Lawyers for Both Sides Sum Up at Ehrlichman's Trial

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WASHINGTON, July 11—The lawyers presented their closing arguments today in the trial of John D. Ehrlichman, with the prosecution contending that Mr. Ehrlichman had approved and authorized an illegal operation and the defense maintaining that he had authorized only a legitimate investigation.

Attorneys for the three other co-defendants—G. Gordon Liddy, Bernard L. Barker and Eugenio R. Martinez — also presented their summations. Judge Gerhard A. Gesell will charge the jury—instruct the jurors in the matters of law that are relevant to the case—at 10 A.M. tomorrow.

William D. Merrill, the assistant Watergate special prosecutor, said that there was "direct evidence" that Mr. Ehrlichman had given "approval and authorization" to a plan to examine the files of Dr. Lewis J. Fielding, the former psychiatrist of Dr. Daniel Ellsberg, in search of material on Dr. Ellsberg for a "psychiatric profile."

Mr. Ehrlichman, President Nixon's former domestic affairs assistant, and his co-defendants are charged with conspiring to violate Dr. Fielding's civil rights by conspiring to break into his office in Beverly Hills, Calif., on Sept. 3, 1971. In addition, Mr. Ehrlichman is charged with four counts of making false statements, once to an agent of the Federal Bureau of Investigation and three times to a grand jury.

'Selective Memory'

Mr. Merrill, speaking in a near monotone voice and with few gestures and no histrionics, used a red grease pencil to circle on an oversized calendar crucial dates in July, August and September, 1971, when conversations took place or memorandums were sent that Mr. Ehrlichman has been unable to recall. He characterized Mr. Ehrlichman as having a "selective memory throughout this trial."

Conceding that the word "break-in" had not been used, Mr. Merrill said:

"Main issue is who was aware of the plan to search Dr. Fielding's files, not who was aware of the break-in."

Mr. Ehrlichman has agreed that he approved an Aug. 11, 1971, memo recommending a "covert operation" to examine the psychiatrist's file, but denied that he knew or thought this would involve a break-in. But Mr. Merrill maintained that he had approved an illegal, secret search.

After Mr. Marrill's summation, William S. Frates of Miami, M. Ehrlichman's chief counsel, took the main burden of the defense summation after an introduction by Henry H. Jones, another of Mr. Ehrlichman's four lawyers. Mr. Frates, whose florid, folksy style and resounding voice are in marked contrast to Mr. Merrill's, told the jurors, "they're trying to make you the jury believe the word "covert" is an illegal operation. It doesn't mean illegal."

Charges Unfairness

Mr. Frates, who sometimes called the jurors "you folks," charged that Mr. Ehrlichman had been unfairly treated in his appearance before grand juries, with the prosecution asking him about certain memorandums in their possession and not showing them to him and, at a later appearance, trying to stop him from correcting earlier testimony.

"Were they trying to trick him?" he asked. "Is that being fair to a citizen of the United States who's volunteering" that his memory is at fault?

It was at this point that Mrs. Ehrlichman, who has been composed, friendly and smiling in court every day since the trial began, started to cry. As tears slid down her cheek her eldest son, Peter, 24 years old, put his arm around her, and a friend in the row behind handed her a tissue. Throughout the rest of Mr. Frates's presentation, she appeared to be blinking back tears.

Mr. Ehrlichman was portrayed by his defense counsel as a man with wide-ranging responsibilities, huge amounts of paperwork and innumeral telephone calls who could not reasonably be expected to remember a problem that, "important as it was, it was just another important problem."

Jibs at Young

Much of Mr. Frates's argument was directed against David Young, a principal prosecution witness and a one-time aide to Secretary of State Kissinger in the White House who became, with Egil Krough Jr., a co-director of the Special Investigations unit that planned the "covert operations," He referred to Mr. Young sarcastically as "that great American, David Young," and said, "He couldn't answer a question straight if he wanted to."

He described Mr. Krogh as "a young man trying to move too fast, to fast," and read aloud from Mr. Krogh's May, 1973, letter or resignation as Assistant Secretary of Transportation in which he accepted full responsibility for the Fielding incident and said that it had not been authorized by his superiors. Mr. Krogh made similar statements in an affidavit submitted to the judge in the 1973 trial of Dr. Ellsberg, who admitted having made available to newspapers the Pentagon papers, a 1971 secret Government history of the war in Vietnam.

He ended by expressing "great confidence" that the jurors would be "fair and just" in their decision. Having used less than his allotted two hours, Mr. Frates was followed by Peter J. Maroulis, defense counsel for Mr. Liddy. Mr. Liddy offered no testimony on his behalf, and spoke only to confirm to Judge Gesell his decision not to testify.

Belief in Warrant Cited

Mr. Maroulis declared that his client had believed that a search warrant had been obtained for the examination of the files. He cited the fact that he had outlined his plans in writing, that some of the equipment used had been supplied by the Central Intelligence Agency, that he had been informed by Mr. Young and Mr. Krogh that the project had been approved, and that he had been given $5,000 for expenses. He had made, Mr. Maroulis said, "a mistake of fact" in believing that there was a warrant.

Perhaps the most eloquent summation was that by Daniel Schultz, the lawyer for the trial's nearly forgotten defendants, Mr. Barker and Mr. Martinez. He characterized his clients as "two little men" with years of loyal service to the C.I.A., "not sophisticated spies or agents like E Howard Hunt," and trained to obey their superiors.

They became involved, he said, "as the result of a cruel fraud practiced on them" by Mr. Hunt, who led them to believe that this, too, has a C.I.A. operation.

He noted that Mr. Merrill had suggested that encroachment on individual rights in the name of national security "is one of the greatest dangers."

Cites Those in Pawer

"That may be so," he said. "But if it is, the danger is not from two little men down in Miami, but here in Washington, D.C. The dangerous ones are the people in power, the people who have used their positions of trust and improperly exercised their authority."

He cited Mr. Young, Mr. Hnt and the C.I.A. psychiatrist who agreed to undertake a profile on an American citizen as among "the dangerous ones." Of his clients, he said: "I submit that they have been victimized enough already by this sorry chapter of our country's history."

Mr. Merrill, speaking more emphatically than is his wont, said that the word "entry" might not have been used, but "these were intelligent, sophisticated people; they didn't have to draw each other pictures. They knew exactly what was being proposed and what was being done." If the attempt to enter Dr. Fielding's office was justified on the basis of national security, he said, "then God save this nation from such security."

Mr. Barker and Mr. Martinez, he said, knew the law, and "people cannot be allowed to violate these rights because they are told it is right. Can we allow these things to happen because someone in the Government doesn't like someone?" he asked. "That's not patriotism—it's anarchy, the beginnings of a police state."