

# Judge Gesell Voids One of Four Counts Against Ehrlichman

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WASHINGTON, July 22 —

John D. Ehrlichman, former chief domestic counselor to President Nixon, was acquitted today of one of the four felony counts on which he had been convicted in connection with the burglary of a Los Angeles psychiatrist's office.

The count was dismissed by Federal District Judge Gerhard A. Gesell and involved making false statements to the Federal Bureau of Investigation. The judge refused to set aside Mr. Ehrlichman's conviction on two counts of perjury and one of violating a citizen's civil rights.

As a result of the acquittal, the maximum jail term to which the former White House aide could be sentenced was reduced from 25 to 20 years, and the maximum fine from \$40,000 to \$30,000. Judge Gesell has scheduled sentencing for July 31.

At the same time, the judge denied a motion by G. Gordon

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# EHRlichman FREE OF A FELONY COUNT

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Liddy, another of the defendants in the same trial, that his conviction for conspiring to violate the civil rights of Dr. Lewis J. Fielding, the psychiatrist, be set aside as not supported by the evidence.

## Sought Ellsberg Material

Dr. Fielding had Dr. Daniel Ellsberg as a patient in the late 1960's until July, 1970. The burglars at Dr. Fielding's office in 1971 were attempting to obtain psychiatric information about Dr. Ellsberg, a former Pentagon official who has since said that he gave the Pentagon papers, confidential records of the Vietnam war, to The New York Times and subsequently to other papers.

Before the trial of Mr. Ehrlichman, Mr. Liddy and two codefendants, the former Nixon aide had moved to dismiss a charge that he had lied to the F.B.I., and Judge Gesell reserved decision, pending the submission of trial evidence.

Today the judge concluded that Congress had not intended the ban on making false statements to a Government agency to apply to F.B.I. interviews at which the witness testifies voluntarily, without either an oath or any verbatim transcript of his replies.

"The F.B.I. interview may occur, as it did here," Judge Gesell wrote in his acquittal memorandum, "under extremely informal circumstances which did not sufficiently alert the person interviewed to the danger that false statements may lead to a felony."

The judge explained that he had been reluctant to dismiss the single count before the case went to the jury for fear that the jurors might interpret such an action as indicating that the remaining charges had been successfully proved in the eyes of the court.

The jury gave its verdict 10 days ago.

Under a 1972 Supreme Court ruling, Judge Gesell noted, a statement that was incomplete or deceptive but literally true would probably not constitute a violation of the Federal law, but without a transcript it would be impossible to raise such a defense.

Here, the judge noted, Mr. Ehrlichman "was faced with the difficult task of arguing that his statements to the F.B.I. were literally true on the sole basis of the agent's sketchy notes, which did not purport to be a verbatim record of either the questions or the answers at issue which were not even shown to him until shortly before the trial."

Mr. Liddy's lawyer had argued that the prosecution had failed to prove that no legal search warrant had been obtained in support of the raid on Dr. Fielding's office.

Judge Gesell denied the motion for acquittal without issuing any memorandum.