

voted to talk about aspects of Watergate, I am certain...

The vast percentage of my working time was spent on substantive issues and domestic policy. About one-half of 1 percent was spent on politics, the campaign and the events with which you have been concerning yourself as a Committee. That is the context in which I hope you will receive this testimony.

Similarly, you must measure the President's role in all of this in true perspective. The 1972 campaign, the Watergate and its investigation competed for his attention with the claims of hundreds of members of Congress, economists, diplomats, educators, scientists, labor leaders, businessmen and countless other citizens, and with the demands of the problems of the nation in their manifold and compound complexities, with the daily mail and the endless meetings, the speeches and other communication with the public, with the need for management, leadership, inspiration and the need and desire for time to study and think. I see redeeming aspects in this process.

I have faith that good can result from this Committee's efforts. In the future participants in political campaigns will surely be aware of the history of this time. And the standards which they will wish to impose upon themselves will be the product of the lessons of that history, whatever it may turn out to be. I have great optimism that the lessons of the history of this era will bring only good for this country.

Dash: Mr. Ehrlichman, I think you indicated in your statement an extreme loyalty to the President in the position you held, first as counsel to the President, then as Special Assistant to the President in domestic affairs. Would you tell the Committee, when did you first begin to work with President Nixon in any political campaign?

Ehrlichman: Late in 1959

... I was an advance man in the 1960 campaign.

Dash: How did you obtain this assignment?

Ehrlichman: Through Bob Haldeman, who was the campaign tour manager in that campaign.

Dash: Could you tell the Committee how you knew Mr. Haldeman at that time?

Ehrlichman: Yes, we had been at the University (of Southern California) together.

Dash: I would take it, then, you were very close friends?

Ehrlichman: Not terribly close friends in college. We kept track of one another casually over the years and I was a guest at his home in Connecticut during a trip East in 1959 and he asked me if I would be interested in taking a leave from my practice and working in a political campaign...

Dash: Mr. Ehrlichman, during the time, during the 1960 campaign, when you were working with Mr. Haldeman and also for President Nixon as an advance man, is it true that you were serving to some extent as an undercover agent, sort of stalking Mr. Rockefeller, as has been once stated?

Ehrlichman: No, that was a prior episode. During the primaries, in the pre-convention period of that 1960 campaign, Mr. (Robert) Finch, who then was on the Vice President's staff—President Nixon then being Vice President—asked me if I would go to North Dakota and observe Governor Rockefeller's efforts to rejuvenate a then abandoned Presidential aspiration...

Dash: And what role did you play when you went to North Dakota?

Ehrlichman: Well, other than being a driver in Governor Rockefeller's motorcade, I was simply an observer.

Dash: How did you obtain that position as a driver in the motorcade?

Ehrlichman: Through mutual friends.

Dash: I take it that you were considered part of Mr. Rockefeller's entourage?

Ehrlichman: Well, I don't imagine that it really occurred to anybody to ask.

Dash: Who were you reporting to at that time?

Ehrlichman: Mr. Finch.

Dash: Now, in the '68 cam-

aign, did you play any role in the political campaign?

Ehrlichman: I was the tour director.

Dash: And what function did the tour director have?

Ehrlichman: Well, that is largely dealing with problems of scheduling, advancing and logistics. And the care and feeding of the press.

(Laughter.)

Dash: Care and feeding of the press... Now, when Mr. Nixon was elected President, you joined the White House staff first as counsel to the President?

Ehrlichman: That is correct.

Dash: When did you move from that position to the position of assistant to the President for domestic affairs?

Ehrlichman: It was near the beginning of 1970. I can't recall the exact date, but in the first couple of months of 1970, I believe...

Dash: ... did you consider Mr. (H. R.) Haldeman (former White House Chief of Staff) as senior to you in the White House staff?

Ehrlichman: Well, I don't think anybody on the White House ever considers anybody else senior to him.

Dash: I take it other than the President?

Ehrlichman: Right.

