

EHRlichman PLEA OPPOSED IN COURT

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Prosecutor Asks Judges to
Back Conviction of Four

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WASHINGTON, May 2—The special Watergate prosecution asked the United States Court of Appeals here today to affirm the convictions last summer of John D. Ehrlichman, once the chief domestic affairs adviser to Richard M. Nixon, and his three co-defendants in the so-called "plumbers" case.

The prosecution, in a 151-page brief filed with the court in response to defense appeals, strongly defended both its own actions in the case and those of the trial judge, Gerhard A. Gesell.

It said among other things that it had sustained its burden of proving all the elements of the central charge in the case, conspiracy to violate civil rights.

It said, too, that Judge Gesell had been right to refuse to call former President Nixon as a witness in the case; that the judge had not, as Mr. Ehrlichman alleged, violated the former White House aide's right to a fair trial through alleged mannerisms and facial expressions; and that the judge had conducted an adequate jury selection process.

Point-by-Point Rebuttal

The prosecution's arguments came in response to a variety of contentions that Mr. Ehrlichman and his co-defendants made in their appeals last July.

Each raised several points, ranging from complaints about the nature of the judge's instructions to the jury to challenges to the jury selection process.

The prosecution's brief today—signed by Henry S. Ruth Jr., the special prosecutor, and five assistants, Peter M. Kreindler, Philip B. Heymann, Maureen E. Gevlin, Jay Stephens and Richard D. Weinberg—was essentially a point-by-point rebuttal.

Mr. Ehrlichman and the three others—G. Gordon Liddy, Bernard L. Barker and Eugenio R. Martinez—were found guilty on July 12 of conspiring to violate the civil rights of Dr. Daniel Ellsberg's former psychiatrist by breaking into the psychiatrist's office to search for material concerning Dr. Ellsberg.

Mr. Ehrlichman was also found guilty of two counts of lying to a grand jury in connection with the break-in and was sentenced by Judge Gesell on July 31 to 20 months to 5

years in prison.

Mr. Liddy received 1-to-3 year term, to run concurrently with his sentence in the Watergate burglary case. Mr. Barker and Mr. Martinez were given suspended sentences, however, and placed on probation for three years, on the grounds that in Judge Gesell's words they had been "duped" by government officials.

The break-in of the office of Dr. Lewis Fielding occurred on Sept. 3, 1971. It was one of the activities of the special White House investigations unit known as the "plumbers," a unit supervised by Mr. Ehrlichman.

The plumbers unit was set up to stop what Mr. Nixon considered to be "leaks" of sensitive information to the press.

Old Arguments Repeated

To some extent, the prosecution in its brief today was repeating earlier arguments. It contended, for example, as it had contended before, that "the break-in and physical search of Dr. Fielding's office and the seizure of his papers constituted a plain and indisputable violation of the Fourth Amendment" protection against unreasonable searches and seizures.

Various defendants had also raised some new arguments after their convictions, though, and the prosecution brief responded to these as well.

Mr. Ehrlichman had contended, for example, that Judge Gesell had made facial expressions and gestures during the defendant's testimony that hurt Mr. Ehrlichman's case.

The prosecution replied that any expressions that the judge may have made did not "exceed the bounds of judicial propriety" and that Mr. Ehrlichman's counsel had made no objection during the trial to the judge's alleged behavior.

The prosecution's brief, in responding to arguments raised on appeal by Mr. Barker and Mr. Martinez, also comments—seemingly approvingly—on Judge Gesell's action in giving the two men suspended sentences rather than jail terms.

The two defendants had argued for certain instructions to the jury that, essentially, could have won them acquittals on the grounds of good faith reliance on the apparent authority of the offices from whom they got their orders.

The prosecution responded in its brief that this type of instruction would have "far reaching and dangerous consequences." It went on, though, to agree that "the government which put law breakers in official positions bears some responsibility for those whom these officials solicit to act as their agents."

The "way to handle this situation," the prosecution said, is "to recognize the substantial difference in guilt in terms of sentencing."