

# MARDIAN CONVICTION ON WATERGATE UPSET

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## Actions on Haldeman, Ehrlichman and Mitchell Are Upheld

By JOHN M. CREWDSON  
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WASHINGTON, Oct. 12—A Federal appeals court reversed today the conviction of Robert C. Mardian, the former Assistant Attorney General who was found guilty 21 months ago of conspiring with other aides to former President Nixon to cover up responsibility for the 1972 Watergate break-in.

At the same time but in a separate opinion, the panel of appeals court judges, including Chief Judge David L. Bazelon, upheld the convictions of three of the former aides, H. R. Haldeman, John D. Ehrlichman and John N. Mitchell.

In their brief opinion concerning Mr. Mardian's case, the judges said that John J. Sirica, the presiding judge at the 1974 Watergate cover-up trial, had erred in failing to grant Mr. Mardian's request that he be tried alone, instead of with the other defendants.

### Prosecutor Weighing Move

In reversing his conspiracy conviction, the appeals court remanded Mr. Mardian's case for a new trial. But a spokesman for the Watergate special prosecutor, Charles F. Ruff, said it would be some days before a decision was made on whether to appeal the reversal, to retry Mr. Mardian, or to let the matter rest.

Mr. Mardian, who was an official of the Committee for the Re-election of the President in June 1972 when the Watergate break-in occurred, could not be reached by reporters today at his family's

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construction business in Phoenix, Ariz., where he works.

But Ronald P. Wertheim, one of his lawyers, said that he had telephoned the news of the reversal to his client, who was "elated, naturally."

Mr. Mardian argued before the trial began that his role in the Watergate cover-up had been a marginal one and that, unless his case was severed from that of the other defendants and tried separately, there was a danger that the Government's evidence against the others might taint his own defense.

### Judges Defend Sirica

Judge Sirica denied that request, and the appeals judges noted today that he had acted properly because, "based on the information then before the court, that showing was not so compelling that it was clear Mardian's interest in a separate trial outweighed" the interests opposing separation.

But the judges of the United States Court of Appeals for the District of Columbia said today that, as the trial progressed, it became clear that the evidence against Mr. Mardian, who was charged with only a single count of conspiracy, "was not as strong as that marshalled against his co-defendants."

Two weeks after the trial began, David Bress, Mr. Mardian's principal counsel, was forced to withdraw from the case because of illness. Mr. Bress has since died. But when he withdrew, Mr. Mardian again requested a severance, and it was Judge Sirica's decision not to grant the second motion that the court cited in reversing his conviction.

One legal expert, citing the court's linking of the issue of Mr. Mardian's minor role in the cover-up conspiracy with his inability to be represented by his choice of counsel, said that the decision seemed a fairly narrow one that would not be likely to have many antecedents and would not therefore have major impact on future conspiracy cases.

Mr. Mardian was one of seven original defendants in the cover-up case, the last major action brought by the special prosecutor's office.

### Parkinson and Colson

Kenneth L. Parkinson, a lawyer for the Nixon re-election committee, was acquitted by the jury that convicted Mr. Mardian. Charges against Charles W. Colson, a former special counsel to Mr. Nixon, were dropped when he admitted his role in a separate break-in at the office of Daniel Ellsberg's psychiatrist.

The special prosecutor dismissed charges against the seventh defendant, Gordon C. Strachan, an assistant to Mr. Haldeman, after it became unclear whether some of the Government's evidence against him had been developed from testimony Mr. Strachan gave under a grant of Congressional immunity.

In rejecting the pleas of Mr. Haldeman, who served as President Nixon's chief of staff, Mr. Ehrlichman, the President's domestic adviser, and Mr. Mitchell, the former Attorney General and Nixon re-election director, the appeals judges disposed of several contentions by the three that Judge Sirica had allowed his personal bias against the defendants, as well as technical errors, to pervade his conduct of the trial.

They also dismissed a contention by the three that their defense had been hampered by their inability to gain the testimony of Mr. Nixon, who was then incapacitated with phlebitis, in their defense.

### Defense Lawyer Plans

Plato Cacheris, a lawyer for Mr. Mitchell, said today that he believed he would ask the Supreme Court to hear his appeal of today's decision. John J. Wilson, who represented Mr. Haldeman at the trial, said he would not decide whether to appeal the ruling until after he had studied the 302-page appeals decision. William Frates, Mr. Ehrlichman's lawyer, could not be reached for comment.

The principal arguments of the three defendants whose convictions were upheld today concerned the overwhelming national publicity given to the Watergate scandals in the two years preceding their trial and what they argued was an insufficient attempt by Judge Sirica to make certain that the 12 jurors who decided their fate were free from prejudice.

The appeals judges, in their opinion, conceded that the publicity surrounding Watergate had been "extraordinarily heavy," but not so inherently prejudicial nor "unforgettable" that it supported the defendants' argument that they had been unable to receive a fair trial.

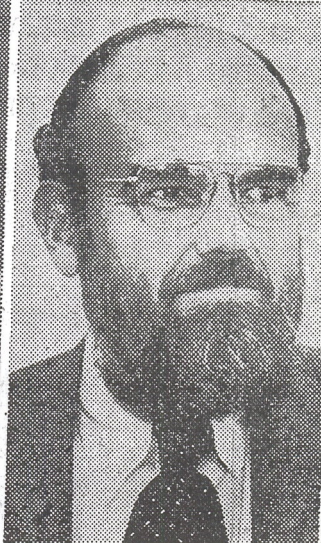
Judge George E. MacKinnon, the only judge who dissented from today's decision, wrote in a separate opinion that he believed that because of the pre-trial publicity the cover-up case should have been heard in a jurisdiction outside of Washington.



Robert C. Mardian



John N. Mitchell



John D. Ehrlichman



H. R. Haldeman

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