(Laughter)

Ehrlichman: Well, it is a sort of a metaphysical concept among the assistants to the President as to who is senior to whom. My reporting relationship, so to speak, was direct to the President at that point and only on in a limited number of cases did I come under Mr. Haldeman's area of interest, so to speak...

Dash: ... did there come a time when you were asked to develop a capability in the White House for intelligence-gathering?

Ehrlichman: Intelligence-gathering? The answer would be no.

Dash: ... were you ever asked to set up a special unit in the White House for the purpose of determining whether certain leaks had occurred in major national security areas?

Ehrlichman: In point of fact I was—and strictly in terms of your question, I was asked to set it up. Mr.

Krogh was asked to set it up.
Dash: Who is Mr. Krogh?
Ehrlichman: Bud Krogh, Egil Krogh Jr., was a member of the Domestic Council staff, and he was asked by the President to form this special unit. I was designated as one to whom Mr. Krogh could come with problems in connection with it, and the President said also that he could come to him with problems.

Dash: Were you in at the

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beginning of the setting up of this plan?

Ehrlichman: Yes, I was.

Dash: And you knew what the unit was to do?

Ehrlichman: Yes.

Dash: What was the unit to do?

Ehrlichman: The unit as originally conceived was to stimulate the various departments and agencies to do a better job of controlling leaks and the theft or other exposure of national security secrets from within their departments. It was a group which was to bring to account, so to speak, the various security offices of the Departments of Defense and State and Justice and CIA, to get them to do a better job.

Dash: . . . was it ever called or was it ever referred to as an investigative unit?

Ehrlichman: Subsequently . . . it became an investigative unit. . .

Dash: Now, Mr. (David) Young (former White House appointments Secretary to Dr. Henry Kissinger) also worked in this unit, did he not?

Ehrlichman: Yes.

Dash: And he worked under Mr. Krogh?

Ehrlichman: He worked as a kind of a co-chairman.

Dash: What was the reporting relationship between Mr. Young, Mr. Krogh to you?

Ehrlichman: Well, Mr. Krogh, of course, was on my staff and maintained the same reporting relationship to me that he had always maintained. Mr. Young began reporting to me at the time that he joined that special unit . . . We didn't have a system of weekly reports or monthly reports or any-

thing of that kind but just when something came up that required my attention they would let me know.

Dash: And if it was important, they would, would they not?

Ehrlichman: I would hope that most of my people would handle things themselves. Usually it got to me—I mean I am talking now about routine domestic things, they got to me as the last step before they went to the President.

Dash: Did you ever initiate any instructions to them

Ehrlichman: I was asked to ratify a number of their decisions from time to time, and their practice, Young and Krogh we are now talking about . . . Their practice would be to send me periodic information reports or status reports or progress reports and sometimes those would contain requests for either approval of a decision that they had made or proposals that they had or something of that kind.

Dash: Is this the special investigations unit that later became, began to be known popularly as the plumbers?

Ehrlichman: Yes.

Dash: Now, you said that the major responsibility of this unit developed because of the need for the unit to go ahead on an investigation of the so-called Pentagon leaks. Were there any other responsibilities or assignments given to this unit?

Ehrlichman: Yes . . . I can state some of them; I cannot state all of them . . .

The Strategic Arms Limitations negotiations were under way in the summer of 1971 and a newspaper obtained the U.S. negotiating position, in effect, the secret script for the U.S. negotiators in that negotiation. That came close on the heels of the Pentagon papers episode and was a major cause of concern for the President and for those dealing in this area of foreign policy. This special unit was asked to see if they could determine the source of that leak.

Dash: Do you know what actions the special unit took in seeking to carry out that responsibility?

Ehrlichman: In general terms, I do. I know that they worked through the security

people at the State Department and the Defense Department. They narrowed down the probable source of that leak, and I believe there were some personnel actions taken as a result of that.

Dash: Did you become aware of any wiretapping that took place at the request of the President and approved by the Attorney General in regard to that?

