

Mardian Is Argumentative on Cross-Examination

By LESLEY OELSNER
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WASHINGTON, Dec. 16—Former Assistant Attorney General Robert C. Mardian held to his account at the Watergate cover-up trial through several hours of cross-examination today, growing increasingly annoyed and argumentative as the examination progressed.

Unlike some of the other defendants who have taken the stand, he made no concessions.

For most of the cross-examination, the defendant appeared to have the better of the sparring between him and the prosecutor who was questioning him, Jill Wine Vollner.

Only toward the end of the day did it appear that the prosecution might be winning some ground with its cross-examination as Mr. Mardian, seeming to lose patience, argued with and snapped at Mrs. Vollner rather than answering her questions directly.

At one point, she asked Mr. Mardian if he had made a certain statement before the grand jury. Mr. Mardian said, "Yes." Then Mrs. Vollner asked if that statement "was a fact."

Tone Is Scornful

Mr. Mardian replied, in a scornful tone, "What do you want me to say? 'Yes, Yes?'"

At another point, Mrs. Vollner asked an involved question. In such a case, a witness is permitted to say that he or she does not understand the question. Mr. Mardian, though, retorted, "I'm not going to dignify your question with an answer."

Mr. Mardian also objected several times that Mrs. Vollner was incorrectly "characterizing" something he had previously said.

Judge Sirica chided Mr. Mardian, mildly, a few times, telling him at one point to "let the lawyers argue the case."

James F. Neal, the chief prosecutor, also chided him, but less mildly.

If Mr. Mardian did lose some points by his responses late in the day, as some courtroom observers suggested, appeared earlier to have been at least holding even and perhaps winning ground.

First, under questioning by his attorney, Thomas C. Green, he continued with apparent self-assurance the account that he started last Friday—substantially the same as he gave the Senate Watergate committee last year.

Cites Duties as Lawyer

Mr. Mardian, who had worked for the Nixon re-election committee in a somewhat undefined role, told how Mr. Mitchell had given him the as-



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Jill Wine Vollner, a Watergate prosecutor, cross-examining Robert C. Mardian at the Watergate trial.

signment immediately after the break-in at Democratic headquarters in the Watergate complex on June 17, 1972, of handling the re-election committee's response to Watergate from a legal point of view.

As he told it, he gathered information for example in an interview with G. Gordon Liddy, the man who devised the break-in—in the role of an attorney, with the information thus subject to the attorney-client privilege.

He defended his actions as consistent with his duties as a lawyer.

Testimony on direct examination is often less important to the jury than testimony under cross-examination, which is unrehearsed and often much tougher.

Under cross-examination by Mrs. Vollner, however, Mr. Mar-

dian at first appeared to a number of observers to be at least as effective as he had been on direct.

At one point, Mrs. Vollner tried to show that Mr. Mardian had given somewhat different testimony at a grand jury appearance than he had given at the trial. She quoted from a portion of the transcript of the grand jury proceedings in an attempt to prove her point.

Mr. Mardian and Mr. Green, though, were then able to read a subsequent portion of the transcript, which appeared to contradict Mrs. Vollner's point.

The issue was the date when Mr. Mardian learned that there were written logs of the wiretapping of conversations at the Democratic national headquar-

employes.

Mr. Mardian, under repeated questioning by Mrs. Vollner, said that he did not know when he learned this.

Mrs. Vollner contended that he learned it before he talked to Mr. Liddy on June 21, 1972.

She said that Mr. Mardian was asked the same question before a grand jury on Aug. 2, 1973. Reading from the transcript, she told Mr. Mardian he had answered as follows:

"I don't know at what point in time I learned of it. I think I probably learned of it before I talked to Mr. Liddy."

However, as Mr. Green brought out immediately, the transcript shows that the answer was longer, reading as follows:

"I think I probably learned of it before I talked to Mr. Liddy, or it may have been afterwards. I don't know."

Mr. Mardian seemed at times to fluster Mrs. Vollner with his answers, sometimes making her lose her train of thought. And Mr. Green won several legal arguments on his objections to some of her questions.

Mr. Green, a former prosecutor, is, at 33 years of age, the youngest of the chief defense counsel in the case.

Mr. Green has been putting on a substantial defense.

Beginning last Thursday, he put on eight witnesses to establish an alibi for Mr. Mardian that rebuts one of the major allegations against him—that he placed the phone call that led Mr. Liddy to ask the then Attorney General, Richard G. Kleindienst, on June 17, 1971, to get the men who had been arrested several hours previously at the Watergate break-in out of jail.

Mr. Green plans to call a number of character witnesses tomorrow.

William S. Frates, the chief defense counsel for John D. Ehrlichman, tried during the Ehrlichman defense case to put on some witnesses who could testify about substantive matters. However, most of them were disallowed by Judge Sirica, on the ground that their testimony would be repetitive.

Also, he decided not to call any character witnesses after the judge said that the prosecution would be allowed to ask those witnesses about Mr. Ehrlichman's indictment for perjury in the "Plumber's" case, for which he was convicted last summer.

Basically, the defense was thus Mr. Ehrlichman's testimony in his own behalf.

The defense for two of the other defendants, John N. Mitchell and H. R. Haldeman, was also essentially just their testimony, supported by a few character witnesses.