

Watergate I: The Evidence To Date

The huge bulk of the Watergate committee testimony contains so many diversions, evasions, conflicts and lies that the record of what has been learned is still unclear.

There is more to be heard. After a month-long recess Senator Sam Ervin's Select Committee still expects to question seven further witnesses about the Watergate burglary and the subsequent cover-up. Also missing from the record is the potentially (but not necessarily) decisive evidence from the tapes of conversations secretly recorded by the President. Nixon's latest account of the affair, presumably to be given this week, could alter the weight of evidence already before the committee.

Yet the hearing recess provides a fitting opportunity for the Ervin committee staff to begin sifting the testimony in search of tentative conclusions—and perjury. TIME, too, has assessed the evidence to date and, without attempting to indicate individual criminal culpability, offers this analysis:

The 1970 Intelligence Plan

UNDISPUTED FACTS. President Nixon on July 23, 1970, notified four federal intelligence-gathering agencies—the FBI, CIA, National Security Agency and Defense Intelligence Agency—that he had approved a new plan for the use of some previously banned tactics in gathering information on antiwar demonstrators, campus rioters, radical bomb throwers and black extremists. The tactics included breaking and entering, the opening of personal mail and the interception of communication between U.S. residents and foreign points. One of the plan's originators, Nixon Aide Tom Huston, pointed out in a memo that breaking and entering, at least, was “clearly illegal.” The plan was opposed by FBI Director J. Edgar Hoover (for reasons not entirely clear, since the FBI has not been above breaking and entering in espionage cases); his objections were supported by Attorney General John Mitchell.

IN DISPUTE. Nixon said in his May 22 statement that because of Hoover's protests, he rescinded his approval of the plan five days after granting it. He said the plan never went into effect. Neither Mitchell nor John Dean, then White House counsel, could recall seeing orders canceling the plan. No such documents were produced. Questions by Senators indicated some doubts about whether the plan had actually been promptly and completely killed.

WEIGHT OF EVIDENCE. The lack of any evidence that any illegal acts have been carried out by the intelligence agencies seems to indicate that the plan was indeed rescinded. Similar acts, however, were carried out by the White House “plumbers.”

WHAT DID NIXON KNOW? However temporarily, he approved the plan—and thus approved acts that he had been advised would be illegal.

Creation of the Plumbers

UNDISPUTED FACTS. Concerned about leaks of classified Government information to newspapers, especially the Pentagon papers, Nixon in June 1971 created a White House group called the Special Investigations Unit, also known as the plumbers. It was supervised by John Ehrlichman, directed by Egil Krogh and included David Young, E. Howard Hunt and G. Gordon Liddy. Its activities included tapping the phones of officials and newsmen suspected of handling leaked information; burglarizing the office of a psychiatrist consulted by Pentagon Papers Defendant Daniel Ellsberg; investigating Senator Edward Kennedy's Chappaquiddick accident; covertly spiriting ITT Lobbyist Dita Beard out of Washington; and fabricating a State Department cable linking the Kennedy Administration with the

assassination of South Viet Nam's President Diem. Two of the plumbers, Liddy and Hunt, later were convicted of wiretapping and burglary at the Watergate.

IN DISPUTE. The President's May 22 statement denied that the plumbers were assigned to do anything illegal. It said that their duties were strictly in the field of national security and, beyond plugging leaks, they were to compile “an accurate record of events related to the Viet Nam War.” Ehrlichman portrayed the plumbers' main purpose as to “stimulate various agencies and departments” in controlling leaks. He rejected suggestions by Senators that the plumbers resembled a secret-police group or that their activity was primarily political.

WEIGHT OF EVIDENCE. The plumber operations described by Mitchell as “White House horrors,” especially the fake Viet Nam cable, the Dita Beard foray, and the Chappaquiddick probe, did not at all fit the Nixon or Ehrlichman descriptions of the plumbers' role. These acts were highly political and had nothing to do with national security.

WHAT DID NIXON KNOW? No witness admitted discussing with Nixon any of these plumber activities except for the burglary of Ellsberg's psychiatrist's office. Yet Nixon created the plumbers to deal with a threat “so grave as to require extraordinary actions,” and he described their work as “highly sensitive.” There is a strong possibility that he kept informed of all plumber activities. If he did not, he should have.

The Ellsberg Burglary

UNDISPUTED FACTS. Nixon on May 22 said he ordered the plumbers to examine Ellsberg's “associates and his motives” because no one knew “what additional national secrets Mr. Ellsberg might disclose.” Directed by Plumbers Hunt and Liddy, a team of burglars paid by the White House broke into the Los Angeles office of Dr. Lewis Fielding in September 1971, in a search for Ellsberg's psychiatric records. (White House Aides Krogh and Young were aware of this burglary in advance.)

