

EHRlichman GUILT UPHELD ON APPEAL IN ELLSBERG CASE

MAY 18 1976

Conviction of Liddy Is Also
Affirmed in Break-In at
Office of Psychiatrist

2 OTHERS ARE CLEARED

Federal Panel Rules, 2-1, for
Miamians Who Conducted
Raid for the 'Plumbers'
NYTimes

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WASHINGTON, May 17—The United States Court of Appeals unanimously affirmed today the conviction of John D. Ehrlichman, once President Nixon's chief domestic affairs adviser, for his role in the 1971 break-in of the office of Dr. Daniel Ellsberg's former psychiatrist by the White House "plumbers."

The court also unanimously upheld the conviction of Mr. Ehrlichman's co-defendant, G. Gordon Liddy, who worked both for the Nixon White House and the 1972 Nixon re-election campaign.

However, by a vote of 2 to 1, the court reversed the convictions of the two other defendants in the so-called plumbers trial, Bernard L. Barker and Eugenio R. Martinez, the Miami residents who carried out the break-in on instructions from Mr. Liddy and another White House aide, E. Howard Hunt Jr.

Separate Opinions

The two judges who voted for the reversal wrote separate opinions giving somewhat different rationales. They agreed, however, that the trial judge—United States District Judge Gerhard A. Gesell—had erred in refusing to let the jury consider a "mistake-of-law" defense offered for the two Miami men.

The four were convicted on July 12, 1974, by a jury of six men and six women that deliberated on the case for just three hours. All four were found guilty of conspiring to violate the civil rights of the psychiatrist, Dr. Lewis J. Fielding of Beverly Hills.

Mr. Ehrlichman was also convicted of three counts involving false statements. One of those counts was subse-

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Guilt of Ehrlichman Upheld on Appeal

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quently set aside by Judge Gesell.

The Fielding break-in—which did not become public for nearly two years after it occurred—developed into one of the major embarrassments of the Nixon Administration and became part of the broad Watergate scandal.

The break-in arose from the White House's anger over newspaper disclosures of classified information, particularly the Pentagon papers, the secret Government history of American involvement in Vietnam.

The plumbers were set up in the White House, under the ultimate control of Mr. Ehrlichman, to investigate "leaks." The break-in was an attempt to gain information that might be used to discredit Dr. Ellsberg, who has said that he gave the Pentagon papers to the press.

Mr. Ehrlichman's primary defense at the trial was that he had not been apprised of, and had not authorized, the break-in. He testified that he had approved only a conventional investigation, involving no surreptitious entry.

The jury's verdict on the conspiracy count, however, as the appeals court's opinion by Judge Malcolm R. Wilkey put it, "reflected a finding that Ehrlichman had in fact authorized the search."

Mr. Ehrlichman argued on appeal that the search, while warrantless, was legal because it had been undertaken pursuant to Presidential power in national security matters involving foreign affairs. Even if it were illegal under the Fourth Amendment's ban on unreasonable search and seizure, he

said, he acted in a good-faith belief in its legality.

He also contended that he had been denied a fair trial because of the court's failure to counteract the effects of pre-trial publicity by dismissing the indictment or by other means, such as changing the site of the trial. He also said the Judge Gesell should have called Mr. Nixon to testify personally, rather than allow him, as the judge did, to submit testimony in the form of written answers to written questions.

The appeals court reasoned that the warrantless search infringed Dr. Fielding's rights under the Fourth Amendment, and that since there was not even any assertion that either the President or the Attorney General had specifically authorized the break-in as a national security measure, Mr. Ehrlichman could not contend that he believed it was lawful.

"Ehrlichman soars into a novel claim of authority," the court said. "No court has ever in any way indicated, nor has any Presidential administration or Attorney General claimed that any executive officer acting under an inexplicit Presidential mandate may authorize warrantless searches of foreign agents or collaborators, much less the warrantless search of the offices of an American citizen not himself suspected of collaboration."

cate decisions of propriety and probable cause to those actually assigned to ferret out 'national security' information is patent and is indeed illustrated by the intrusion undertaken in this case, without any more specific Presidential directive than that ascribed to Henry II vexed with Becket." Saint Thomas à Becket

(1118?-1170), Archbishop of Canterbury, was murdered after opposing Henry II.

The court—with Court of Appeals Judge Harold Leventhal and District Judge Robert R. Merhige, Jr. joining Judge Wilkey—similarly dismissed Mr. Ehrlichman's other contentions.

The Wilkey opinion did not reach the question of whether there can ever be a "national security" exception to the requirement of warrants for searches of homes. However, Judge Leventhal, joined by Judge Merhige, wrote an additional opinion condemning a friend-of-the-court brief by the Justice Department that stated that a warrantless search was lawful provided there was "solid reason to believe that foreign espionage or intelligence is involved."

Judge Gesell sentenced Mr. Ehrlichman to 20 months to five years for the plumbers charges. Mr. Ehrlichman, who was also convicted in the Watergate cover-up case, has been free pending his various appeals. It could not be learned if he will appeal today's ruling to the Supreme Court.

Mr. Liddy was sentenced to a one-to-three-year term, to be served concurrently with the term of six years eight months to 20 years that he is currently serving in the Federal prison in Danbury.

Judge Gesell gave Mr. Barker and Mr. Martinez suspended sentences, saying that they had been "duped by high Government officials." The two have already served prison terms for their roles in the Watergate break-in, to which they pleaded guilty Jan. 15, 1973.

Judges Wilkey and Merhige voted to reverse the convictions



CBS News

John D. Ehrlichman



United Press International

G. Gordon Liddy

of Mr. Barker and Mr. Martinez, with Judge Leventhal dissenting. Judge Merhige said: "The record discloses sufficient evidence of reliance on an official interpretation of the law for the matter to have been submitted to the jury."

Judge Wilkey called the two defendants "footsoldiers" of the Watergate affair and said:

"I do not think that defendants Barker and Martinez were entitled to act in objective good faith on the facts known to them in regard to Hunt's position and implicity of the validity of a legal theory, still to be disproved, which has been vigorously espoused by the President and Attorney General for the last 40 years."

The Watergate prosecution declined to say this afternoon whether it would seek to retry the two.

Mr. Hunt was not prosecuted in that case. He was, however, prosecuted in the Watergate break-in case and served as a government witness in both the plumbers trial and the Watergate cover-up trial.