

Ehrlichman Conviction Is Upheld

Washington

The U.S. Court of Appeals in Washington unanimously affirmed yesterday the conviction of John D. Ehrlichman, once President Nixon's chief domestic affairs adviser, for his role in the 1971 break-in by the White House "plumbers" of the office of Daniel Ellsberg's psychiatrist.

The appeals court also unanimously upheld the conviction of Ehrlichman's codefendant, G. Gordon Liddy, who worked both for the Nixon White House and the 1972 Nixon re-election campaign.

Attorneys for Ehrlichman are considering an appeal to the Supreme Court.

By 2-to-1 vote, the court reversed the conviction of the two other defendants in the so-called Plumbers trial, Bernard L. Barker and Eugenio R. Martinez. These two Miami residents actually carried out the break-in on instructions from Liddy and another White House aide, E. Howard Hunt.

The two judges who voted for the reversal wrote separate opinions giving somewhat different rationales. They generally agreed, however, that the federal district trial judge — Gerhard A. Gesell — had erred in refusing to let the jury consider a "mistake of law" defense on the part of the two Miamians.

The four were convicted on July 12, 1974.

All four were found guilty of conspiring to violate the civil rights of the psychiatrist, Dr. Lewis J. Fielding of Beverly Hills. Ehrlich-

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man was also convicted of three counts involving making of false statements, one count of which was subsequently set aside by Gesell.

The break-in, which did not become public for nearly two years after it occurred, developed into one of the major embarrassments of the Nixon administration and became part of the broad Watergate scandal.

The break-in arose out of the White House's anger and concern about various newspaper disclosures of classified information, particularly the publication of the Pentagon Papers, the secret government history of American involvement in Vietnam.

The Plumbers were set up in the White House, under the ultimate control of Ehrlichman, to investigate "leaks." The break-in was an attempt to gain information that might be used to discredit Ellsberg, who has said he gave the Pentagon Papers to the press.

Ehrlichman's primary defense at the trial had been that he was not apprised of, and did not authorize, the break-in. He testified that

he only approved a conventional investigation, involving no surreptitious entry.

The jury's verdict on the conspiracy count, however, as the appeals court's opinion by Judge Malcolm R. Wilkey on Ehrlichman's appeal put it, "reflected a finding that Ehrlichman had in fact authorized the search."

Ehrlichman had argued on appeal that the search, while warrantless, was legal because it was undertaken pursuant to presidential power in national security matters involving foreign affairs, and that even, if it were illegal, under the Fourth Amendment's ban against unreasonable search and seizure, he had acted in a good faith belief in its legality.

The appeals court reasoned that the warrantless search infringed on Fielding's rights under the Fourth Amendment, and that since there was not even any assertion that either the President or attorney general had specifically authorized the break-in as a national security measure, Ehrlichman could not contend he believed it was lawful.

The court — with Appellate Judge Harold Leventhal and District Judge Robert Mehrige and Wilkey — similarly dismissed Ehrlichman's other contentions.

Gesell sentenced Ehrlichman to 20 months to five years for the Plumbers charges. Ehrlichman, who was also convicted in the Watergate coverup case, has been free pending his various appeals.

Liddy was sentenced to a one-to-three year term, to be served concurrent with the term of six years, eight months to 20 years that he is currently serving in the Federal prison in Danbury.

Gesell had given Barker and Martinez suspended sentences, saying they had been "duped by high government officials." The two have already served prison terms for their roles in the Watergate break-in, to which they pleaded guilty, Jan. 15, 1973.

Wilkey and Mehrige voted to reverse the convictions of Barker and Martinez, with Leventhal dissenting.

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