

U.S. Defends Jury In Watergate Trial

By George Lardner Jr.

Washington Post Staff Writer

The U.S. government yesterday denied charges that the Watergate cover-up trial jury was stacked against the defendants and said five of the jurors initially thought the prosecutions unfair because of the pardon of former President Richard Nixon.

In a book-length brief filed with the U.S. Circuit Court of Appeals here, Watergate prosecutors maintained that only one of the 12 jurors could conceivably be said to have been predisposed against the former Nixon White House aides and campaign advisers.

This juror, Marjorie M. Milbourn, it was disclosed in the brief, revealed as the trial began that she had written letters — including one to Sen. Howard H. Baker Jr. (R-Tenn.) of the Senate Watergate committee — “suggesting that the moral tone of the country could be raised with the help of transcendental meditation.”

Defense lawyers challenged her for cause at that point, the brief indicated, but U.S. District Court Judge John J. Sirica denied the motion.

Defending that decision in yesterday's brief, Special Prosecutor Henry S. Ruth and his aides said that “her (Milbourn's) letter used ‘Watergate’ only as an example of the moral problems confronting the country and did not mention any of the defendants or speak about guilt.”

Denying former Attorney General John N. Mitchell's claim that the jurors were picked from a “poisoned well,” the prosecutors said 21 of the 73 prospective jurors questioned on the issue openly voiced an opinion that the defendants were guilty.

Six said they couldn't change their minds and were automatically disqualified. The others said they felt they could render an impartial verdict but none was selected for the jury.

The three-month trial ended

Jan. 1 with the convictions of Mitchell, former White House aides H.R. (Bob) Haldeman and John D. Ehrlichman, and former re-election campaign deputy Robert Mardian for conspiracy to obstruct justice in the Watergate scandal.

Making public other details behind the selection of the jury, Ruth disputed the charges of Mitchell's lawyers that three of the jurors — foreman John Hoffar, Ruth Gould and Milbourn — were “inclined” to believe in guilt.

By the time the trial was over, Ruth added, it was clear that the convictions of the four men were based “on the overwhelming evidence of their guilt.”

The questioning of prospective jurors, known as the voir dire, was conducted behind closed doors by Sirica for almost two weeks before the trial proper began on Oct. 14, 1974.

Sirica refused to unseal the records after the trial was concluded, but attorneys in the case have permission to quote from the records in briefs for the appeals court.

Ruth and his counsel, Peter M. Kreindler, said Gould admitted that she had been “rather amazed” when transcripts of a number of

President Nixon's taped conversations at the White House dealing with Watergate were made public earlier in 1974.

But she “emphatically denied that she had an opinion of guilt or that she ever had expressed such an opinion,” the government brief added.

The prosecutors said Hoffar, one of the two Republicans on the jury, had previously expressed “opinions” about the Watergate case, but “in both directions.”

(Another juror, Thelma Wells, has said publicly that far from being against any of the defendants, foreman Hoffar “wanted to let them all go free. We had to change his mind.”)

During the voir dire, Milbourn, the Watergate prosecutors said, “freely conceded that she thought that in ‘moral terms, (Watergate) might not have been everything that is desirable” but declared that she had no opinion as to anyone's guilt.

The prosecutors maintained that the jury, by its conduct during the trial, such as its willingness to sit through the Christmas holidays and its acquittal of defendant Kenneth Wells Parkinson, “showed that it did not have a predisposition to convict the defendants regardless of the evidence.”

Ruth also stressed that “five of the jurors had expressed the view that prosecution of the defendants was unfair in light of the pardon of former President Nixon.”

Discussing pretrial publicity, Ruth maintained that it was almost entirely factual and dispassionate. Except for Gould and Milbourn, he reported, the jurors, up until their selection, had not followed the case closely, “and some had not followed it at all.”

Gould, the government brief continued, “merely followed Watergate as ‘a matter of news’” and by trial time, “no longer could sort out what she had heard” during the Senate Watergate hearings.

“Juror Milbourn,” the brief stated, “initially had paid attention to the publicity, (but) later lost interest in it.”