

Nixon Ex-Aides' Conviction Appeal Argued in Court

By George Lardner

Washington Post Staff Writer

Lawyers for the convicted Watergate cover-up conspirators protested yesterday that they had been forced to come to trial under the "white heat" of inflammatory publicity that U.S. District Court Judge John J. Sirica treated far too lightly.

William G. Hundley, the lawyer for former Attorney General John N. Mitchell, told the U.S. Court of Appeals that Sirica's closed-door questioning of potential jurors in the case was "totally inadequate to ascertain the prejudice that existed" against the cover-up trial defendants.

Citing exchanges from many of the still-secret sessions at which the jurors were picked in October, 1974, Hundley complained that Sirica had planned to ask each prospective panelist just what he or she had read or heard about the Watergate scandal, but then relented under the vigorous objections of Watergate prosecutors.

The prosecutors have replied in part that far from being stacked in their favor, the jury included five who thought it unfair to try the cover-up defendants in light of the pardon that had just been granted former President Nixon. But Hundley dismissed such laments as "crocodile tears."

In sarcastic tones, Hundley disclosed that it was the defense lawyers who tried to prevent those jurors from serving, while the prosecutors successfully opposed their dismissal. Hundley maintained that the prosecutors wanted to keep the jurors, on the theory that they had also decided that "before you get a pardon, somebody did something wrong."

A majority of the full bench of the Court of Appeals here spent most of the day hearing

arguments on the case, but a decision is not expected for months. Also appealing their Jan. 1, 1975, convictions with Mitchell are former White House aides H. R. (Bob) Haldeman and John D. Ehrlichman and former Assistant Attorney General Robert C. Mardian.

Convicted of conspiracy to obstruct justice and other related felonies in efforts to cover up White House involvement in the June 17, 1972, break-in at Democratic Party headquarters in the Watergate complex here, Haldeman, Ehrlichman and Mitchell were each sentenced to 2-1/2 to 8 years in federal prison, but all are free on appeal.

Mardian, the only defendant convicted of conspiracy alone and the only one to attend yesterday's hearing, is contesting a 10-to-30-month

sentence. He also is free pending appeal.

Speaking for the Watergate special prosecution force, acting counsel Peter M. Kreindler emphasized that the defendants were not contesting the weight of the evidence presented at the three-month trial, which began in October, 1974, the month after Nixon was pardoned.

"The evidence showed a

massive conspiracy to obstruct justice," Kreindler told the court. None of them has questioned the characterization. The proof of guilt is overwhelming."

Haldeman's lawyer, John J. Wilson, contended that his client did not get a fair trial because of Judge Sirica's errors and the heavy pretrial publicity concerning the Watergate scandal and related misdeeds.

"The American people were whipped up to a white heat against the appellants in this case," Wilson told the six appellate judges. "I'm not exaggerating a bit . . . This was the most virulent publicity situation that has ever existed in America. The Watergate story inundated the papers of the District of Columbia."

Despite all the headlines and television shows, prosecutor Kreindler said the questioning of the prospective jurors in the case strongly suggested "the citizens of the District of Columbia hadn't followed Watergate very closely."

He said the acquittal of the fifth defendant, Nixon reelection campaign lawyer Kenneth Wells Parkinson, showed that the jury exercised independent judgment.

Ehrlichman's lawyer, William S. Frates, argued that Sirica's refusal to obtain former President Nixon's testimony, which Ehrlichman repeatedly sought before and during the trial, demanded a reversal of Ehrlichman's conviction.

"He was the producer, the director, and the main actor in what this trial was all about," Frates said of Nixon.

Kreindler said neither Ehrlichman nor any of the other defendants ever produced any solid indication that the ailing ex-President's testimony was vital, but Frates pointed out that both Sirica and the prosecutors agreed at one point that it would be helpful and important.

Mardian's lawyer, David Ginsburg, maintained that Mardian had been unfairly tarred by the prejudicial remarks of other defendants and witnesses heard at the trial. Kreindler replied that there was plenty of other solid evidence against Mardian.