

Memorandum

TO : Peter F. Rient

DATE: June 19, 1975

FROM : Peter M. Kreindler *PK*SUBJECT: Watergate Appeal

As I now understand it, the appellants will be raising the issues identified below:

1. Haldeman -- see copy of letter attached, but only issues 1, 6, 7, 8, 10, 11, 13, 14, 17, 18 and 19.
2. Ehrlichman -- I have not yet received the designation, but I know that at a minimum Ehrlichman will be raising (a) the failure to grant a deposition of Mr. Nixon or to continue the trial to obtain his testimony, and (b) the admission of evidence relating to the Fielding break-in. Most likely, since he has been totally uncooperative with his co-defendants, he will be raising issues related to publicity. In this regard, he may have a slightly better claim than most because Ruth Gould was aware of his Fielding break-in conviction. See Marshall v. United States.
3. Mitchell -- Mitchell will be definitely raising the following points: (a) his right of silence was violated by the Senate Judiciary Committee and the House Judiciary Committee, and the prosecution's incriminating use of his compelled testimony in cross was constitutional error. This argument undoubtedly will be worked into an argument on Delaney and pre-trial publicity; (b) inadequate voir dire procedures and superficial questioning; (c) number and method of exercising peremptories; (d) failure of Sirica to recuse himself; and (e) failure to delete references to Mitchell on the tapes, in particular, those expressing opinions on Mitchell's guilt and those referring to the Vesco trial. Apparently, a severance argument will be woven into some of the above arguments, but not made separately.

4. Mardian -- (a) severance -- based upon spillover, relative weight of the evidence, "antagonistic" defenses (see beginning of JWV cross of Parkinson and use made of this cross by Neal and Stein in closing), and lack of counsel of choice; (b) failure to delete references to Mardian on tapes (Sixth Amendment and hearsay) -- in particular, Ehrlichman statements based upon statements of non co-conspirators and Dean and Magruder after they had withdrawn; (c) JWV cross of Parkinson as to whether it would have been a violation of the code of legal ethics for Mardian to disclose what he knew to Parkinson; (d) Passaretti charts were not supported by the evidence insofar as they identified Mardian as the "source" of \$40,000; and (e) instructions erroneous and inadequate on the scope and duration of the conspiracy in not differentiating between the cover-up and alleged cover-up of the cover-up -- in particular, admissibility of perjury before the Senate Select Committee as part of the conspiracy. Mardian also may raise the following arguments: (a) our rebuttal case inconsistent with the case-in-chief and Neal's summation not supported by the evidence in rebuttal case; (b) Sirica improperly curtailed the cross of Dean, Gray, Reisner and Powell Moore; (c) Sirica's refusal to question marshals (Tr. 9637) as to whether they had excised an article from the Washington Post on 12/7/74. In this regard, Green intends to either submit affidavits or ask counsel at argument to state that they never had been told by this office the telephone number to call to alert the marshals to obscure publicity they might not otherwise see in censoring newspapers. JWV informed Judge Sirica that she had given counsel the phone numbers; and (d) some argument relating to Mardian's withdrawal.

Attachment

cc: Mr. Ruth
Mr. Geller
Ms. Gevlin
Mr. Stephens
Mr. Glazer
Mr. Benner