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Appeals Court Upholds McCord
Conviction, Liddy Sentence

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The U. S. Court of Appeals upheld yesterday the conviction of Watergate co-conspirator James W. McCord Jr., unanimously rejecting his contention that governmental and judicial improprieties had irreparably tainted his trial.

In a separate 6-to-1 opinion, the appeals court also supported U. S. District Judge John J. Sirica's position of a jail sentence on convicted Watergate co-conspirator G. Gordon Liddy for refusing to testify before a grand jury.

Liddy had contended that the contempt sentence, an 18-month term that he has finished serving, should not have been timed to run as it did before he began serving his sentence for the Watergate break-in conspiracy itself.

The court's 36-page unanimous opinion on McCord's appeal marks the second time that it has rejected contentions that Judge Sirica handled the original Watergate trial improperly. It had rejected a similar plea last month in upholding Liddy's conviction on appeal.

Yesterday's opinion, written by U. S. Chief Circuit Judge David L. Bazelon, remarked that "a superficial review of these events (Sirica's actions in the original trial) might support the inference that at least Judge Sirica communicated an appearance of inquisitorial attitude inconsistent with notions of a fair trial."

However, Judge Bazelon added, "such a view assumes an exceedingly narrow interpretation of the responsibilities of a trial judge."

"No judge should remain aloof while the prosecution ignores important evidence or,

indeed, while the defense fails to explore testimony central to the issues at trial or fails to raise defenses which may exonerate the accused," Bazelon continued.

Bazelon said that there are "strict limits" on the power of a judge to intervene in a trial, but that the intervention must be assessed in individual cases based on whether it is in the pursuit of justice and is consistent with the premises of the limits on intervention.

"Judge Sirica's conduct of McCord's trial was consonant with these standards," Bazelon said.

McCord also had argued that the government had allowed him to go to trial in an attempt to cover up the involvement of higher governmental officials, and knowingly used perjured testimony against him in that trial. For that alleged governmental misconduct, McCord said, charges against him should be dismissed.

The appeals judges found that McCord "was not merely the object of the governmental misconduct but was a participant in it" by failing to disclose the involvement of higher officials during the trial.

"To remedy the government's breach of its duty to observe the law scrupulously so that it may set a proper example for the citizenry, we should not exonerate those in the government or associated with those in the government already convicted for that breach of duty, but rather we should continue the process of prosecution," Judge Bazelon wrote.

"In sum," Judge Bazelon

continued, "we are not here faced with a choice between convicting criminals and decrying lawless government conduct—the two are one and the same in this case and we may achieve both goals by affirming McCord's conviction."

McCord also had contended that newly discovered evidence relevant to his trial had been developed since his conviction—some of it on White House tapes—that warranted his being granted a new trial. The appeals court refused that claim by saying much of the evidence was not relevant to the break in at the Democratic National Headquarters for which McCord was convicted.

The only possibility raised by the new evidence on involvement by higher officials is that he might have claimed in his defense that he was authorized to commit the burglary, the appeals judges said.

"Confronted with McCord's own lack of diligence and his own statements that he was not coerced, we can only conclude that McCord knew full well the consequences of his failures to raise the defense and knowingly this course of action," Judge Bazelon said.

The appeals court also rejected a claim that McCord's trial attorney, Gerald Alch, did not properly defend him because of an alleged higher loyalty to the White House than to McCord himself.

Seven U.S. Court of Appeals judges voted to affirm the McCord conviction, with Circuit Judges Roger Robb and Edward A. Tamm foregoing participation. Circuit Judge George MacKinnon wrote a separate, two-page concurring opinion in the McCord case.