Ehrlichman: In regard to the SALT leak?

Dash: Yes.

Ehrlichman: No.

Dash: Did you become aware of any wiretapping that was authorized by the President and also the Attorney General with regard to any particular leaks involving national security at this time?

Ehrlichman: The answer to your question, Mr. Dash, is yes. It was in relation to an investigation in 1971. Beyond that I cannot go.

Dash: Did you know anything about the so-called Kissinger taps?

Ehrlichman: Yes. I knew

—I did not know at the time the details of those taps; that is, who was being tapped, the purpose, the extent, and so on. I knew generally that such a thing was going on . . . I think Mr. Haldeman told me obliquely and not directly and not with any degree of specific fact that such a thing was going on.

Dash: . . . Well, did you ever receive the logs of those taps?

Ehrlichman: Yes, I evidently did without scrutinizing them, but I did receive them . . . from Mr. Mardian at the Justice Department

... He gave them to me because he felt that they should be in the custody of the White House and proposed that they be moved out of the Justice Department because he could not assure their safe-keeping there.

Dash: Well, did you know that actually, he was giving them to you at the direction of the President?

Ehrlichman: I did not know that until I heard him testify to that here. In point of fact, I referred the question to the President, perhaps unnecessarily, after

Mr. Mardian originally talked to me about it. The President asked me then to take custody of them, which I did . . .

Dash: . . . And these were the logs and taps that were put on certain newspaper persons and certain staff members of Mr. Kissinger?

Ehrlichman: That is what I understand . . .

Dash: Did you have any role in authorizing other wiretaps?

Ehrlichman: From time to time, I did.

Dash: What area, would you tell us? . . . I am not asking for any specific taps.

Ehrlichman: National security, generally national security objectives. I am under a stricture which really doesn't permit me to be very responsive to your question. . . .

Dash: Were you aware of the electronic surveillance on Joseph Kraft's house?

Ehrlichman: That was the one that I was talking about in 1969 that, so far as I know, never happened.

Dash: Do you know who was involved in attempting to commit that wiretap? . . .

Ehrlichman: Mr. Jack Caulfield was.

Dash: Did you ever discuss that tap with the President?

Ehrlichman: I am sure I did.

Dash: Do you know what the purpose of the placing of that tap was?

Ehrlichman: It was a national security purpose.

Dash: . . . Now, you did become aware at some point in time—at this point, I don't want to go into this specifically—of the activities of staff members of the special investigations unit (the "plumbers"), Mr. (E. Howard) Hunt and Mr. (G. Gordon) Liddy, with regard to the office of Mr. Ellsberg's psychiatrist?

Ehrlichman: Yes, I did.

Dash: And that took place when, the so-called break-in of (Daniel) Ellsberg psychiatrist's?

Ehrlichman: I have heard two dates, but it was around Labor Day of 1971.

Dash: And I take it that was a fact-gathering project?

Ehrlichman: That was the fact-gathering project that I mentioned before in relation to the theft of the secrets and the turnover to the Rus-

sians and the dilemma we had of the (FBI) not moving on this.

Dash: Would it also be a, even more of a serious campaign issues (than the Watergate) if it developed or was revealed that Mr. Hunt and Mr. Liddy had broken into the office of Mr. Ellsberg's psychiatrist, the same two people?

Ehrlichman: No, I would not think so. They were certainly identified as former White House people in the media, and that was, that connection was, known . . .

Dash: Are you telling the committee that additional information, that these former White House staffers working under your direction had broken into Mr. Ellsberg's psychiatrist's office, would not have created an even more serious embarrassing situation for the campaign?

Ehrlichman: I would not think so, Mr. Dash, for several reasons. No. 1, that episode was a part of a very intensive national security investigation which had been impressed with a very high security classification. The likelihood of that being disclosed was very slight.

No. 2, those people were operating, at least I believe they were operating, under express authorization—

Dash: Express authorization to break in?

