

By Timothy S. Robinson

Washington Post Staff Writer

John D. Ehrlichman, who was President Nixon's top domestic adviser for nearly three years, was convicted by a U.S. District Court jury here yesterday of four criminal charges growing out of the 1971 Ellsberg break-in.

Ehrlichman, the highest ranking aide to President Nixon to be convicted in the aftermath of Watergate, was found guilty of conspiring to violate the civil rights of Daniel Ellsberg's psychiatrist, whose office was broken into in September, 1971, by three men working for the secret White House "plumbers" unit.

Three men who helped carry out the break-in—Bernard L. Barker, Eugenio Martinez and former White House aide G. Gordon Liddy—also were convicted yesterday of conspiring to violate the civil rights of the psychiatrist, Dr. Lewis Fielding.

Ehrlichman also was convicted by the jury yesterday of three charges of lying to the FBI and a grand jury investigating the Ellsberg break-in. He was acquitted of the fifth count against him in the indictment—another charge of lying to a grand jury—after the defense showed Ehrlichman had answered the question with the literal, if not the full, truth.

Ehrlichman, a Seattle, Wash., zoning lawyer and former Nixon campaign aide who joined the President's White House staff as an assistant and then as counsel in 1969, could receive maximum prison terms totaling 25 years and fines totaling \$45,000 on yesterday's convictions. Judge Gesell scheduled sentencing for all four defendants for July 31.

The tall, tanned lawyer — who was second closest to the President in the White House hierarchy—stood erect and expressionless as jury foreman W. A. Garner recited the verdict on each count.

The jury had deliberated about 3½

hours before sending a note to U.S. District Judge Gerhard A. Gesell at 5:05 p.m. yesterday that it had made a decision.

Later, standing in the sunshine on the courthouse steps, with his wife at his side, Mr. Ehrlichman said he would appeal the convictions. He said he had instructed his lawyers to base that appeal on what he called, without further explanation, his "inability to get a fair trial in this District" and on rulings by the judge during the trial that excluded much of an intended national security defense for the crime.

Ehrlichman said that "nothing that has happened today has shaken my confidence in the American judicial system . . . I am still looking forward to complete exoneration."

Judge Gesell had instructed the jury that it need not find that Ehrlichman had known in advance that the "covert operation" to obtain Ellsberg's psychiatric files included a forcible break-in.

That instruction cut sharply into one of Ehrlichman's defenses to the conspiracy count, that he merely approved a "covert operation" to exam-

ine the files and never knew in advance that there would be a break-in. Gesell said, in effect, that any search of private files without permission or a court order would be illegal.

After the jury was dismissed for its deliberations, Ehrlichman's attorneys objected to the judge's instructions because he didn't instruct the jury generally as to their defense theory. Judge Gesell answered that "there is no coherent statement of his defense . . . his defense has been one of guarding and dodging around various issues."

The jury conducted its private deliberations yesterday in the dark-paneled courtroom for the D.C. Court of Appeals at 4th and E Streets NW, the

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### EHRlichman, From A1

same roof in which the verdict was read. The case had been moved from Judge Gesell's courtroom in the nearby U.S. Courthouse because two armed convicts were still holding hostages in the basement cellblock of that building.

The Ehrlichman conviction has had "an adverse reaction as far as the President's welfare is concerned" on Capitol Hill, said Rep. Robert McClory (R-Ill.), an influential minority member of the House Judiciary Committee, which is considering impeachment of the President.

Mr. Nixon's Watergate lawyer, James D. St. Clair, sharply disagreed, however. "The impeachment of the President is separate and distinct from the criminal prosecution of Mr. Ehrlichman," St. Clair said. "The President has fully cooperated in this case. . . the President has done his duty" towards the administration of justice.

Yesterday morning Gesell bluntly defined the legal issues at stake in the trial, instructing the jury that the law had been violated if the government attempted to get private information without a search warrant. He said a search need not entail a "physical break-in," which only tended to emphasize "lack of permission."

"But an entry, surreptitious or otherwise is enough for unauthorized search as the court has defined it," the judge declared.

"When a government agency invades an area in which there is a legitimate expectation of privacy to look through such papers without permission, that is a "search," Gesell said.

The judge's instruction thus hit at the heart of Ehrlichman's defense, in which he said he never authorized the break-in, but merely a legal "covert" operation.

During the trial, the pros-

ecution introduced an Aug. 11, 1973, memorandum from Krogh and Young to Ehrlichman that recommended a "covert" operation "to examine all the medical files still held by Ellsberg's psychoanalyst covering a two-year period in which he was undergoing analysis."

The memo was initiated by Ehrlichman in the "approved" blank with the added handwritten notation, "If done under your assurance that it is not traceable."

In this way, the prosecution argued, Ehrlichman had authorized a search for information that, at the very least, he knew was privately held and would not be voluntarily surrendered.

