

# Ehrlichman Appeals Plumbers' Guilt

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WASHINGTON, June 18 (AP)—John D. Ehrlichman's lawyer argued today that the former White House aide's conviction in connection with the burglary of a California psychiatrist's office should be overturned on the ground that former President Nixon indirectly authorized the break-in.

Mr. Ehrlichman was convicted of conspiracy to violate the rights of Dr. Lewis Fielding, a Beverly Hills psychiatrist, because of a burglary at the doctor's office on Sept. 3, 1971.

Mr. Ehrlichman and three others convicted with him are appealing the jury's verdict in the so-called White House plumbers trial.

William S. Frates, who represented Mr. Ehrlichman both in the plumbers trial and in the later cover-up case, told the appeals court that his client had been "the alter ego" of President Nixon and therefore had the right to authorize a search of Dr. Fielding's office without first getting a warrant.

Mr. Frates contended that the President had the right to order such break-ins where national security was concerned.

A basic argument of Mr. Ehrlichman's appeal is that the trial judge, Gerhard A. Gesell, denied him the right to present a defense that the break-in had been for national security purposes.

United States District Judge

Robert Merhige Jr., one of the three members of the appeals court, asked Mr. Frates whether he intended to say "the President inferentially authorized a warrantless entry" into Dr. Fielding's office.

"Yes," Mr. Frates said.

Before the break-in, Dr. Fielding had treated Dr. Daniel Ellsberg, who was indicted on June 20, 1971 for distributing the Pentagon Papers, the top-secret study of the Vietnam war, to the news media.

There was testimony in the trial a year ago that the White House agents were sent into Dr. Fielding's office to get Dr. Ellsberg's records for a "psychological profile" that was to have been used in a public attack against him.

Mr. Ehrlichman was sentenced to serve 20 months to five years for one count of

conspiracy and two counts of lying to a grand jury. The sentence was absorbed into the 2½-to eight-year term imposed on Mr. Ehrlichman after his conviction in the cover-up trial.

Daniel Schultz, attorney for two of the other convicted men in the plumbers trial—Bernard L. Barker and Eugenio R. Martinez—argued that his clients "believed that whatever authority was required" for the break-in had been obtained.

"They had a man from the White House," Mr. Schultz said. "They had his badge of authority."

His argument was that Mr. Barker and Mr. Martinez, who were placed on probation by Judge Gesell, lacked the required specific intent to violate Mr. Fielding's rights and that the jury should have been instructed in that way.