

# SUPREME COURT BARS PLEA BY EHRLICHMAN, HALDEMAN, MITCHELL

## JUSTICES REFUSE TO HEAR CASE

### No Vote or Explanation Is Given— Three in Watergate Cover-Up Face 2½-to-8-Year Terms

By LESLEY OELSNER

Special to The New York Times

WASHINGTON, May 23—The Supreme Court refused today to hear the appeals of John N. Mitchell, H. R. Haldeman and John D. Ehrlichman from their convictions in the Watergate cover-up case.

The Court gave no explanation and no breakdown of the voting other than to say that Justice William H. Rehnquist had not participated.

The action came more than a month after the Justices, in a rare and unauthorized press disclosure that caused them considerable embarrassment, were reported to have voted, 5 to 3, not to hear the appeals.

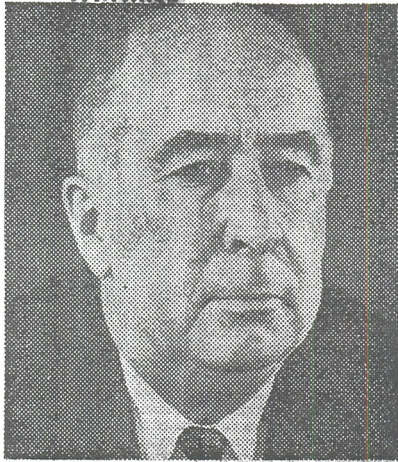
Chief Justice Warren E. Burger then postponed final consideration of the case, according to Court sources, in the hope of getting a change in the vote so that the appeals could be heard.

#### Legal Battle Appears Over

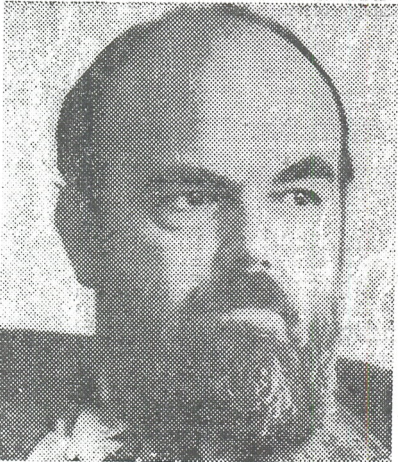
Today's action ends for all practical purposes the long legal fighting over the cover-up, even as the scandal is again in the public mind as a result of former President Richard M. Nixon's television interviews with David Frost. The scandal led to Mr. Nixon's resignation from the Presidency.

Barring some unforeseen and unlikely development, such as Court reconsideration of the cases, the refusal today means that the three men, who as aides to Mr. Nixon were once among the most powerful men in the nation, must each serve terms of from two and a half to eight years in prison.

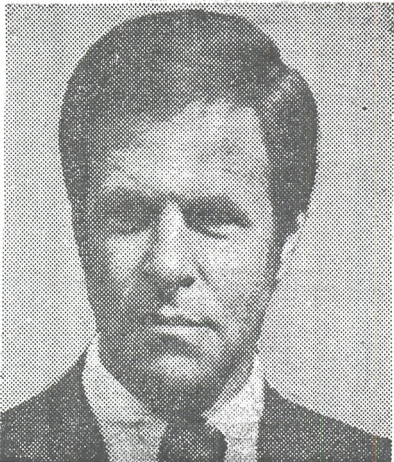
Mr. Ehrlichman, who was Mr. Nixon's chief domestic affairs adviser, entered



United Press International  
John N. Mitchell



The New York Times  
John D. Ehrlichman



H. R. Haldeman

prison voluntarily last October to begin serving his cover-up sentence and a concurrent sentence of 20 months to five years imposed in the "plumbers" case on charges arising from the break-in at the office of Dr. Daniel Ellsberg's former psychiatrist. He had continued, however, to press appeals in both cases.

The Court refused a few months ago to hear the plumbers case appeal.

#### Mitchell and Haldeman Out

Mr. Mitchell, who was Attorney General, and Mr. Haldeman, the chief of staff at the Nixon White House, have been free pending appeal.

Lawyers for Mr. Mitchell and Mr. Haldeman said that they planned to file petitions asking the justices to reconsider the matter. Mr. Ehrlichman's defense was also reportedly considering the possibility of asking for a rehearing.

Such requests are almost never granted. However, they sometimes serve to delay for a few weeks or longer the carrying out of the Supreme Court's action. It is thus unclear precisely when Mr. Haldeman and Mr. Mitchell will begin their terms.

