

Mitchell Seeks Reversal Based on Jury Selection

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Former Attorney General John N. Mitchell charged yesterday that the jurors who convicted him in the Watergate cover-up trial were drawn "from a poisoned well" because of their preconceived opinions.

Mitchell's lawyers filed a 151-page brief, and former Assistant Attorney General Robert C. Mardian's lawyers filed a 129-page brief in the U.S. Court of Appeals in efforts to overturn the two men's conspiracy convictions in the Watergate cover-up.

Mitchell's brief questioned the objectivity of a number of jurors and faulted trial judge John J. Sirica's questioning of them before they were empaneled to sit on the jury.

Former White House aides H.R. Haldeman and John D. Ehrlichman were expected to file briefs later. The four were convicted Jan. 1.

"The record in this case is

riddled with highly prejudicial constitutional and other error," Mitchell said.

"Our conclusion that the veniremen [prospective jurors] were drawn from a poisoned well is further buttressed by the fact that while the process of eliminating hardship cases was continuing, one prospective juror sent a note to Special Prosecutor [Leon] Jaworski expressing her adulation for him," the brief said.

Mitchell said jury foreman John A. Hoffar admitted during the closed questioning by Sirica that he "probably" had previously expressed an opinion about the guilt of the defendants and that the opinion he expressed usually depended on the person he was talking with.

"He is not one of these so-called intellectuals, but I think he is a man that has good common sense," the brief quoted Sirica as saying of Hoffar during the questioning of the prospective jurors.

Until now, the record of the questioning of prospective jurors has been secret. According to Mitchell's brief, 73 prospective jurors were questioned and 38 were inclined to believe in guilt, 5 were inclined to favor the defense, and 30 had no opinion.

Mitchell said juror Ruth Gould conceded under questioning that she had formed an opinion about the guilt of the defendants when the text of the White House tapes was released, and thought it unfair to prosecute them in view of the pardon of former President Nixon.

Sirica failed to explore the inconsistency in the answers of juror Roy Carter, who said during questioning that while he believed it unfair to prosecute the defendants in light of the pardon, he denied virtually all knowledge of the case, it said.

Mitchell said juror Marjorie Milbourn acknowledged she had made financial contributions during the 1972 campaign and said although she did not know whether the defendants were guilty in a legal sense, "in moral terms, it might not have been everything that is acceptable."

Mitchell's brief also quoted Mrs. Milbourn as saying she thought she could render an unbiased verdict but could not "guarantee it."

Mitchell also sought a reversal of the conviction on grounds his "right of silence" was violated by the publicity generated by the Senate Watergate committee and the House Judiciary Committee's impeachment inquiry; that Sirica erred in refusing to remove himself from the case; and "irreparably damaging error" was committed against Mitchell by permitting numerous statements of opinion in the White House tapes to be admitted as evidence.

Mardian's lawyers based their appeal on grounds the conspiracy involving Mardian was not proved; that "highly prejudicial and uncollaborators" were admitted against him; and that he was tainted by "the overwhelming mass of evidence" against the other defendants.