

LAWYER ASSERTS EHRlichman WAS NIXON SCAPEGOAT

Tells Jurors Aide Was a
Loyal Servant Who Was
'Thrown to the Wolves'

SUMMATION BY DEFENSE

Sirica Will Recess Case for
Weekend Today and Send
It to Jury on Monday

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WASHINGTON, Dec. 26 —

John D. Ehrlichman's chief defense lawyer told the jury today as the Watergate cover-up trial neared an end that Mr. Ehrlichman was a "loyal servant" whom Richard Nixon had "thrown to the wolves" to protect himself.

The lawyer, William S. Frates, asked the jury in his closing argument not to be swayed in its deliberations by any dislike it might feel toward former President Nixon.

He asked the jurors not to be swayed either by the "golden tongue" of the chief prosecutor, James F. Neal, whose impassioned summation a few days

earlier had often appeared to hold jurors as well as spectators spellbound.

Striking With Conviction

And he asked the jurors, too, not to "follow the crowd" but instead to "stick with" whatever conviction each one arrived at. To a number of observers the request appeared to be an attempt to suggest to the jurors the possibility of not returning a verdict at all, because of failure to agree with one another.

At the close of today's session, the 60th day of the trial, Judge John J. Sirica announced that he planned to send the case to the jury on Monday, recessing for the weekend after the conclusion tomorrow of the defense summations and the prosecution's rebuttal summation.

Judge Sirica had said midway through the day that all defense arguments were to be concluded this afternoon so that he could send the case to the jury tomorrow.

At 5:15 P. M., however, when Jacob A. Stein, the attorney for Kenneth Wells Parkinson, one of the defendants, had given only a few minutes of his summation, the judge reconsidered.

He said that Mr. Stein would finish in the morning, that the prosecution would follow with rebuttal summation, and that he would then recess court for the weekend. He will instruct the jurors Monday morning on the legal principles in-

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involved in the case, taking two to two and a half hours, he said, and then give them the case.

The jury also heard the summation on behalf of former Assistant Attorney General Robert C. Mardian, who was an official of the 1972 Nixon re-election campaign, and the beginning of the summation on behalf of Mr. Parkinson, a Washington lawyer. Mr. Parkinson was hired by the campaign committee to handle the litigation resulting from the break-in at Democratic national headquarters at the Watergate complex on June 17, 1972.

Case of 'Sand'

Mr. Mardian's attorney, Thomas C. Green, argued that the Government had made an "error" when it included Mr. Mardian in the case. He said that the Government had built a case of "sand," not of "concrete," against his client.

Mr. Mardian, unlike the four other defendants, is charged only with the basic conspiracy count in the case, conspiracy to obstruct justice. Of the 45 "overt acts" listed in the conspiracy count as steps taken in furtherance of the conspiracy, only five concern Mr. Mardian. Mr. Green pointed this out, saying, "He stands apart from his other defendants, co-defendants in this case."

Mr. Stein followed Mr. Green. He said, basically, that the Government had failed to demonstrate any motive Mr. Parkinson might have had for joining the conspiracy.

Mr. Frates has based much of Mr. Ehrlichman's defense on the contention that Mr. Nixon "deceived," "lied" to and "misled" Mr. Ehrlichman. In his summation today—picking up where he left off on Monday when the trial recessed for Christmas—he referred over and over to various things the former President allegedly did

or did not do to Mr. Ehrlichman.

He said, for instance, that Mr. Ehrlichman had never been told by Mr. Nixon or others of the President's own involvement in the Watergate cover-up. So, Mr. Frates said, Mr. Ehrlichman believed in Mr. Nixon and, in the spring of 1973, was trying to get the truth out about Watergate to clear Mr. Nixon.

"Here's this dedicated loyal servant trying to clear his commander in chief, regardless of who got hurt," Mr. Frates said. "And here's the commander in chief, sitting in his office knowing all the time who was calling the shots."

Several times in his summation—a somewhat disjointed argument as he skipped back and forth between various points—Mr. Frates referred the jury to the day that Mr. Nixon told Mr. Ehrlichman he had to resign, April 29, 1973, as White House domestic affairs adviser.

At one point, while trying to prove Mr. Ehrlichman's lack of involvement in the cover-up, he said that his client had received "no greater compliment" than the one he received that day from Mr. Nixon—"when he was throwing him out on the street to protect himself, when he said, 'You've been my conscience, even while knowing what he'd kept from Ehrlichman.'"

