

Watergate Cover-Up Trial

By George Lardner Jr.
Washington Post Staff Writer

The testimony is over. The evidence is in. The speeches are done.

The last act of the Watergate cover-up trial will unfold Monday when U.S. District Court Judge John J. Sirica sums up the case for the jurors in legalistic terms and sends them to a back room to begin deliberating over a verdict.

No one has denied that there was a massive effort to obstruct justice in the Watergate case, which the Nixon White House once derided as a "third-rate burglary."

The central issue for the jurors to settle is whether the five defendants—former White House aides H. R. (Bob) Haldeman and John D. Ehrlichman, former Attorney General John N. Mitchell and Nixon re-election committee advisers Robert C. Mardian and Kenneth Wells Parkinson—knowingly and willfully took part in the conspiracy.

All have denied it despite the avalanche of testimony and tapes that began Oct. 17, when a bookish-looking witness named John Wesley Dean III took the stand and proceeded to implicate each and every one of them, along with former President Nixon.

It started out as a twice-told tale, but the weeks that followed were laced with surprises: a dramatic courtroom confession from Watergate figure E. Howard Hunt Jr., an incriminating memo that Hunt's testimony forced into the open, explo-

sive new White House tapes showing Nixon promising clemency here and anxiously devising a story line to protect himself there.

Defense lawyers openly shuddered at times as the evidence poured in, muttering during recesses about the impossibility of cross-examining a tape recording, occasionally indicating that their best hope might be for a hung jury.

Watergate prosecutors have been apprehensive for the same reason. Roughly midway through the trial, one of them said he thought the evidence was solid, but he was still doubtful about the outcome.

"It all depends on the pardon," he said of the sweeping grant of clemency President Ford extended to Nixon in September.

The trial appears to be ending on that same note of lawyerly speculation. Reportedly, seven of the 12 jurors indicated—in the closed-door questioning which started the trial—that they thought it somewhat unfair to prosecute the five former White House aides and campaign advisers after Nixon had been pardoned.

The jurors, however, were accepted for duty after affirming that they still felt they could decide the case solely on the evidence and Sirica's instructions in the law.

The judge will remind them Monday morning, in one of the instructions he has already approved, that "neither the pardon of former President Nixon nor any other cases or extraneous matters should have any

effect on your deliberations or your verdict."

Even so, one of the prosecutors pointed out after closing arguments, it only takes one holdout to keep the jury from reaching a verdict.

"That's what I'd call the iceberg in the case," one defense lawyer added of the Nixon pardon. But he still glumly predicted a guilty verdict, with the possible exception of Parkinson and Mardian.

There is plenty of evidence for the jurors to consider unless they have already made up their minds. The cover-up began literally hours after the June 17, 1972, arrests at Democratic National Committee headquarters here with an effort to have then Attorney General Richard G. Kleindienst get the Watergate burglars out of jail before their aliases were discovered.

It has been established that Watergate figure G. Gordon Liddy, who had not yet been apprehended, made the futile approach. According to the testimony of former Nixon campaign deputy director Jeb Stuart Magruder, Mardian, acting on Mitchell's instructions, was the one who evidently sent Liddy on the mission. Mardian denied it.

According to the prosecution, the cover-up continued for more than a year. Haldeman and Mitchell allegedly ordered their aides to destroy Watergate-related documents. Ehrlichman supposedly told Dean to "deep six" a briefcase full of electronic equipment from Howard Hunt's White House safe.

Haldeman is said to have enlisted the CIA in a deliberate effort to stifle the FBI's Watergate investigation.

At the Committee for the Re-Election of the President, meanwhile, Mardian obtained a confession from Liddy, who, according to prosecution testimony, also mentioned that "commitments" had been made to the Watergate burglars.

Hired to defend the committee against Watergate litigation, Parkinson, all sides agree, was kept in the dark at the start, but allegedly wound up transmitting hush-money messages to and from the original Watergate defendants.

The flow of cash to the Watergate burglars and their lawyers eventually totaled \$429,500. All five defendants allegedly took part in discussions of the fund-raising efforts.

The basic defense theme, common to all five men on trial, has been to deny any criminal intent and to point

Finale to Begin Monday

an accusing finger at someone else.

Haldeman's lawyers denounced Dean and Magruder as "professional liars," and maintained that the White House tapes had been twisted out of context. Ehrlichman said Nixon, and by implication Haldeman, misled him.

Mitchell's attorneys accused former White House special counsel Charles W. Colson of responsibility for the break-in, and said Mitchell remained silent only out of loyalty to the President, a loyalty that was "not reciprocated."

Mardian said he was simply acting as an interim lawyer for the re-election committee, bound by the attorney-client privilege to keep the secrets he learned from everyone, except Mitchell. Parkinson said Mardian, Mitchell and others misled and took advantage of him.

For the jurors, the first question to decide is who was telling the truth, episode by episode. The trial

transcript covers nearly 12,000 pages. The 30 tapes, including 28 conversations with Nixon, took hours to play. The jury has been invited by prosecutors and defense lawyers alike to listen once again—in the midst of their deliberations—to as many as they want.

First, however, Judge Sirica will tell them that just "one overt act" in furtherance of the alleged conspiracy is sufficient, even though the cover-up indictment sets out 45 of them.

"Thus," the jurors will be told, "if you find beyond a reasonable doubt that a conspiracy existed as charged in the indictment, and that during the existence of the conspiracy, one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object of the conspiracy, proof of the conspiracy is then complete."

With that done, the jury may then "return a verdict of guilty as to each defendant you find beyond a reasonable doubt to have been knowingly and willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators committed the overt act."

No one knows how long the deliberations will take, but the jurors, now sequestered at the Sheraton Park Hotel, have shown no signs of wanting to hurry.

At one point last Thursday, Sirica ordered Parkinson's lawyer, Jacob Stein, to finish his closing argument that evening so that the case could be turned over to the jurors the next day. The edict, just before a brief late-afternoon recess, lasted only a few minutes. The judge reversed himself after a shaken-looking marshal reported in a whispered bench conference that one of the jurors, John A. Hoffar, had exclaimed on leaving the courtroom: "What's the big rush?"