Ehrlichman: Yes, sir. Under a national security situation, under a situation of considerable moment to the nation in the theft of top secret documents, and their apparent delivery to the Soviet Embassy. It never was

my view that Hunt and Liddy, as individuals, had done something that was completely irrational in that break-in. In other words, they were operating in a national security setting and pursuant to either instructions or authorization and, that being the case, that had never been a subject which I considered to be seriously embarrassing.

Dash: . . . I am not trying to probe into any other secrets, but certainly at the time in June, 1972, right after the break-in you were aware of, and I take it, he (President Nixon) was aware of the break-in?

Ehrlichman: . . . I cannot speak for the President on that. I can only say that I

was aware of it.

Dash: Well, did not the President in a statement indicate that certain acts were taken by properly motivated people, that he would not authorize but that he had instructed Mr. Haldeman and Mr. Ehrlichman to see to it that none of this, which he thought were taken in the guise of national security, should be investigated into by the FBI?

Ehrlichman: Well, I took that instruction from the President to relate to a number of investigations which the special unit either supervised or engaged in in one way or another over a period of months, spanning six, eight, nine months . . . I included the whole Pentagon papers episode in that.

Dash: . . . Mr. Ehrlichman, prior to the luncheon recess you stated that in your opinion, the entry into the Ellsberg psychiatrist's office was legal because of national security reasons. I think that was your testimony.

Ehrlichman: Yes.

Dash: Have you always maintained that position?

Ehrlichman: Well, I do not know—

Dash: When I say always, I am not going back into eons of time.

Ehrlichman: I do not know that I have ever been asked to maintain it one way or the other. I have had a—I had an awareness of the President's constitutional powers and capacity.

Dash: Well, do you recall when we had our first interview in my office, and we discussed this issue you expressed shock that such a thing had occurred, and indicated that you had informed Mr. Young or Mr. Krogh to see that this thing should not happen again but you did not take any action such as ordering the firing of these people because of the general sensitive issues that were involved. Do you recall that?

Ehrlichman: Well, that is not on the ground of illegality, Mr. Dash. I do not think you asked me at that time whether—what my legal opinion was, for whatever it is worth. What you were asking me was what I did, and that is what I did.

Dash: Well, if it was legal you would ordinarily have approved it, would you not?

Ehrlichman: Well, no, the

thing that troubled me about it was that it was totally unanticipated. . . .

Dash: Who was it authorized by?

Ehrlichman: Well, I am under the impression that it was authorized by Mr. Krogh. I say under the impression, that has been my consistent impression, but it is not based on any personal knowledge.

Dash: Well, now, as a matter of fact, Mr. Ehrlichman, did you not personally approve in advance a covert entry into the Ellsberg psychiatrist office for the purpose of gaining access to the psychoanalyst's reports?

Ehrlichman: . . . I approved a covert investigation. Now, if a covert entry means a breaking and entering the answer to your question is, no.

Dash: Well, let me read to you a memorandum . . . The memorandum is dated Aug. 11, 1971, and it is a memorandum to you from Bud Krogh and David Young, "Subject: Pentagon Papers Project—status report as of August 11, 1971."

I think the relevant information is in paragraph (2) rather than the progress report of (1). Let me just read paragraph 2.