Gesell instructed the jurors yesterday that nothing short of a duly authorized search warrant could have justified entering Fielding's office.

" . . . An individual can not escape criminal liability simply because he sincerely but incorrectly believes that his acts are justified in the name of patriotism, or national security, or a need to create an unfavorable press image or that his superiors have the authority without a warrant to suspend the constitutional protections of the Fourth Amendment," the judge said.

Gesell added that even the "proper concern of the President of the United States and others in high office to prevent leaks of national security

information would not have justified a warrantless search of Dr. Fielding's office without his permission.

"There is no evidence that the President authorized such a search, and as a matter of law neither he nor any official or any agency such as the FBI or the CIA had the authority to order it."

Following Gesell's instructions to the jury, the defense lawyers entered objections to what the judge had said. Andrew C. Hall, one of Ehrlichman's lawyers cited what he said was Gesell's failure to charge the jury with Ehrlichman's theory of the case.

"As I explained to you in detail," Gesell replied, out of the presence of the jury, "his defense has been one of guarding and dodging around various issues of the case, but there is no coherent statement of his defense . . ."

"I attempted twice to draw up last night in some form something that would enable me to do justice to Mr. Ehrlichman," Gesell said. "But on each occasion I attempted to do so it seemed to me I was charging him into difficulties. So I avoided charging the the-

ory of his case out of fairness to him."

The Ellsberg burglary trial was transferred to the old B building of the Superior Court at 4th and E Streets NW from the nearby U.S. District Court because of the holding of hostages by two convicts in the basement cellblock of the federal courthouse. The jurors, who have been sequestered at Mt. Vernon College, were told by Gesell yesterday that the two prisoners still held the District Court cellblock.

Because of the cramped quarters in the older Superior Court building the jurors deliberated in the mahogany paneled courtroom itself, instead of the small, hot jury room nearby. The defendants who normally would have remained in the courthouse, were allowed to leave. Their lawyers left phone numbers where they could be contacted.

Ehrlichman and his codefendants appeared to be in good spirits as the day began. All except Liddy entered the courtroom smiling, and at one point Ehrlichman slid onto the bench next to Barker and placed his arms around him in an affectionate hug.

The conspiracy count of the indictment grew out of a chain of events that began in the summer of 1971, when President Nixon organized a special investigations unit in the White House to track down and stop leaks of classified information. The formation of that unit came against a background of Ellsberg's having released the highly classified Pentagon Papers to the press for publication.

President Nixon at first put Ehrlichman in charge of the plans for the unit. A few days later, on July 2, 1971, he asked Ehrlichman to step out of direct control and suggest someone else to actually head the unit while maintaining an overall view of the operation, according to testimony at the trial.

Ehrlichman suggested his young family friend, Egil (Bud) Krogh, who had come with Ehrlichman from Seattle, Wash., to work in the Nixon administration. Krogh has already pleaded guilty and served six months in jail for violating Fielding's civil rights.

Assigned with Krogh was

David R. Young, an aide to then top foreign affairs adviser Henry A. Kissinger. Young became the only member of the unit to escape being prosecuted for a crime.

As the unit began its operation, E. Howard Hunt, a former CIA agent who had been hired by then-White House special counsel Charles W. Colson with Ehrlichman's approval joined the plumbers' staff. Hunt has since been convicted in the Watergate break-in and was granted immunity from prosecution for his testimony during the Ellsberg break-in trial.

Soon after Hunt's arrival in July, 1971, Liddy, a former FBI agent and treasury department aide, became the final addition to the unit. Liddy also has been convicted in the Watergate break-in.

The plumbers' unit's first main concern, according to trial testimony, became Daniel Ellsberg, easily identified by then as the person who leaked the Pentagon Papers. A federal grand jury in California had been investigating Ellsberg and indicted him in connection with the leak.

The purpose of the White House investigation became a dual one, according to trial witnesses. One aspect was to determine Ellsberg's motives for releasing the papers; the other was to discredit Ellsberg as an antiwar spokesman.

Colson has pleaded guilty and is serving one to three years in prison for obstructing justice in the Pentagon Papers case by disseminating derogatory information about Ellsberg.

One of the ideas for the investigation — by most accounts, suggested by Hunt — was for the CIA to conduct a psychological profile on Ellsberg. The first profile was unacceptable, and Ellsberg's psychiatrist had refused to give additional information to FBI agents that might be helpful.

Someone—this time either Hunt or Liddy or both, — suggested that an "entry" be made into Fielding's office to examine the files. They brought it up with Krogh and Young, who testified that they conveyed the information to Ehrlichman on Aug. 5.

That day, according to Krogh and Young, Ehrlichman said only "Let's think about it." they sent him a memo six days later in which he approved a "covert operation" to examine Fielding's files as long as it was "not traceable."

Hunt recruited Barker and Martinez, two old friends from his CIA days, to carry out a "surreptitious entry." Hunt and Liddy made a trip to California to carry out a

"vulnerability study" in other words to see how easy it would be to gain access to the files.

