting testimony, the final arguments underscored the key points in dispute. The patient jurors had to face up to major questions about each defendant.

JOHN MITCHELL. There was no dispute that Mitchell had sat through three meetings, two of them as Attorney General, at which bugging plans were discussed. Thus he had a motive to join the cover-up. But did he approve the

savesdropping at Democratic National Committee headquarters during the third meeting? Did he suggest that some of the files on the bungled operation be burned? Did he lie to the grand jury? Mitchell admitted approving one payment to the original Watergate burglary defendants, but did he know that its purpose was to silence them? The Government's evidence for affirmative answers to all those questions was strong. But was Mitchell's intent always to protect the President (if the President had asked him, Hundley suggested, Mitchell "probably would have confessed to murder"), and if so, would that make his actions seem excusable to the jury?

H.R. HALDEMAN. The White House tapes are devastating to Haldeman. They tell that he talked with Nixon about getting the CIA to divert the FBI from its investigation of money found on the arrested Watergate burglars. Haldeman agreed that Nixon Lawyer Herbert Kalmbach should raise money for the defendants, and Haldeman knew that a fund he controlled, from which some such payments were made, could incriminate him. Nonetheless, Haldeman sometimes attempted at the trial to place different, more innocent interpretations on his recorded words or insisted that there must be another explanation that he could not supply. Was he credible enough to raise doubts of his guilt in the jurors' minds?

JOHN EHRLICHMAN. Had Ehrlichman really repeatedly sought to "get the truth out"? Had he been so naive as never to realize just what Nixon was up to in the cover-up? Or had Ehrlichman passed up dozens of opportunities to tell investigators what he knew about Watergate? Had he told Kalmbach that it was proper to pay off the defendants, as Kalmbach had claimed in his memorable "I'm looking you in the eye, John,"

testimony? Did John Dean have any motive to lie when he told his aide, Fred Fielding, that Ehrlichman had asked him to "deep six" some of Burglar E. Howard Hunt's incriminating electronic equipment? When Ehrlichman sat through Haldeman's meeting with CIA officials, could he possibly have failed to realize its purpose, or was he, as Neal argued, "a man who knew what was going on 24 hours a day"?

ROBERT MARDIAN. Had he telephoned Wiretapper G. Gordon Liddy and told him to see if then Attorney General Richard Kleindienst could get the five arrested burglars out of jail? Briefed by Liddy shortly after the Watergate bugging, did Mardian have a legal right to withhold the information from investigators on the basis of attorney-client privilege? Had he suggested that the CIA provide bail for the arrested men—even after being told by Liddy that the break-in was not a CIA operation?

KENNETH PARKINSON. When Jeb Stuart Magruder told Parkinson the true story of the origins of the Watergate bugging, did Parkinson destroy his notes on their conversation because he simply did not believe Magruder or because he wanted to conceal the truth? Why did Parkinson sit silently through Magruder's FBI interview when Magruder told an entirely different story? Did Parkinson get a memo from Burglar E. Howard Hunt outlining the demands of the arrested men, as he admitted, make a copy—and yet never read it?

A common theme in the defense was that these men acted either out of ignorance or to execute Nixon's orders—or both. But Neal in rebuttal insisted that democracy rests on the premise that "high officials will be fair, honorable and lawful." Whatever the reason, "They may not assault the temples of justice."