

Wrangling Begins in Wake

By Gerge Lardner Jr.
Washington Post Staff Writer

The drama is over, but the courtroom wrangling is far from done.

John D. Ehrlichman is hoping for a new trial, this time with former President Nixon under oath. John N. Mitchell's lawyers still insist that he was a victim of the conspiracy rather than a member of it. And H. R. (Bob) Haldeman's attorneys have not even started counting all the points they plan to raise on appeal.

Despite the convictions at the Watergate cover-up trial Wednesday, it will take about a year, perhaps longer, before the case winds its way to a conclusion in the higher courts.

Efforts to overturn the guilty verdicts began yesterday with a move by Haldeman's chief counsel, John J. Wilson, to subpoena one of the jurors for a special hearing to determine whether any of them had been exposed to publicity about the case during of the long trial.

The sentencing of the four men who were convicted—Haldeman, Ehrlichman, Mitchell and former Nixon campaign adviser Robert C. Mardian—is still several weeks away. But motions for a new trial, such as the one filed yesterday for Haldeman, must be submitted within a week of the verdicts.

Most of the defense lawyers in the case are apprehensive of stiff sentences when U. S. District Court Judge John J. Sirica imposes final judgment.

Mitchell and Haldeman were each convicted on five counts—each carrying a maximum prison term of five years. Ehrlichman was found guilty of four felonies. Mardian was the only defendant convicted of the single but central charge of conspiracy to obstruct justice.

No one expects Sirica to lay down the maximum sentences that, on paper, could be imposed against the so-called "Big Three" in the cover-up case: 25 years each for Haldeman and Mitchell and 20 years for Ehrlichman.

But several defense lawyers, while not wishing to be quoted, are afraid that Sirica will order at least some of the sentences to run consecutively so that they will total more than five years each.

The only hint the judge has given came during a late-afternoon discussion last month of a bid by former White House counsel John W. Dean III for reduction of the one-to-four-year

prison term Sirica gave him.

The judge gave no indication of what the prosecution's star witness could expect, but during the colloquy, which took place with the jurors out of the room, he noted that the cover-up trial defendants faced "substantial" sentences if they were convicted.

Whatever the sentences, Watergate prosecutors are confident that the trial will withstand any attacks in the appellate courts. But they acknowledge that it will be a long time—perhaps even after the special prosecution force has been disbanded—before the final decision is handed down, either by the U.S. Circuit Court of Ap-

peals here or by the Supreme Court, if the case goes that far.

Wasting no time on Haldeman's behalf, Wilson—in what he carefully captioned simply as a "first motion" for a new trial—cited a portion of an interview with trial juror Ruth C. Gould reported in Thursday's editions of the Washington Star-News.

The article, written by Star-News staff writer Walter Taylor, said Mrs. Gould had "hinted there were some jurors who disregarded his (Sirica's) instructions not to watch television or read newspapers during the brief periods they were not actually under surveillance."

Haldeman's lawyers said this suggested that some of the jurors "not only disobeyed the express orders of this court, but, even more importantly, they may have received influential information which could have affected their verdict."

The attorneys called for a special hearing on the issue and asked Sirica to approve subpoenas for both Mrs. Gould and Taylor "in order to develop the accuracy and extent of the news article."

A spokesman for the U.S. Marshal's office, which guarded the sequestered jury during the long trial, said he was unaware of any prejudicial lapses in the monitoring of the jurors'

THE WASHINGTON POST Saturday, Jan. 4

of Watergate Convictions

TV-watching or newspaper reading.

The spokesman, Horace Webb, said Watergate-related stories were regularly snipped from the newspapers the jurors were given to read while television sets were permitted only in the makeshift recreation or day rooms at the hotels where they stayed. He said the sets were shut off when any Watergate news came on the air.

"If there was a period when a deputy marshal was not in the day room, it was just for a brief minute or two—to go to the bathroom or answer the phone in another room," Webb said. In any event, he added, "we had no reports" of jury exposure to any prejudicial publicity.

Webb said: "I just don't know what Mrs. Gould was talking about."

Lawyers for all four convicted defendants are expected to file new trial motions with Sirica by the Wednesday evening deadline. Appeals to the U.S. Circuit Court here will not begin until after Sirica hands down the sentences. Under the slow-moving appellate process, it could be 4½ months more before all legal briefs are filed and the case is ready to be set for hearing.

"They'll need a few wheelbarrows just to get the record in the case upstairs, I guess," one court official added. "After all, the trial took 14 weeks."

The lawyers for the four men plan to raise once again most of the pretrial motions they unsuccessfully pressed before Sirica—arguing that they should have been granted separate trials, that the trial should have been moved to another city, and that Watergate publicity made a fair trial impossible, especially in the nation's capital.

In addition, Mitchell's lawyers say they will contend, as they did during the trial itself, that Mitchell decided on his own, out of loyalty to Nixon, to remain silent during the course of the cover-up — only to wind up, when the cover-up started to fall apart, as the one the Nixon White House wanted to step forward and take the blame.

Wilson went into the long trial frankly hoping to collect enough errors to upset it on appeal. He has indicated that he plans to raise every point he can think of, including protests against Sirica's final instructions to the jury.

Ehrlichman told reporters Wednesday that he plans to protest Sirica's decision not to press for a deposition of the ailing Nixon, which Ehrlichman's lawyers repeatedly insisted was "indispensable" to their case.

Convicted earlier this year of conspiracy in connection with the White House-sponsored break-in at the offices of Daniel Ellsberg's psychiatrist, Ehrlichman will also contest as prejudicial the prosecution's replay of that episode at the cover-up trial—where it was offered as Ehrlichman's motive for taking part in the cover-up.

Mardian, a former assistant attorney general whose internal security division pressed a series of controversial antiwar conspiracy cases, is expected to complain about the "spillover effect" of being tried with the others.

Another issue will be Sirica's refusal to step aside as the trial judge in the face of complaints that he was too prosecution-minded.

Defense lawyers, however, frankly concede that they face an uphill battle, and one of them has predicted that most of the complaints —except perhaps for the decision not to call Nixon and the replay of evidence con-

cerning the Ellsberg break-in—deserve short shrift and will get it.

As Sirica himself noted at one session, the Supreme Court ruled long ago that "a defendant is entitled to a fair trial, not a perfect one," and the judge's own handling of the original Watergate trial was resoundingly affirmed by the U. S. Court of Appeals here in just those terms last November. It is a doctrine that has also been nurtured by Nixon's own Supreme Court appointees.

Several Watergate prosecutors said they did not think the ruling on Nixon's testimony or the replay of

the Ellsberg break-in would make any impression on the appellate courts.

"I think they're pretty much fanning the breeze on Nixon," one said. "Who knows what he would have testified to?"

From Nashville, the chief trial prosecutor, James F. Neal, who resigned immediately after the verdicts, called it a "well-conducted trial" after a somewhat "rocky start" because of nervousness on all sides.

"I thought Judge Sirica was more generous to defense counsel than a lot of

judges would have been," Neal said. At the same time, he said, the defense lawyers "did a hell of a fine job."

Barnard Patient Shows Progress

CAPE TOWN, South Africa, Jan. 3 (UPI)—The latest double-heart-transplant patient of Dr. Christiaan Barnard is feeling fine and should be up and around soon, hospital spokesmen said today.

Barnard told newsmen yesterday he hoped his patient, Leonard Goss, a 47-year-old retired railway worker, would be out of bed by today or Saturday.