IN DISPUTE. Ehrlichman denied authorizing the burglary but admitted approving a memo from Krogh and Young suggesting that “a covert operation be undertaken to examine all the medical files still held by Ellsberg's psychiatrist.” This information was needed, Ehrlichman said, not to prosecute Ellsberg (such evidence would be inadmissible) but to provide more data for a “psychological profile” that the plumbers had asked the CIA to compile; the White House had found the CIA's first such report inadequate. He rejected Senator Lowell Weicker's charge that the aim was to “smear” Ellsberg for political purposes.

WEIGHT OF EVIDENCE. Ehrlichman's admitted approval of a “covert operation” strongly suggests that he gave a go-ahead to the burglary; Young has told the Ervin committee staff that Ehrlichman in fact did so. A memo from Young to Ehrlichman just before the burglary said that “we have already started on a negative press image for Ellsberg” and that if the “present Hunt/Liddy project Number 1 is successful,” there must be a “game plan” for its use. This suggests a move by the White House to smear Ellsberg.

WHAT DID NIXON KNOW? Dean claims that Krogh told him the burglary orders came “right out of the Oval Office.” Ehrlichman, curiously, argued that Nixon would have been within his legal rights in ordering such a burglary. Nixon said he “did not authorize and had no knowledge of any illegal means to be used” to assess Ellsberg's motives. He said he was informed by Attorney General Richard Kleindienst on April 25 that Hunt was involved in the burglary and promptly agreed that the Ellsberg trial judge, Matthew Byrne, must be in-

formed. Yet a White House-supplied log of Nixon-Dean meetings indicates that Dean told Nixon about the burglary more than a month earlier, on March 17. If Nixon was not actually informed of all plumber activities, he was, in this case, remarkably slow in telling the judge.

Overtures to Judge Byrne

UNDISPUTED FACTS. Shortly before the Ellsberg case was expected to go to the jury, Nixon told Ehrlichman to find out whether Judge Byrne would be interested in a possible appointment as FBI director. Ehrlichman twice met briefly in California with the judge to discuss this. Nixon also briefly met him.

IN DISPUTE. Ehrlichman claims that since no formal offer was made and the judge did not object to discussing the matter, the meetings were not improper. He said neither he nor the President intended to influence the Ellsberg case.

WEIGHT OF EVIDENCE. Any approach to a sitting judge by Government officials who have an obvious interest in wanting the Government's case to prevail is wholly improper. If a private citizen made a similar move, he could be prosecuted.

WHAT DID NIXON KNOW? He ordered the contact made.

The Liddy Plans

UNDISPUTED FACTS. After joining the Committee to Re-Elect the President, former Plumber Liddy twice presented extravagant intelligence-gathering plans to Dean, Mitchell and Jeb Stuart Magruder, the Nixon committee deputy, while Mitchell was still Attorney General. The plans, which initially included wiretapping Nixon's Democratic opponents, using call girls to blackmail Democrats at their national convention, and the kidnapping of anti-Nixon radical leaders—all at a cost estimated at \$1,000,000—were rejected each time by Mitchell. Scaled down to concentrate on the wiretapping, the plans were presented again by Magruder at a third meeting with Mitchell at Key Biscayne after Mitchell had resigned from the Justice Department to head the Nixon committee. A Mitchell deputy, Fred LaRue, was present. Besides the Watergate, the wiretapping targets included Democratic convention headquarters at Miami Beach and the headquarters of the eventual Democratic nominee.

IN DISPUTE. Magruder claimed that Mitchell approved the plan at this third meeting. Mitchell claimed he bluntly rejected it. LaRue said he did neither, in his presence, but delayed a decision. Magruder also claimed that Charles Colson, a White House aide at the time, applied pressure on him to get the plan into motion. (Colson has admitted calling Magruder about Hunt's and Liddy's "security activities" but claimed he did not know what they were.) Magruder said he reported Mitchell's approval to Gordon Strachan, an assistant to H.R. Haldeman, so that Haldeman would be informed. Strachan said he included this item in a memo to Haldeman. Haldeman could not recall reading it. Dean said he reported the first two Liddy meetings to Haldeman; the latter said he did not remember this either.

WEIGHT OF EVIDENCE. An intelligence-gathering operation budgeted at \$250,000 and involving such risky and illegal activities as burglary and wiretapping would not have been undertaken on Liddy's authority—especially if Mitchell had flatly rejected it. Nor did Magruder carry that kind of clout. The likelihood is that Mitchell did give some sign of approval. There may also have been White House pressure.

WHAT DID NIXON KNOW? He has forcefully denied any knowledge of the Liddy plans. Dean said that he "assumed" that Haldeman had reported such significant information to the President, but that is highly tenuous. The Ervin committee was given no evidence that anyone told Nixon of the plans.

