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Levity at The Trial

Attorneys Enliven Proceedings

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The marble corridor outside Courtroom 2 looks like an oriental bazaar whenever there is a break in The Trial.

Autograph collectors scout around for famous faces. The press banters with the lawyers. Spectators, patiently lined up for a seat in the courtroom, crane their necks and strain their ears. Federal marshals keep a dour watch on the red sign reading, "Members of the Press and General Public Not allowed Beyond This Point"—a dividing line where the hubub is always the loudest.

Now entering its ninth week, the Watergate cover-up trial has a zany but predictable rhythm. At 9:30 a.m., U.S. District Court Judge John J. Sirica takes his seat, still looking far younger than 70. A few moments later, there will be a whispered bench conference with prosecutors and defense attorneys for no discernible reason since the jurors have yet to be ushered into the room.

After that comes the usual morning debate over legal niceties such as the quotation marks in a perjury count against former White House chief of staff H.R. (Bob) Haldeman.

Eventually, the jury files in and the witnesses march to the stand—household names like John W. Dean III and Jeb Stuart Magruder. Yes, they know all the defendants, but somehow they can never find John N. Mitchell, the former Attorney General of the United States who has been strategically placed by his lawyers at the remotest table in the courtroom.

Finally, after a pause that he prolongs just long enough to suggest that his client was just as far removed from the scandal, Mitchell's chief counsel, William G. Hundley, cheerily shouts, "We're over here," points at Mitchell's balking dome amid appreciative chuckles, and the testimony begins, interspersed with tape recordings.

See TRIAL, A6, Col. 1

TRIAL, From A1

It is almost like attending a seance. Everyone puts on a khaki-colored headset and the ghosts of the Nixon White House suddenly reappear. Here is the Marine band playing in the Rose Garden. The President's valet, Manolo Sanchez, brings in refreshments. Richard Nixon taps his desk to the approximate beat of a martial tune.

But there is no joy, no light hearted joking in the Oval Office, at least not when the talk is of Watergate, not even when it seems that it will all end with the indictment of G. Gordon Liddy and his burglary squad. Nixon was all business, envisioning retaliation against his critics. As the months wore on, he ended gloomily, wondering about "that goddamn Dean," worrying whether "the son-of-a-bitch had a tape recorder on him."

Through it all, the President can be heard, anticipating what his aides are about to tell him, filling in names and details before they can blurt them out, interrupting them in mid-sentence with "yeah" and "right." Whatever the facts, the impression is inescapable: he knew, he knew everything.

The jurors drink in all the words, guided by the prosecution transcripts in front of them. The tapes are often impossible to make out on a single hearing, which is all the jurors will get at least before they start their deliberations. At times, the transcripts are plainly inaccurate, but usually on minor

points; at times, they are suggestive. But they are essential.

The recordings are far from the entire show. Trial lawyers love holding forth too much to play second fiddle to a bunch of tapes. The attorney for the Big Three in the cover-up case—Mitchell, Haldeman and Former White House aide John D. Ehrlichman—all have their own special styles.

Mitchell's chief lawyer, Bill Hundley, is an expert at cross-examination and wisecracks. At one hush-hush conference with Judge Sirica not long ago, about the doctors he might name to examine Nixon, Hundley waggishly nominated Dr. P.M. Palumbo, the team physician for the Washington Redskins.

"Dr. Palumbo'll get him back in the game, Judge," Hundley reportedly suggested.

Ehrlichman's attorney, William Snow Frates, is a master of the courtroom harangue. He gets his points into the record with a basso profundo that brooks no interruption even though Frates, as often as not, is doing the interrupting. He can even express himself without saying a word.

Asked for his reaction to Sirica's appointment of a medical team to check out Nixon's status as a trial witness, for example, Frates, who subpoenaed the ex-President, said he could have "no comment" in light of the judge's "gag order" on out-of-court statements. The Miami attorney then jumped up and down for joy a few times without uttering a sound.

The most outspoken of all the courtroom advocates, Haldeman's chief counsel, John J. Wilson, is a prodigious legal tactician, and at 73, the only man in the room who can trade barbs with the judge and get away with it.

Sirica, to be sure, does not take them lying down, especially when the jury is out of the courtroom, which is often. It isn't often that a judge suggests that a lawyer is a "windbag" or that the lawyer even obliquely returns the compliment, but the cover-up trial has a chemistry all its own.

The exchange came just the other day when the feisty Wilson made one final protest against the prosecution's showing of a videotape of Haldeman's testimony before the Senate Watergate committee in July of 1973 when he allegedly perjured himself. With the jurors waiting in a back room, Sirica had just ruled the film admissible after a special preview.

Wilson complained that

Haldeman was being forced to testify against himself. He said he was sure the judge wouldn't pay any attention to the point, but he said he wanted an official ruling for his "error bag," which was "already bursting at the seams."

Chief trial prosecutor James F. Neal—a Tennessee "country boy" who is a single-handed match for the strong points of all the defense lawyers put together—parried with the thought that Wilson's "error bag" was really a "ferty bag . . . two pounds of manure in a one-pound bag."

Wilson bristled. "I've been listening to this product of the moonshine district of Tennessee for eight weeks," he said of Neal, "and I'm getting tired of it."

The comeback was almost lost in the laughter over Neal's thrust. The judge couldn't resist joining in the fun. He said he thought it was really "a windbag" that Wilson was toting around.

"Your honor," the lawyer replied under another hail of laughter, "I think I can say that in all the years we've known each other, we've both been guilty of that."

The atmosphere was much more tense at the outset, with the judge brusquely striking down defense protests about hearsay testimony and other legal points.