'Traumatic Effect'

At another point Mr. Frates sought to explain an answer that Mr. Ehrlichman gave to the grand jury in the spring of 1973—an answer involved in one of the two perjury counts against him—by saying that Mr. Ehrlichman's forced resignation shortly before the grand jury appearance had had a "traumatic effect" on the defendant and his family.

"He was thrown out," Mr. Frates said. "Let's be brutally frank—thrown to the wolves." He sought to disassociate his client, one of Mr. Nixon's clos-

est aides, from the President in other ways, too.

"I don't think we need anyone to tell us the Nixon Administration was not the most popular group of people to be in Washington in the last few years," he said.

It was possible, he went on, for someone to think poorly of a defendant who had worked for Mr. Nixon just because he or she disliked the President.

"That's not the issue," he told the jurors. "The issue is, has the Government proven beyond a reasonable doubt?"

Praise and Criticism

Mr. Frates variously praised and criticized the prosecution today—lauding Mr. Neal for his "golden" and "silver tongue" and criticizing the prosecutors for one of the perjury counts, for instance, on the ground that the count was based on only "half" the answer that Mr. Ehrlichman gave the grand jury, when in fact the rest of his answer, not included in the indictments, showed that he had answered the question fully and truthfully.

He also referred to the concept of proving a charge "beyond a reasonable doubt," saying at one point, "Before they take anybody's liberty away, they must prove it beyond a reasonable doubt, not the silver tongue of a great lawyer."

There has been speculation in and around the courtroom that the best that some of the defendants can hope for is a hung jury. This morning, Mr. Frates made what many observers interpreted as an only slightly veiled pitch for such a result.

He started by telling the jury, as he had told it when he began his summation on Monday, how wonderful juries are as an institution.

Some 'Go Along'

"But," he went on, "there's one weakness,"

"Sometimes people are inclined to go along with the crowd."

Mr. Frates's voice, already

loud, began to boom across the courtroom.

"I don't care if it's guilty or not guilty," he said. "If that's your conviction, stick with it. Stick with it!"

Mr. Green, following Mr. Frates to the lectern, gave a markedly different type of summation, different in tone as well as form.

Mr. Green, who took over Mr. Mardian's defense when the defendant's original chief counsel, David G. Bress, became seriously ill after the trial began, has a reputation for being one of the best prepared lawyers in the case, his argument today appeared to bear the reputation out—he built his argument step by step, each step following logically the preceding one and each accompanied by sections he read from the transcript of testimony at the trial.

Also, as if to tell the jury how serious the case was, he spoke in an almost somber tone, sometimes growing angry but never, unlike any of the lawyers, prosecution or defense, before him, making jokes.

Only One Count

He began by reminding the jury that Mr. Mardian was charged only with the conspiracy count and that only five of the overt acts concerned him.

"These overt acts are not building blocks in the Government's case," he said. "They're not concrete. They're really

just sand."

He reminded the jury—as Mr. Bress, who was in court today to watch, looking frail, had told them in his opening statement weeks ago—that the evidence against Mr. Mardian concerned only "30 days in the summer of 1972." This was the 30 days following the break-in, during which Mr. Mardian worked on the Watergate-related litigation facing the committee and after which he devoted himself full time to political activities around the country for Mr. Nixon's campaign.

And then, to complete the

foundation for the rest of his argument, he noted that the evidence against Mr. Mardian, unlike the evidence against some of his co-defendants, did not come from the White House tape recordings.

"The evidence is out of the witnesses' mouths," he said. "It's testimony based on recollection."

"Memories are fragile," he remarked.

Mr. Mardian, like each of the other defendants, had taken the witness stand in his own defense. During his testimony, particularly under cross-examination by Jill Wine Volner of the prosecution staff, he became argumentative at times.

Mr. Green tried to erase whatever poor effect this arguing may have had on the jury.

"This trial is not a popularity contest," he told the jurors. If he himself had done anything to offend them, he said, the jurors should not hold it against Mr. Mardian. So too, he added, with anything Mr. Mardian himself might have said.

"He waited 11 weeks to take the witness stand," Mr. Green said. "It's a terrible burden to wait."

"People react to that pressure differently," he added. "And if when my client was on the stand his zeal offended you, then I ask you to forgive him that."