

# Cover-Up Convictions Stand

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The U.S. Court of Appeals yesterday upheld the Watergate cover-up convictions of three of former President Richard Nixon's top aides, but ruled that a fourth—former Assistant Attorney General Robert C. Mardian—must be given a new trial.

In upholding the convictions of former Attorney General John N. Mitchell and former White House aides John D. Ehrlichman and H. R. (Bob) Haldeman, the appeals court ruled 5 to 1 that there was no indication the jury verdict was based on anything other

than the overwhelming evidence of their guilt."

In a separate opinion it ruled that Mardian, a one-time Nixon campaign aide, should have been given a separate trial on the charges because his first-choice attorney became ill after the trial began and because he was alleged to have a more limited role in the cover-up conspiracy.

In its 201-page majority opinion, the appeals court commended the trial performance of U.S. District Court Judge John J. Sirica, who presided over the four-month airing of the charges in the political scandal.

It rejected complaints by the defendants that Sirica should have dismissed the charges against them or moved the trial because of pretrial publicity, claims by the defendants that the judge should have forced the then-ill Nixon to testify at the trial, and contentions by the defendants that the White House tapes should not have been admitted into evidence.

All four men have been free on personal bond pending the outcome of the appeal. Lawyers for Mitchell and Ehrlichman said they will carry their case to the

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# Three Watergate Convictions Upheld; New Trial Is Ordered for Mardian

## WATERGATE, From A1

Supreme Court. A Haldeman lawyer declined to comment until he has read the appeals court decision.

A Supreme Court decision on whether to hear the appeal could take several months.

A spokesman for the Watergate special prosecutor's office said it hasn't been decided whether to try Mardian again.

Mardian, 52, was convicted of conspiring to obstruct justice and was sentenced to a prison term of 10 months to three years.

Mitchell, Haldeman and Ehrlichman were convicted of conspiracy, obstruction of justice and lying under oath before various forums. Each received a prison term of 2½ to eight years in prison.

The charges grew out of the Nixon administration's attempts to conceal its involvement in the break-in at the Democratic National Headquarters in the Watergate office complex on June 17, 1972.

The four men were among seven persons indicted by a federal grand jury in March, 1974, on charges that concerned—as the appeals court said in its rulings yesterday—"an unprecedented scandal at the highest levels of government."

The others indicted at the time were former White House aide Gordon Strachan, whose charges were later dismissed because of legal problems stemming from a grant of immunity; former White House lawyer Charles W. Colson, whose cover-up charges were dropped after he pleaded guilty and served a prison term in a separate case, and former Nixon re-election lawyer Kenneth Parkinson, who was acquitted in the cover-up trial.

The appeals court said the "unveiling of the conspiracy" to impede a grand jury investigation of the break-in received unusually large coverage in the media, but it rejected contentions by the defendants that the publicity made a fair trial impossible.

"The overwhelming bulk" of the coverage, said the judges in an unsigned opinion, "consist[ed] of straightforward, unemotional factual accounts of events and of the progress of official investigations."

Participating in the majority ruling

were U.S. Circuit Court Chief Judge David L. Bazelon and Circuit Court Judge J. Skelly Wright, Carl McGowan, Harold Leventhal and Spottswood Robinson III. U.S. Circuit Court Judge George MacKinnon filed a separate 80-page dissent in which he said the trial should have been moved from Washington because of the pre-trial publicity.

The majority judges said there was no need to move the trial because Judge Sirica took "all appropriate measures" while selecting prospective jurors to assure that they had not been improperly influenced by publicity.

"[W]e are convinced that the District Court exercised its discretion judiciously and intelligently," the judges said. "Indeed, no one who reads this transcript [of the jury selection process] can fail to be impressed with the patience, attention and acumen with which the judge probed the opinions of the [prospective jurors] so as to remove those who harbored any prejudice or preconception."

In discussing whether it was a fair trial, the judges said the defendants "appear to concede this ultimate conclusion, for they never suggest that the jury was actually prejudiced against them or that its verdict rested on anything other than the overwhelming evidence of their guilt."

The defendants also argued that the trial should have been postponed so that Nixon could appear as a defense witness.

In rejecting that argument, the appeals judges said Nixon's testimony would have been of "limited significance" and therefore was not worth a postponement of the trial.

The judges said that there was "no assurance" that Nixon's testimony would have been favorable to the defense, that the defendants had failed to specify the purpose of calling the former President, that any testimony he would have given would merely duplicate other testimony in the trial, and that the former chief executive "could not have disputed the central propositions in the government's case."

"And of course Nixon could not have disproved what the tapes revealed," the judges added.

The appeals court also ruled that Sirica properly admitted the tapes into evidence despite the defendants'

claims that they should not have been played.

The recordings, according to the judges, "contain discussions of many aspects of Watergate strategy. The conspiracy at issue required the coordination and control of a large number of individuals who had knowledge of the events that were being covered up.

"... [A]most all of these [tapes] are integral parts of the continual strategy sessions that took place in the White House concerning what to do in the future about Watergate," the judges continued.

The defendants also charged that Sirica, whose name has become inextricably entwined with the effort to unravel the Watergate case, was prejudiced against them.

The judges said they could detect no prejudice, and they praised Sirica's "dignified though persistent judicial efforts to bring everyone responsible for Watergate to book. Already we have ... commended his quest for truth, and what we said then applies equally now."

The court's 19-page opinion reversing Mardian's conviction was written by Wright and was unanimous. However, Leventhal did not sit in the Mardian case.

Wright said Mardian's right to the counsel of his choice required that he be removed from the Watergate cover-up case when his attorney, the late David G. Bress, became ill two weeks into the trial. A Bress associate, Thomas Green, continued to represent Mardian.

Saying out that Mardian's alleged role in the conspiracy was "limited," Wright said there would only be a "minimal burden" on the part of the government to try him separately from the other defendants.

Under the ruling, the special prosecutor's office has the option of retrying Mardian, dropping the charges against him, attempting to convince him to plead guilty, or appealing the ruling.

Reached yesterday as he was on his way to work at the Mardian Brothers Construction Co. in Phoenix, Mardian said he was "thrilled" by the appeals court ruling.

"I didn't lose faith in the system and it works," Mardian said.