

# 4 in Watergate Appeal Say Sirica Barred Fair Trial

NYTimes

By LESLEY OELSNER JAN 7 1976

Special to The New York Times

WASHINGTON, Jan. 6—Lawyers for the four former Nixon Administration officials convicted last year in the Watergate cover-up case told the United States Court of Appeals here today that Federal District Judge John J. Sirica had failed in numerous ways to give the defendants a fair trial.

In arguing to overturn the convictions, the lawyers charged that Judge Sirica had denied three of the defendants their Sixth Amendment rights to obtain witnesses when he refused to order former President Richard M. Nixon to testify.

"Here is the producer, the director, the main character of what this trial was all about," William S. Frates, one of the lawyers, told the court in an allusion to the former President.

They complained of "errors" and of improper instructions to the jury and they contended, especially strongly, that the judge had failed to protect the defendants from massive, prejudicial pretrial publicity.

"The American people were whipped up to a white heat," John J. Wilson, attorney for H. R. Haldeman, the former White House chief of staff, told the judges. A few minutes later, he added:

"This is the greatest, the

largest, the most virulent publicity situation that ever existed in America from the beginning of time."

Meanwhile, Ralph G. Newman, an literary appraiser and prominent Lincoln scholar, was fined \$10,000 today for his role in backdating Richard M. Nixon's personal papers, giving the then President a \$450,000 illegal income tax deduction. [Page 34.] The Watergate defense lawyers — all of whose arguments were disputed by Peter Kreindler, a lawyer representing the Government — argued their long-awaited appeal just over one year after the New Year's Day verdict against Mr. Haldeman and his co-defendants, John N. Mitchell, the former Attorney General; and Nixon campaign manager John D. Ehrlichman, once Mr. Nixon's chief domestic affairs adviser, and Robert C. Mardian, a former Assistant Attorney

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General.

Judge Sirica sentenced the defendants last Feb. 21—Mr. Mardian, who was convicted on a single count of conspiracy, to 10 months to three years in prison; the others, each convicted of conspiracy, obstruction of justice and various counts of lying under oath, to from two and a half to eight years.

All are free pending appeal.

Of the four, only Mr. Mardian came to hear the arguments, and he attended only the portion in which his attorney, David Ginsburg, spoke and in which Mr. Kreindler, a former member of the special Watergate prosecutor's staff, responded to Mr. Ginsburg.

He sat in the second row of the spectator section with his wife, Dorothy, watching, somber-faced. When he left, though, he was beaming, as he rarely did during the trial. He said to reporters, "No comment, but I'm smiling."

5th Defendant Acquitted

At the trial the Government presented what was generally regarded as a massive case against Mr. Haldeman, Mr. Ehrlichman, and Mr. Mitchell, and a less strong case against Mr. Mardian and a fifth defendant, who was acquitted, Kenneth W. Parkinson, a lawyer who worked for the Nixon re-election

campaign after the Watergate break-in.

As a result the lawyers for at least the three better-known defendants concentrated much of their effort at the trial on building a record for appeal. Mr. Wilson, in particular, spoke repeatedly of his "error bag," filled, he said over and over during the three-month trial, with mistakes by Judge Sirica that could win his client a reversal from the appeals court.

The really important proceeding in the case, some of the defense lawyers often seemed to be saying, would thus be the argument that took place today.

A Large Turnout

The day's proceeding did have at least some of the aura of a major event—reporters, photographers and television artists were there in force; the arguments were held in the courthouse's huge ceremonial courtroom, four floors above Judge Sirica's courtroom; and the room was nearly filled with spectators, some of them former members of the special prosecution team such as Jill Wine Vollner and Philip Lacovara.

But the proceedings also seemed somewhat familiar—the thrust of the arguments had been heard before, at the

trial and then in the appeals briefs; the events under discussion were now several years old.

The morning was spent on arguments on behalf of—and then against—Mr. Haldeman, Mr. Mitchell, and Mr. Ehrlichman.

Mr. Wilson started the session, saying: "We did not get a fair trial in this case. We did not get a fair trial for two reasons." They were, he said, the massive publicity and "the errors of the trial judge."

He spent 30 minutes describing the news coverage of Watergate, and then William G. Hundley, attorney for Mr. Mitchell, took up the argument. He called Judge Sirica's jury selection process "totally inadequate" to weed out the bias in the jury pool caused by the publicity.

Ehrlichman's Lawyer Speaks

William S. Frates, Mr. Ehrlichman's lawyer, then argued that Judge Sirica should have required Mr. Nixon to testify, as requested by the three defendants. And, as did the other attorneys, he pictured Judge Sirica as determined to have the trial go forward regardless of circumstances.

He said he was not speaking out of hostility and that, in fact, he "became rather fond of him" during the trial. But, he said, "it was obvious from the start of the trial that Judge Sirica was going to get a jury; we were going to try it; and there would be no delay."

Mr. Nixon was ill at the time that the trial be delayed to await Mr. Nixon's recovery so that he and others could question him. Judge Sirica declined, on the ground that Mr. Nixon would not be well enough for some time and also that he did not feel the testimony that Mr. Nixon could be expected to give was necessary to the defense.

Mr. Kreindler, in response, said that the evidence had shown "a massive conspiracy by the President and his closest aides to obstruct justice and to defraud the United States—and he added that none of the three had challenged the Government contention that the proof of guilt was "overwhelming."

On the publicity question, he contended that the jury had been, in fact, impartial; as shown by such actions as its acquittal of one defendant and the time it spent deliberating.

He also said that the jury selection process had shown that a high percentage of people in the jury pool had not been familiar with details from the news coverage. "It turned out," he said, "that the citizens of the District of Columbia hadn't followed Watergate very closely."

Mr. Mardian's lawyer, unlike

the others, and unlike his initial appeals brief, did address the question of the sufficiency of the evidence. He listed some of the evidence that had been presented against his client, and said, "Mardian's case should never have gone to the jury."

Mr. Ginsburg — who was heard separately by only five of the six judges who heard the others, because of the recusal of one judge who was once Mr. Ginsburg's law partner — also repeated the main points from his brief.

Among other things, he said that Judge Sirica should have severed Mr. Mardian's case from the others, especially after his original counsel became ill and had to be replaced by his young assistant. Mr. Mardian, Mr. Ginsburg said, wanted "an older, more seasoned lawyer," and Judge Sirica's failure to allow him to obtain one denied his right to counsel of his choice.