Destruction of Records

UNDISPUTED FACTS. After the arrests at the Watergate on June 17, 1972, there was an orgy of paper shredding. Liddy quickly destroyed a sheaf of documents from his offices at the Nixon finance committee, presumably related to his political-espionage plans. Magruder similarly ordered his Watergate-related documents destroyed, including reports of intercepted conversations at Democratic headquarters. Strachan went through Haldeman's files and destroyed documents reporting the Liddy plan. Herbert Porter, the Nixon committee's scheduling director, shredded various expense receipts given him by Liddy. Later both Fred LaRue and Herbert Kalmbach, Nixon's personal attorney, destroyed records on the amounts of money they had secretly distributed to the Watergate defendants or their attorneys. Acting FBI Director L. Patrick Gray burned documents taken from Hunt's safe. Nixon Finance Committee Chairman Maurice Stans, Treasurer Hugh Sloan Jr. and Kalmbach destroyed reports of campaign contributions received before a financing-disclosure law went into effect on April 7, 1972, although this destruction may not have had any direct connection with Watergate.

IN DISPUTE. Just who directed the destruction in each case is unclear. LaRue claimed that Mitchell suggested that Magruder have "a bonfire"; Mitchell denied that. Strachan claimed that Haldeman had suggested cleaning out his files; Haldeman had no such recollection. Porter said he shredded at Liddy's direction (Liddy has talked publicly to no one). Gray said he burned "politically sensitive" papers unrelated to Watergate at the suggestion of Ehrlichman and Dean; Ehrlichman said the papers were given to Gray for safekeeping and to guard against leaks.

WEIGHT OF EVIDENCE. The widespread burning and shredding, regardless of who ordered it, clearly indicates that an almost automatic cover-up of the origins of the Watergate operation began immediately after the break-in was discovered. Destruction of contribution records probably was intended mainly to protect the identity of donors. Yet the elimination of precise records on large amounts of campaign cash also hampered investigators trying to trace Liddy's operating funds.

WHAT DID NIXON KNOW? There is no evidence that he knew anything about this matter. Many of the principals had ample reasons to protect themselves by destroying evidence without informing anyone else.

Misuse of the CIA and FBI

UNDISPUTED FACTS. Shortly after the Watergate arrests, Nixon ordered Haldeman and Ehrlichman to meet with top officials of the CIA. They did so. Later that same day, newly installed Deputy CIA Director Vernon Walters told Gray that FBI attempts to trace money used by the wiretappers through Mexico might interfere with a covert CIA operation there. This slowed the FBI probe. Later Dean asked Walters whether the CIA might provide bail money and support the wiretappers if they were imprisoned. Both Walters and CIA Director Richard Helms decided that the White House was trying "to use" the agency. Walters, after checking further on what the agency was actually doing in Mexico, told Gray that there was no CIA operation in Mexico that could be compromised by the FBI. Gray concluded that there had been an attempt to interfere with the FBI investigation, and he warned the President on July 6, 1972, that "people on your staff are trying to mortally wound you." Nixon asked no questions, but told Gray to continue his investigation.

IN DISPUTE. Haldeman contended that he merely asked the CIA officials to find out whether the CIA had been involved in Watergate and whether they had some operation in Mexico that might be exposed. Both Helms and Walters claimed that Haldeman had introduced the subject as a potential political em-

barrassment, not a security matter. Walters said he was not asked to determine facts, but was told by Haldeman to tell Gray to hold back the FBI's investigation in Mexico.

WEIGHT OF EVIDENCE. This is among the earliest and clearest instances of a White House effort to impede the investigation. The past CIA service of several of the arrested wiretappers made it seem logical at first that the CIA could provide a convenient cover for the Watergate operation, but Helms' instant denials to Haldeman of any CIA involvement promptly squelched any such notion.

WHAT DID NIXON KNOW? Nixon said on May 22 that he had no intention of impeding any Watergate investigation, but was concerned about an FBI probe interfering with matters of national security. If his intent really was only to protect national security secrets, he failed to convey that to Haldeman or, through Ehrlichman, to Dean. As these aides relayed the President's instructions to Gray, Helms and Walters, the White House interest impressed those officials as highly political. The fact that Nixon asked no questions when Gray warned him about his aides' activities suggests that Nixon might well have known what those aides were trying to do.

Executive Clemency

UNDISPUTED FACTS. Dean (through intermediaries John Caulfield and Anthony Ulasewicz) sent word to convicted wiretapper James McCord that he could expect Executive clemency after perhaps a year in prison if he remained silent about any higher involvement in the burglary. McCord was told that the suggestion was coming "from the very highest levels of the White House." Even before the convicted wiretappers were sentenced, Ehrlichman and Dean asked Attorney General Richard Kleindienst at what point "Executive pardons" could be granted to convicted criminals.

