

# Applebaum to the President: When

By Art Buchwald

John Ehrlichman testified before the Senate Watergate Committee two weeks ago that it was "well within both the constitutional duty and the obligation of the President" for White House aides to break into the office of Dr. Daniel Ellsberg's former psychiatrist.

Sen. Sam Ervin Jr. of North Carolina disputed this interpretation of the President's power and argued there was nothing in the law which gives the President the right to suspend the Fourth Amendment's protection against unreasonable searches and seizures.

Since this is a great constitutional issue I sought out my old law professor, Heinrich Applebaum, who holds the Chair of jurisprudence at the Watergate Technical Institute of Perjury.

"Professor, who is right in the constitutional dispute between Sen. Ervin and John Ehrlichman?"

"They're both right and they're both wrong."

"What kind of answer is that?"

"Well, Ehrlichman is right in saying the President of the United States has the duty and obligation to break into anybody's psychiatrist's office that he wants to. But he's wrong in saying that White House aides could do it for the President."

"Do you mean if the President wanted Ellsberg's

psychiatric records, he had to break into the office himself?"

"That is correct. He had to perform the burglary personally. Otherwise it would be considered illegal."

"But isn't that kind of hard for a President to do?"

"The writers of the Constitution didn't want to make it easy. They knew that every President of the United States at one time or another would have a desire to break into a psychiatrist's office."

"It's something that no man in power can resist. So they provided that the act itself had to be committed *only* by the President. The writers of the Constitution

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assumed that this would keep most Presidents from using the power unless it was absolutely necessary.

"Now, had President Nixon borrowed a wig and a camera and tools from the CIA and gone to Dr. Fielding's Beverly Hills office, broken into the files and retrieved the Ellsberg records, he would be acting within the law. But the fact that the President turned over the mission to two White House plumbers was his undoing. As a lawyer he should have known that."

"John Ehrlichman's lawyer, John Wilson, has argued that the President has a vast reservoir of power given to him by Congress which makes it possible for the

President to commit what would otherwise be an unlawful act for national security," I said. "Do you agree with this?"

"I certainly do. When it comes to national security the President can mug, steal and commit arson as long as he is protecting American citizens."

"How do you arrive at that?"

"Because, as Ehrlichman's lawyer has so well pointed out, the courts have never ruled that he *couldn't* do it. Now the President cannot commit these unlawful acts willy-nilly. He has to prove that in some way they have to do with a threat from a foreign power."

"How can he prove it?"

"In the case of Ellsberg's psychiatrist, it's quite possible that Dr. Fielding had made studies of Freud."

"But Freud isn't a foreign power."

"Aha, but where did Freud practice?"

"In Vienna."

"That's all the President needs to justify the break-in."

"Then if I hear you right, Dr. Applebaum, Mr. Nixon's only error in the Ellsberg affair is that he did not burglarize the office himself."

"That's the only constitutional issue they've got him on. In fairness to President Nixon though any President could have made the same mistake."