

# Watergate *FP Post 1-7-76* defendants make appeal

WASHINGTON (AP) — A lawyer for Watergate cover-up defendant John D. Ehrlichman argued Tuesday that Ehrlichman was denied a fair trial because the jury did not hear testimony from former President Richard M. Nixon.

"He was producer, the director and the main actor in what this trial was all about," said Atty. William C. Frates as four men convicted in the Watergate cover-up took their case to the U.S. Court of Appeals.

Arguing for the special Watergate prosecutor's office, Peter M. Kreindler said it was determined that Nixon was not healthy enough to appear at the trial.

Besides, Kreindler said, "There is no basis in this trial record that the result would have been any different if Mr. Nixon had testified."

Six of the nine members of the appeals court heard oral arguments slightly over a year after four of the five cover-up defendants were convicted of seeking to block the investigation into the original Watergate break-in.

Besides Ehrlichman, a former White House assistant, they are former Atty. Gen. John N. Mitchell, former White

House Chief of Staff H. R. Haldeman and former Nixon reelection committee official Robert C. Mardian. Only Mardian appeared in the courtroom, where jury selection in their trial began Oct. 1, 1974 and a verdict was returned the next New Year's Day.

Once lawyers for three of the four defendants had finished, prosecutor Kreindler said, "None of the defendants has challenged the evidence... they were convicted on evidence that left no doubt whatsoever about their guilt."

Lawyers for Haldeman and Mitchell argued that intense pretrial publicity prevented selection of an impartial jury.

Haldeman lawyer John Wilson said, "The American people were whipped up into a white heat by the publicity in this case."

Opinions of guilt were planted in the minds of possible jurors because of reports in The Washington Post and other publications, hearings by the Senate Watergate Committee and the House Judiciary Committee, plus court fights over possession of the White House tapes, Wilson said.

Mitchell lawyer William G. Hundley said trial Judge John J. Sirica failed to find out if prospective jurors had firmly implanted opinions that the defendants were guilty.

Hundley said Sirica's handling of jury selection was "totally inadequate," because the judge did not ask potential jury members what they knew about Watergate.

Objections on that point were raised at the time by defense lawyers, but Sirica ignored them, Hundley said.