

# Gagliardi Keeps Firm Control of His Court

By MARCIA CHAMBERS

When the defense in the conspiracy trial of John N. Mitchell and Maurice H. Stans objected to a fleeting remark by a prosecutor a few weeks ago, Federal Judge Lee P. Gagliardi intervened quickly.

"Now look," the 55-year-old jurist said, "I want no reaction. We are here and as much as possible we want a completely sterile courtroom, and we are going to keep it that way."

Judge Gagliardi's remark is unlikely to appear as a footnote to this historic trial, which is expected to go to the jury about midweek. Nevertheless, it did reveal the manner in which he is overseeing the trial.

He has sought to exercise tight control of his courtroom. It may be because he is new to the bench—he was appointed 27 months ago by President Nixon. It may be that in this highly publicized trial he feels under pressure, his actions open to analysis by the legal community across the nation.

Whatever the reason, Judge Gagliardi has emerged as a cautious, firm, fair jurist.

## Allows No Bickering

He will not permit bickering among lawyers. "Please don't argue, please don't comment. No argument, no argument," has become almost a refrain in the courtroom during seven weeks of testimony.

He is quick-tempered in refusing to allow attorneys to argue points of law before the jurors. He also scrutinizes the courtroom for indecorous behavior, and once called an early recess and walked off the bench when he noticed several reporters whispering and laughing about a line of testimony.

Yet he sometimes appears hesitant to admonish lawyers for unusual courtroom behavior.

"He is so often worried about other people's feelings that he is reluctant to take a firm stand," said one lawyer who knows him well.

It was weeks before the judge scolded Peter Fleming Jr., one of Mr. Mitchell's attorneys, for making paper airplanes while



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Judge Lee P. Gagliardi

sitting only three feet from the jury box.

"Put that down," the judge said one day.

He has presided over 32 criminal cases and earned the reputation as a stiff sentencer.

"He's not John Sirica, but he's well on his way," said one prosecutor, citing the imposition by Judge Gagliardi of a 20-year prison term in a narcotics case.

However, he sentenced a 37-year-old lawyer, Martin Roth, to only 21 months in prison for obstruction of justice and false swearing in a Securities and Exchange Commission case. Mr. Roth could have received five years on either count, but this was a first offense.

Some weeks ago, before testimony began, defense attorneys argued for a mistrial because of a statement made by James W. Rayhill, one of the prosecutors, in his opening statement. Judge Gagliardi suspended court and pondered the motion for three days before denying it.

"Inexperience, cowed by the defense," muttered some assistants in the United States At-

torney's office. But courtroom observers think the judge is more sure of himself now.

"He's sitting on the best bench in the country," said one attorney, "and personally I think he's holding his own. He's not a judicial scholar, true. There are others who are smarter, but he has enormous integrity and he is an indefatigable worker."

Judge Gagliardi, a small, wiry man with jet black hair, walks into the courthouse each morning at 8 or 8:30. During the trial he sits in a green leather chair, peering at a witness over his eyeglasses, which frequently slide down his nose. He will often stay in his chambers until 7 P.M. He wears conservative suits, white shirts and dark ties.

Few knew anything about Judge Gagliardi when he received the case last May. That a relatively inexperienced judge might preside over the trial caused some concern among administrators in the United States Attorney's office. The prosecutors had their usual worry: what if a conviction was won only to be later reversed because the judge had made errors?

## Takes His Time

Occasionally the defense in this trial has raised the reversible error argument, so it is hardly surprising that Judge Gagliardi takes his time to rule on an issue.

He was nominated to the bench late in 1971 by Senator James L. Buckley, Conservative-Republican of New York. On a wall in his chambers is his framed certificate of nomination to the bench, signed by Richard Nixon and John Mitchell, then the Attorney General.

One week before Judge Gagliardi's name was pulled out of the drum, some judges urged the creation of a special wheel or drum without the names of the several Nixon-Mitchell appointees to the bench. (For trials in the Federal Court, the names of all judges are placed in a wheel.)

They reasoned that the public might not have confidence in the court's impartiality if a

Nixon-appointed judge presided. Other judges argued against a limited wheel. To set up rules for special cases would undermine the fairness of the selection system, they said. The matter was dropped.

Judge Gagliardi, a Republican, was chief trial counsel in his father's White Plains law firm before nomination to the bench. Law runs in the family. The judge's brother, Joseph F. Gagliardi, is a state Supreme Court justice. The judge is a native of Larchmont, N. Y.

In his courtroom, Judge Gagliardi sometimes becomes impatient, usually when a lawyer stumbles in questioning a witness. He intervenes quickly, and with a few deft questions speeds along the testimony. Sometimes, he is the teacher: "You see, we let these in, Mr. Rayhill, on the grounds of relevance. If there isn't such a conversation, the way to do it—and I don't want to try your case for you—is to ask the witness if this refreshes his recollection." Mr. Rayhill then did just that.

## Jurors Went to Opera

Judge Gagliardi is solicitous of the jurors, who have been sequestered since March 1.

"You have a special night tonight, I know," said the judge recently at the end of a court session. That night the jurors went to see "Madama Butterfly" at the Met. Another time, he remembered that one juror was to take a test for promotion in the Postal Service.

"Good luck to you tomorrow," the judge said.

Considered by his colleagues to be jolly and good-natured, Judge Gagliardi's only display of anger during the trial occurred when defense attorneys failed to explain fully to him that they intended to have a joint defense and might call witnesses for either Mr. Stans or Mr. Mitchell out of turn. Mr. Fleming argued there was no rule prohibiting this action.

Mr. Fleming was probably correct. But Judge Gagliardi would conduct his own trial. He cited "custom and practice, which has become a rule of the court here," in deciding against the defense.