

Liddy Conviction Is Upheld

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In a ringing defense of U.S. District Judge John J. Sirica's conduct of the original Watergate trial, the U.S. Court of Appeals unanimously upheld the conviction of Watergate conspirator G. Gordon Liddy yesterday.

The opinion rejected widespread criticism of Sirica, who made clear before the January, 1973, trial that he was interested not only in obtaining a verdict on the guilt or innocence of the defendants but in getting to the bottom of the Watergate scandal.

"Judge Sirica's palpable search for the truth in such a trial was not only permissible, it was in the highest tradition of his office as a federal judge," U.S. Circuit Judge Harold Leventhal wrote for the seven-member

panel that ruled on Liddy's appeal.

The Court of Appeals ruling is certain to be read closely by defense lawyers in the Watergate cover-up trial now being conducted before Sirica. At least one of those lawyers, John J. Wilson, has made it clear that he is hoping to goad Sirica into committing errors that will cause the appellate court to reverse a conviction if Wilson's client, former White House chief of staff H.R. (Bob) Haldeman, is found guilty.

The appellate court ruling did not say that Sirica's handling of the original trial had been error-free, but that the errors for the most part were harmless and therefore not prejudicial.

In one instance—Sirica's permitting the prosecution

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to argue to the jury that Liddy's retention of a lawyer in the early morning hours after the Watergate break-in was evidence of criminality—the court said Sirica erred.

But the evidence against Liddy was so overwhelming, the court said, "that even if there were constitutional error in the comment of the prosecutor and the instruction of the trial judge there is no reasonable possibility that it contributed to the

Liddy, the former counsel for the Finance Committee to Re-elect the President, was convicted with James W. McCord Jr., security director for the Committee for the Re-election of the President, on charges of conspiracy, burglary, illegal wiretapping and eavesdropping stemming from the June 17, 1972 break-in at the Democratic National Committee's Watergate headquarters. Five other men—former White House aide E. Howard Hunt Jr. and four men from Miami arrested inside the Democratic headquarters—pleaded guilty to the charges against them.

Sirica came to preside over the Watergate trial in

September, 1972, by appointing himself to the case after he was asked by the prosecution to invoke a court rule allowing the "best available" judge to hear the case.

The decision dismayed the prosecutors, who complained privately that Sirica, himself a former assistant U.S. attorney, was prosecution minded and might commit an error that could lead to the overturning of a conviction. Beyond his favoring of the prosecution and his tough attitude—which had earned him the nickname "Maximum John" for his stiff sentences—Sirica had a reputation for being stubborn and occasionally inclined to follow his own bent regardless of what the law commanded. Among the 15 U.S. District Court judges here, Sirica had one of the worst records for having cases sent back to him by the Court of Appeals because of errors he had made during trials and hearings.

Nearing the end of an undistinguished career, Sirica, then 68, set out with dogged determination to pursue his own course of action in the Watergate trial. When it was suggested to him during the trial that he had ruled improperly, he angrily brushed aside the complaint. "I'm not awed by the appellate courts. Let's get that

straight," Sirica said. "All they can do is reverse me. They can't tell me how to try my case."

Perhaps more than any other individual associated with the Watergate affair Sirica came to symbolize a determination to find out the full truth about the Watergate break-in. Ultimately, after the Watergate cover-up unraveled and the truth began to come out, Sirica had honors heaped upon him.

During and after the trial, however, Sirica was criticized in some circles for being injudicious, for overstepping the line and becoming—in the opinion of some—a member of the prosecution team.

Frustrated by the prosecution's failure to give a complete explanation as to why the break-in occurred and who was behind it, Sirica communicated his intention before and during the trial to elicit facts.

Twice in the trial—during the questioning of former Nixon campaign treasurer Hugh W. Sloan Jr. and of Alfred C. Baldwin III, the man who listened in on phone conversations from Democratic headquarters—Sirica intervened to question the witnesses himself.

The appellate court defended Sirica's action in principle, even though it found some "problems" with the manner in which Sirica went about doing it. "The precepts of fair trial and judicial objectivity do not require a judge to be inert," Leventhal said. "The trial judge is properly governed by the interest of justice and truth, and is not compelled to act as if he were merely presiding at a sporting match."

A federal judge has "inherent authority" not only to comment on evidence but when appropriate to call or recall witnesses, Leventhal said. "What is required, however, are reins of restraint, that he not comport himself in such a way as to 'tilt' or oversteer the jury or control their deliberations." Despite the "problems" the court found with some of Sirica's actions, Leventhal said, "his over-all course was neither an abuse of his judicial function nor a denial of fair trial."

Noting that Sirica intervened where he disbelieved the testimony, the opinion said, "the public interest in safeguarding a record from taint is particularly keen when the case involves the integrity of the nation's po-

litical system—as can fairly be said when persons in the campaign of one major political party used clandestine contributions to penetrate the internal process of the other—and is consequently of moment in both the daily press and history." Viewed in this context, the court held, Sirica's search for the truth "was in the highest tradition of his office as a federal judge."

The appellate court suggested, however, that Sirica might have done better to accept the prosecution's offer to ask Sloan the questions that Sirica himself had asked. Additionally, the court suggested, the jury should have had an opportunity to hear Sloan answer the questions rather than have Sirica read his examination of Sloan—done outside the jury's presence—to the jury later in the trial.

The Court of Appeals dismissed, with only minimum discussion, the other three points raised by Liddy in his appeal: that Sirica erred in not questioning each prospective juror individually before a jury was selected; that Sirica should not have allowed testimony regarding Liddy's statement to a third party that he had lost his job at the re-election committee for not cooperating with the FBI; and that Sirica's adherence to a Court of Appeals order on testimony concerning the Watergate wiretaps denied Liddy the right to cross-examine witnesses.

Liddy's appeal was heard by the full court, except for two judges, rather than by a three-judge panel that usually hears appeals. According to informed sources, the court has made a policy decision to hear all Watergate-related cases *en banc* (full-court) because of their importance and to avoid petitions for rehearing by the full court.

Circuit Judges Roger Robb and Edward A. Tamm chose not to participate in deliberations on Liddy's appeal.

Liddy, sentenced by Sirica to from six years, eight months minimum to 20 years in jail for his role in the Watergate break-in as well as an additional sentence of 18 months for contempt of court after refusing to answer questions before the federal grand jury. Liddy was released on \$5,000 bail last month. His lawyer, Peter L. Maroulis, of Poughkeepsie, N.Y., said yesterday he will not decide whether to appeal the decision to the U.S. Supreme Court until after he reads the opinion.