IN DISPUTE. Dean claimed that he transmitted the message to McCord after being told to do so by Mitchell, who had indicated that similar assurances of clemency had been given to Hunt, another convicted wiretapper. Mitchell flatly denied that he had given either Hunt or Dean such assurances. According to Dean, Ehrlichman, apparently after checking with Nixon, also told Colson that assurances of clemency could be given to Hunt. Ehrlichman heatedly denied this. Magruder testified that when he expressed concern about committing perjury about Liddy's assignments for the Nixon committee, Dean and Mitchell told him he could expect clemency, as well as family-support payments, if convicted. Mitchell denied making such a promise.

WEIGHT OF EVIDENCE. Whatever the precise level of authority it came from, word did get to some of the convicted burglars that they could expect to get out of prison after serving relatively short terms if they kept quiet about who had authorized the Watergate crimes.

WHAT DID NIXON KNOW? Executive clemency can only be offered by the President. If Nixon's aides were making such offers, they risked directly implicating him. Dean contended that Nixon told him on March 13 that he had discussed clemency with both Ehrlichman and Colson. Nixon has denied that, as have both Ehrlichman and Colson, and this is one point on which the presidential tapes could prove decisive.

Money for the Wiretappers

UNDISPUTED FACTS. Some \$420,000, taken mainly from Nixon campaign contributions, was distributed covertly to the seven Watergate defendants, their families and lawyers. The delivery-men used telephone booths, storage lockers and other public sites as drops so that the recipients would never see them. One source of money was a \$350,000 White House cash fund that

had been controlled by Haldeman. Roughly half of the money was transmitted by Kalmbach, the other half by LaRue. Dean helped arrange and direct these payments.

IN DISPUTE. Dean claimed that Mitchell, Haldeman and Ehrlichman all approved the payments. Kalmbach testified that Ehrlichman specifically assured him that they were proper, that Dean had authority to direct them and that Kalmbach should continue to carry out Dean's instructions. Both Ehrlichman and Mitchell denied these allegations. Presidential Aide Richard Moore relayed a request from either Haldeman or Ehrlichman (he was not sure which) that Mitchell raise more money for the defendants. Moore said that Mitchell refused. Dean testified that the money was intended to buy the silence of the defendants. Kalmbach and Ehrlichman said it was meant for lawyers' fees or as a "humanitarian" gesture. Haldeman admitted being aware of the payments, but claimed he had not approved any, and said he had made no judgments about their propriety.

WEIGHT OF EVIDENCE. If the White House was not seeking silence and was not trying to conceal the involvement of high officials, it would have been under no obligation to help defendants who had created such a politically embarrassing mess. The surreptitious delivery was strong evidence that all those involved knew it was wrong. The contrary claims seem to be belated efforts to avoid criminal prosecution.

WHAT DID NIXON KNOW? Dean contended that he discussed these payoffs with Nixon, and that the President said it would be "no problem" to raise \$1,000,000 for this purpose. Haldeman, who listened to two tapes of this conversation, claimed that Nixon added a key phrase: "But it would be wrong." Only the tapes themselves can resolve this conflict.

The testimony does not legally prove that the President was an active participant in the cover-up (much less that he ordered or knew about the bugging). The damning testimony to that effect is the testimony of John Dean, which is still uncorroborated at key points. Dean's account has been challenged by Mitchell, Ehrlichman and Haldeman; their own credibility has been assailed in turn by other witnesses.

Although Nixon's involvement in the cover-up is not proved by courtroom standards, by any other rational standard it is extremely difficult to believe that he did not know of it or encourage it. He was warned early of cover-up activities undertaken by his closest aides; he then professed total unawareness for some nine months, despite his position at the apex of a tightly organized reporting system.

Throughout all the internal conflicts and ambiguities in the testimony, an overall pattern seems clear. Unwilling to trust regular agencies of Government to deal with genuine, though exaggerated, threats to domestic order, Nixon approved illegal means to fight them. When those were rejected by self-protecting bureaucrats, he created his own White House squad of undercover operators. They used some of these same illegal tactics against whatever forces the White House considered threatening, whether a Daniel Ellsberg, a Dita Beard or a talkative official. Eventually they were used against the Democrats.

Aside from these specific acts, the Watergate hearings produced evidence of an alarming atmosphere around the President. Whether it was John Ehrlichman's defense of spying on the drinking and sexual habits of politicians, John Dean's advocacy of using agencies of Government to "screw our political enemies," or Bob Haldeman's desire to "put out the story" on Communist money falsely alleged to be supporting Democratic candidates, an amorality prevailed that went well beyond normal standards of politics. It degraded the White House.

There was too the incessant secret taping, most notably by Nixon himself. The untested technicality of Executive privilege to protect the President's tapes, whatever its constitutional merits, seems insufficient cause to withhold evidence that might dispose of some of the accusations against him. Until and unless further evidence or explanations emerge from the President's expected statement, that is where the matter stands.