Hunt and Liddy showed photographs to Krogh and Young on Aug. 30, and detailed the operation to them. Krogh and Young, testifying during the trial, said they still didn't feel they had enough authority to approve the operation and called Ehrlichman. He gave them the final go-ahead, they said. He also arranged the financing for the operation with Colson, they added.

Meanwhile, various members of the unit had sent numerous memos to Ehrlichman discussing the psychological profile that was in the works, according to evidence presented during the trial.

Everyone agreed that after the break-in became a forcible entry, Ehrlichman ordered such events stopped in the future.

That was the end of any detailed discussion of the project, apparently, until original Watergate prosecutors Earl Silbert, Seymour Glanzer and Donald Campbell learned from former White House counsel John W. Dean III about the Ellsberg operation during their investigation into the Watergate coverup in the spring of 1973.

During the same time period, Ehrlichman also had expressed a renewed interest in the Ellsberg case when he discovered Hunt may have been disclosing it to a federal grand jury, Young testified.

According to Young, Ehrlichman called for Young's files on the plumbers' unit in March, 1973, and a few days later met with Young and told him he had removed "sensitive" memoranda from the files that showed a "little too much forethought" about the break-in.

The events from July, 1971, to March, 1973, contained the elements of the conspiracy count on which the four defendants were convicted yesterday. Civil rights conspiracy carries a maximum penalty of 10 years in jail and a \$10,000 fine.

Events on which the next three counts were based came as prosecutors Glanzer, Silbert and Campbell became more interested in Ehrlichman himself.

FBI agents interviewed Ehrlichman on May 1, 1973, and he told them that he had not seen any material on the "Pentagon Papers" case in more than a year. Lying to the FBI is a felony carrying maximum terms of five years in jail and a \$10,000 fine. Investigators found out a

few days later from Young that Ehrlichman had seen his files only six weeks before the FBI interview.

Then, on May 14, Ehrlichman was called before a federal grand jury and placed under oath. Prosecutors, armed with memos supplied by Young in return for immunity, were asking Ehrlichman about his knowledge of the psychological profile in advance of the break-in.

Ehrlichman, in three different answers during the exchange with prosecutors on the subject of the profile, said he learned of the profile "only after the . . . break-in."

The jury found that Ehrlichman purposely lied to the grand jury in those exchanges, that were contained in one count of the indictment, a felony that carries a maximum penalty of five years in jail and a \$5,000 fine.

In the same grand jury appearance, Prosecutor Glanzer asked this question:

"Q. Now were you aware before this break-in, which took place on or about Sept. 3, 1971, that an effort was going to be directed towards obtaining information from Dr. Ellsberg or Dr. Ellsberg's psychiatrist?"

"No," Ehrlichman replied. The prosecutors by then were aware of the Aug. 11 memo bearing Ehrlichman's initials approving the covert operation. The jury found yesterday that answer was a purposeful lie, and convicted him of another count of making false declarations to a grand jury.

[One of the jurors, David E. Shickles, said that probably

the most critical evidence presented to the jury was the August, 1973, memorandum from Krogh and Young to Ehrlichman in which they proposed a covert operation to get psychiatric information on Ehrlichman. The memo, which bore Ehrlichman's initialled approval, was used by some of the jurors to convince recalcitrant jurors that Ehrlichman had at the very least authorized an illegal search for the information.]

The last count of the indictment against Ehrlichman concerned his knowledge of persons having files relating to the Pentagon Papers investigation. Ehrlichman said in his answers that he assumed Krogh was the only person who had such files.

The jury apparently accepted Ehrlichman's explanation that he didn't say Young had such files because he wasn't specifically asked that question. Witnesses before grand juries are not obligated to volunteer information, but to answer questions truthfully.

Ehrlichman, 49, now lives in Seattle with his wife and five

children. Barker, 57, and Martinez, 52, are from Miami, and Liddy, 43, is in D.C. Jail serving his sentence for his conviction in the Watergate case. Liddy's wife and five children live in Oxon Hill.

Named in the conspiracy count of the original indictment in the Ellsberg break-in case, handed down by a federal grand jury under the guidance of the Special Watergate Prosecution force on March 7, 1974, were Colson and Miamian Felipe De Diego.

The charges against Colson were dropped when he entered his guilty plea for obstruction

of justice. Judge Gesell dismissed the charges against De Diego because he had been given immunity in state prosecutors investigating the same offenses for which he was charged in the federal case.

After the break-in was made public in the Spring of 1973, U.S. District Judge Matthew Byrne dismissed charges that had been brought against Ells-

berg. The basis for that dismissal during the ongoing trial, Byrne said, was "government misconduct."

Ellsberg could not be reached for comment yesterday.



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John D. Ehrlichman and his wife, Jeanne, leave court after verdict.



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**John Ehrlichman and wife Jeanne leave the courthouse after he was convicted**