

Coverup Conviction of 3 Nixon Aides Upheld

Washington

The U.S. Court of Appeals yesterday upheld the Watergate coverup convictions of three of former President Nixon's closest aides but granted a new trial for one-time Nixon campaign assistant Robert C. Mardian.

In a 300-page opinion, the six judges said defendants in the four-

month-long conspiracy trial had been properly tried and found guilty of "wide-ranging conspiracy" at the highest levels of government.

A separate opinion said Mardian, a former assistant attorney general, should have been tried separately from co-defendants John Mitchell, H. R. Haldeman and John Ehrlichman.

A fifth defendant, lawyer Kenneth W. Parkinson, had been acquitted when the jury returned its verdict on New Year's Day 1975.

Mitchell, a former attorney general, Haldeman, the former White House chief of staff, Ehrlichman, Mr. Nixon's principal domestic affairs adviser, and Mardian had all been found guilty of plotting to illegally block investigations into the break-in at Democratic National

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Committee headquarters June 17, 1972.

Mardian had been sentenced to a ten-month-to-three-year jail term by U.S. District Judge John J. Sirica. Mitchell, Haldeman and Ehrlichman were given jail terms of 2½ to eight years.

All have remained free pending their appeals. In most cases, losing in the appeals court would mean going to jail even if the Supreme Court is asked to take the case.

But Ehrlichman is also facing a minimum 20-month jail term for a separate conviction in the White House "plumbers" case and has been allowed to stay free pending a Supreme Court appeal. Ehrlichman was convicted of ordering members of the plumbers unit — a group set up to stop White House leaks — to break into the office of psychiatrist Lewis Fielding in an attempt to obtain the records of Pentagon Papers figure Daniel Ellsberg.

Mr. Nixon, who has lived in San Clemente since resigning from the White House in August, 1974, was himself named as an unindicted co-conspirator by the same grand jury that indicted the others in the Watergate coverup. He was later pardoned by President Ford from facing any Watergate charges.

In their decision, the appeals judges dismissed point by point more than two dozen legal questions raised by lawyers for the defendants during an unusually long appeals process.

In one, Haldeman's lawyers said the extensive publicity surrounding Watergate made it impossible for an impartial jury to be chosen in Washington.

The judges said, however, that despite the publicity they could find "no reason for concluding that the population of Washington, D.C., was so aroused against appellants and so unlikely to be able objectively to judge their guilt or innocence on the basis of evidence presented at trial . . ."

"On the basis of our own review," the opinion said, "we have no doubt that the jury was impartial."

Lawyers for Ehrlichman said he was denied a fair trial because Sirica failed to recess the trial long enough for Mr. Nixon to recover from phlebitis and appear as a witness.

But the appeals court said after reviewing testimony at the trial it had decided Mr. Nixon's "testimony would have been of marginal significance."

The judges noted that while the defendants challenged Sirica's method of jury selection and other actions during the three-month trial, they never questioned that the verdict against them "rested on anything other than the overwhelming evidence of their guilt."

There was no immediate comment from Haldeman, Mitchell or Ehrlichman, but their lawyers have indicated that the case will be taken to the Supreme Court.

One appeals judge, George E. MacKinnon, filed a partial dissent saying, "If ever in the history of our country there was a criminal case which by law had to be transferred to another place for trial because of pretrial publicity alone, this is that case."

As for Mardian, the court said a combination of his relatively minor role in the cover-up and the serious illness of his principal lawyer, David Bress, should have prompted Sirica to permit him to be tried separately.

A spokesman for the special Watergate prosecutor's office said no decision has been made on whether Mardian will be retried.

The five jurists joining in the main decision were Chief Judge David L. Bazelon, J. Skelly Wright, Carl McGowan, Harold Leventhal and Spottswood W. Robinson.

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