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Ehrlichman Files Motion Asking for a New Trial

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WASHINGTON, July 19 — John D. Ehrlichman, found guilty a week ago of conspiracy and making false statements, filed a motion today asking for acquittal and a new trial on grounds that included the "facial expressions and gestures" of the presiding judge.

The motion filed by Mr. Ehrlichman's lawyers, claimed that he "was denied a fair trial by reason of the actions of the Court during the course of the trial."

"These actions," the motion said, "consisted of the making of facial expressions and other gestures which carried to the observer, and in particular to the jury, a clear indication of the Court's opinion on the credibility of John D. Ehrlichman. The Court repeatedly made facial expressions and turned away from the witness in such a manner as to indicate to the jury that Mr. Ehrlichman could not be believed."

The motion and its supporting memorandum also noted that Judge Gerhard A. Gesell had not instructed the jury to disregard facial expressions. It also alleged that during the trial, he "had indicated that the issue was whether or not Mr. Ehrlichman had approved a plan to bust into Dr. Fielding's office," but instructed the jury somewhat differently.

During his charge to the jury, the motion contends, Judge Gesell said "that a break-in was not the issue, but rather whether or not there had been a conspiracy to invade Dr. Fielding's privacy." The motion contended that "his instruction was both incorrect in the law and improper."

In support of its first contention, concerning Judge Gesell's "facial expressions," the defense lawyers attached two supporting affidavits. They were from Mrs. William J. Flathers 3d and Susan Sullivan, identified only as spectators, at the trial.

In identical affidavits, Miss Sullivan and Mrs. Flathers said that "by reason of the reaction of the trial judge by facial expressions, gestures and body movement, the Court clearly conveyed the impression that the Court found defendant Ehrlichman's testimony and the defense case to be inconsistent with facts and of doubtful veracity."

Among the 18 specifics listed in the supporting memorandum were allegations that Judge Gesell "erred" in his charge to the jury by "placing undue and heavy emphasis on the Government's theory of the case, and by failing to charge on the defendant's theory of the case."

The memorandum also alleged a "failing" by Judge Gesell "to require the President to fully and completely respond to the interrogatories." Mr. Nixon gave sworn, written answers to six questions submitted to him by the defense.

The memorandum also cited "the atmosphere created by two Federal prisoners holding several persons hostage in the courthouse during final argument" as detracting from the jury's ability to "impartially deliberate on the facts of this case."

Mr. Ehrlichman and three co-defendants, G. Gordon Liddy, Eugenio R. Martinez and Bernard L. Barker, were found guilty of conspiring to violate the civil rights of Dr. Lewis J. Fielding, Daniel Ellsberg's former psychiatrist, by breaking into his office in Beverly Hills, Calif., on Sept. 3, 1971 in