The refusal to hear the case does not mean that the Supreme Court has upheld, or affirmed, the convictions—that it agreed with the convictions on the merits. Technically, it simply means that the Court has refused requests by the three men to review a decision by the United States Court of Appeals for the District of Columbia last fall in which the appeals

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court upheld their convictions.

The effect of the action is to leave the appeals court opinion as the final decision on the merits of the defendants' arguments.

The action does mean that the Justices were not convinced by the argument that the three men made in their petitions as to why the cases should be heard. Only four Justices need vote to hear a case in order for review to be granted.

The three defendants were convicted on Jan. 1, 1975, along with former Assistant Attorney General Robert C. Mardian, whose conviction was reversed by the appeals court in the ruling last fall. A fifth defendant, Kenneth Wells Parkinson, a Washington lawyer who worked for the Committee for the Re-election of the President, was acquitted.

Mr. Mitchell and Mr. Haldeman were each convicted of conspiracy, obstruction of justice and three counts of perjury. Mr. Ehrlichman was convicted of conspiracy, obstruction of justice and two counts of perjury.

The cover-up trial last three months. It was, by any measure, one of the most remarkable trials in the nation's history, with a group of once vastly powerful men facing judgment before a jury of Washington residents, predominantly black and mostly working class.

The trial was presided over by John J. Sirica, who through his handling of earlier Watergate cases and proceedings had helped bring the unraveling of the incidents involved in the break-in June 17, 1972, at the Democratic national headquarters in the Watergate complex.

#### First Disclosure of Tapes

The prosecution put on massive amounts of evidence, including many of Mr. Nixon's White House tape recordings. With the exception of one brief segment that had been played previously, the trial was the first public playing of the tapes.

Mr. Nixon was not there, despite some attempts by the defense to obtain his testimony. Judge Sirica ruled that the former President need not be present because of his poor health at the time and because he considered the expected testimony of Mr. Nixon to be of limited value.

#### Like 'Hamlet Without Hamlet'

Nevertheless, Mr. Nixon dominated the trial, and the trial disclosed much new information about his own part in Watergate. The tapes established that he had played a major role in the cover-up.

Mr. Ehrlichman filed his own petition with the Justices seeking review; Mr. Mitchell and Mr. Haldeman filed a joint petition. Both petitions discussed pretrial publicity and the lack of testimony from Mr. Nixon.

Mr. Ehrlichman's petition said, regarding Mr. Nixon:

"Throughout the Watergate affair, Richard Nixon was the main actor. To expect Ehrlichman to conduct his defense without the testimony of Richard Nixon is tantamount to asking a Shakespearean troupe to perform 'Hamlet' without Hamlet. As reflected by this record, Richard Nixon—although physically absent from the courtroom—was at the heart of each of the Government's main contentions. Never before has a single witness been so central a figure as was Richard M. Nixon in this case."

On the subject of pretrial publicity, the Haldeman-Mitchell petition said:

"The fundamental problem raised by this prosecution was neither addressed nor answered by the court below. The problem is whether fallible men and women can reach a disinterested verdict as to the guilt of those associated with the gravest scandal in American political history when, before they enter the jury box, their minds were saturated by press and radio for months preceding the matter designed to establish the guilt of the accused."

Mr. Ehrlichman also raised questions about whether he had been given adequate access to White House files while preparing for his defense. And the Haldeman-Mitchell petition raised questions as to whether Judge Sirica should have disqualified himself because of his role in earlier Watergate-related proceedings.

The special Watergate prosecutor, Charles F. Ruff, filed a memorandum opposing high court review of the case. He said:

"While the trial in this case was profoundly important—the conspiracy to obstruct justice among those holding positions of public trust constituted an assault on the fundamental principle that no man is above the law—the issues presented by petitioners for review are common and familiar."

There was "no basis," he went on, to review the issues.

The Court, announcing its refusal to hear the dispute, did not state why Justice Rehnquist had not participated. Presumably he disqualified himself because he was an Assistant Attorney General from 1969 to 1971, during Mr. Mitchell's tenure as Attorney General, and the two had been friendly.

In the vote last month on whether to hear the appeals, in the Court's regular private conference, those voting against were said to be Justices Potter Stewart, William J. Brennan Jr., Thurgood Marshall, Byron R. White and John Paul Stevens. Those voting to hear the appeals were said to be the Chief Justice and Justices Harry A. Blackmun and Lewis F. Powell Jr.