But after some two weeks of evidence, and some public criticism of his rulings and observations from the bench, Sirica seemed to become much more relaxed and even-handed, anticipating impermissible hearsay from the prosecution witnesses and ruling it out even when no one objected. The defense score on other legal points they did raise seemed to go up as well.

The trial still has a sort of split personality to it, especially when prosecutors and defense lawyers begin interrupting each other in the jury's presence. At one point Friday, in the midst of a squabble between Frates and Watergate assistant prosecutor Richard Ben-Veniste, the judge even issued a thinly veiled warning that someone might wind up being held in contempt.

"If it happens too often," Sirica said of the sniping, "someone will have to accept the consequences after the trial is over and I don't have to spell out what I mean."

Minutes later, it was all levity again. The key to the changing mood may have been the fact that the jurors were now out of the room. Hundley wanted to know when he might expect a copy of the "Ehrlichman report"—six to eight pages of longhand notes on the White House aide's observations and findings about the scandal that he made for Nixon in the spring of 1973. To the obvious astonishment of Watergate prosecutors, Ehrlichman and his lawyer, Frates, told the court earlier

in the week that Ehrlichman had just recently found them at the White House at the bottom of a box with Ehrlichman's name on it.

When Hundley brought the subject up again, Neal made it plain that the prosecution regards the compendium with some suspicion. "We do not concede that it is what it purports to be or anything else . . . for reasons that will later become clear at this trial," the prosecutor told the court.

Sirica said he thought Mitchell's lawyers ought to have a copy in any event since "it could be helpful to Mitchell."

Neal and Frates roared.

"Whoever wrote it, your honor. It's putting (the blame) on Mr. Mitchell," Neal explained.

Hundley wasn't at all surprised.

"We're used to being shot at," he quipped. The Nixon tapes are replete with presumptions of Mitchell's culpability for the Watergate bugging and break-in. When other defense lawyers complained of courtroom laughter last week at various passages on the recordings, Hundley asked:

"What about crying, judge?"

"Crying?" Sirica asked, barely suppressing a smile. "I can't answer that one."

It is difficult to suppress

all reaction on hearing the tapes. Reporter Clark Mollenhoff of the Des Moines Register and Tribune, a former Nixon aide, guffawed loudly on hearing the President wondering fretfully whether that "son of a bitch" Dean had taped incriminating remarks that Nixon made.

"You son of a bith," Haldeman told Mollenhoff at a recess, according to Mollenhoff and others. "This is a serious matter."

"I thought it was a serious matter long before you did," Mollenhoff replied.

His hair nodishly long now, the former White House chief of staff and his lawyers plan to fight the tapes along with the other defendants as best they can, though they frankly acknowledge it won't be easy.

"Those tapes are murder," one source said frankly.

Haldeman, for one, insists that "an incredible injustice" is being done. In a corridor conversation last week, he took one extract not really related to the case to make his point. It dealt with a passage in which the President told Haldeman and Ehrlichman on April 14, 1973, that he wanted no changes in the Cabinet until the Watergate crisis was over and added: "Now the hell with Henry on this . . . You just gotta say that 'Henry, there are bigger things here.'"

The allusion was to White House national security affairs adviser Henry A. Kis-

singer whom Nixon named Secretary of State on Aug. 22, 1973.

As a result, when the April 14 tape was made public last week, it was widely concluded and reported that what had been shelved was Kissinger's own nomination as Secretary of State. Haldeman said this interpretation was "understandable" in light of what later happened, but he said it was wrong.

In April of 1973, "there was no thought at all of Henry becoming Secretary of State—even in Henry's mind," the former White House chief of staff said in genial, earnest tones. Instead, Haldeman hinted, Kissinger had other things in mind for the State Department in the wake of William P. Rogers' expected departure.

Just what those plans were, Haldeman wouldn't say. "To find out," he said with a grin, "you're going to have to read my book."

Similarly, Haldeman, while declining to give any illustrations because of Sirica's "gag order," insisted that other portions of the tapes directly pertinent to the case have also been distorted by hindsight.

It is difficult to see how they could have been twisted that much out of shape. The government's case, which reached a crescendo in the past week and is expected to wind up today, is an impressive array of evidence. And Watergate prosecutors are apparently holding several other tapes in reserve for possible use in rebuttal after the defendants complete their presentation, perhaps a month hence.

"It'll be over by Christmas, I hope," said one defense lawyer. "It's in our best interests to get this to the jury while the Christmas spirit is still lingering."

Locked up in a downtown motel and denied even Sunday visits with their closest relatives for family chitchat, the jurors are plainly expecting to be home by then. They have already complained at least once about their motel accommodations and services after going without hot water for several days.

Told by Judge Sirica recently that they might be through by Dec. 25, the nine women and three men sitting in judgment on the scandal of the century positively glowed—for the first and only time since the trial began. Even Juror No. 7, a retired park policeman named John Hoffar whose poker face is something to behold, showed the trace of again.

Aside from their verdict, the biggest question still



JOHN J. WILSON



JAMES F. NEAL

... opposing attorneys exchange barbs

outstanding is whether Nixon's testimony can be secured. Ehrlichman has demanded it and Sirica plainly wants it, even if everyone has to go to California for it.

At a private conference in the judge's chambers recently, Nixon's chief Washington lawyer, Herbert J. Miller Jr., told Sirica that the pardoned President was just about to be released from the hospital. "They can't do anything more for him there," Miller reportedly added.

Accentuating the positive, Sirica is said to have replied that he was glad to hear the former President was getting better.