

Ehrlichman Is Cleared On 1 Count

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U.S. District Judge Gerhard A. Gesell yesterday dismissed one of four counts on which former White House aide John D. Ehrlichman was convicted by a federal jury here in the Ellsberg break-in case.

Judge Gesell ruled that the charge, which accused Ehrlichman of lying on May 1, 1974, to FBI agents investigating the break-in, was too vague and was too difficult for Ehrlichman to defend himself against.

"... The court concludes that Congress did not intend that statute to be applied to statements given to the FBI voluntarily and without oath or verbatim transcription during an interview initiated by the bureau in the course of a criminal investigation," Judge Gesell ruled yesterday.

The count carried a possible maximum sentence of five years in jail and a \$10,000 fine.

Ehrlichman also was convicted of civil rights conspiracy and two counts of making false declarations to a grand jury investigating the break-in. He still faces a possible maximum sentence on those three counts of 20 years in jail and a fine of \$30,000. He has not yet been sentenced.

The jury acquitted Ehrlichman of a fifth count, which charged him with another instance of lying to a federal grand jury. Ehrlichman's defense to that charge was that he had provided literally truthful answers to the questions involved in that count.

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Judge Gesell had indicated earlier that he might ultimately dismiss the count of lying to FBI agents, but decided to let the case go to the jury for its decision on that charge despite his reservations about the accusation.

"This reservation was made in part because the court recognized that the defendant's allegedly false statements to the FBI would be admissible at trial on issues of intent under the other perjury counts even if the count was dismissed," Gesell said in his written opinion yesterday.

"The court feared that dismissal before a jury verdict would suggest to the jury that the court felt that the remaining false statements had been

proven," Judge Gesell added.

At least two appeals court rulings have questioned the validity of the charge of lying to FBI agents, for the same reasons as those expressed by Gesell in his opinion yesterday.

"The principal difficulty with invoking (the statute) to punish those who lie to the FBI when there is no legal obligation to respond to its inquiry is that the prosecution can thereafter demand sanctions as onerous as those imposed under the general perjury statutes," Gesell said.

However, the FBI charge does not "afford those suspected of criminal conduct with any of the safeguards normally provided under that statute... There is no requirement of an oath, no strict rule of materiality and no guarantee that the proceeding

will be transcribed or reduced to memorandum," the judge wrote.

"In short, the FBI interview may occur—as it did here—unless the FBI were literally true on the circumstances which do not sufficiently alert the person interviewed to the danger that a false statement may lead to a felony conviction."

Ehrlichman could not defend easily against the count, Gesell said, because he "was

faced with the difficult task of arguing that his statement to the FBI were literally true on the basis of the agent's the FBI were literally true on the basis of the agent's sketchy notes, which do not purport to be a verbatim record of either the questions or the answers at issue and which were not even shown to him until shortly before trial." Ehrlichman, former White House aide G. Gordon Liddy

and Eugenio Martinez and Bernard L. Barker were convicted after a 12-day jury trial of conspiring to violate the civil rights of Dr. Lewis Fielding, who was Pentagon Papers codefendant Daniel Ellsberg's psychiatrist, by breaking into his Beverly Hills, Calif., office on Sept. 3, 1971. Ehrlichman had also been convicted of the three additional counts of lying to investigators probing the break-in.