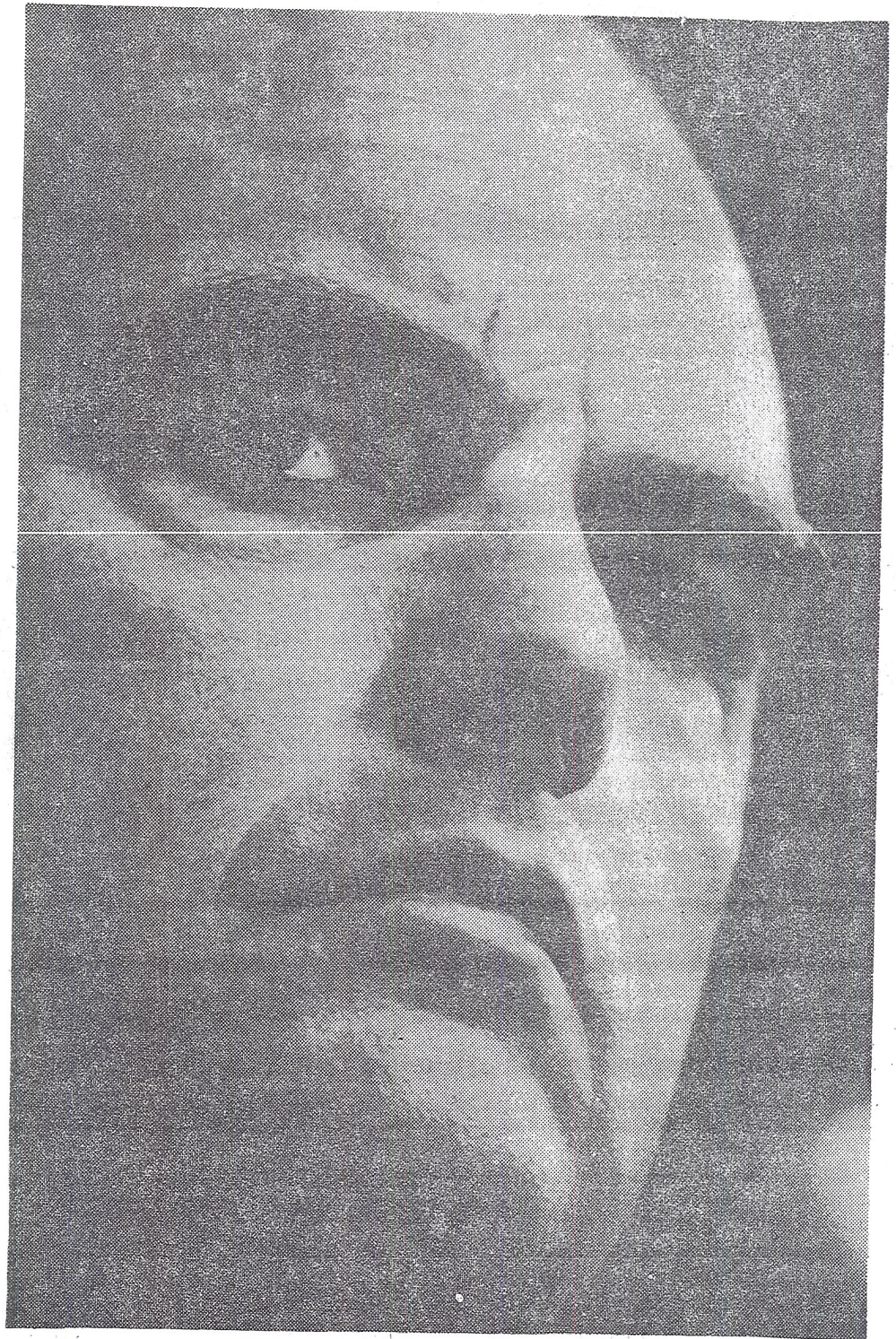
"We have received the CIA preliminary psychological study (copy attached at Tab A) which I must say I am disappointed in and consider very superficial. We will meet tomorrow with the head psychiatrist, Mr. Bernard Malloy, to impress upon him the detail and depth that we expect. We will also make available to him here some of the other information we have received from the FBI on Ellsberg."

Now, more significant, "In this connection we would recommend that a covert operation be undertaken to examine all the medical files still held by Ellsberg's psychoanalyst covering the two-year period in which he was undergoing analysis."

And there is a provision here for approve, disapprove. There is an "E", which I take it you would recognize as your "E" . . . and the handwriting is "If done under your assurance that it is not traceable."

Ehrlichman: That is correct.

Dash: Now, how would



By Frank Johnston—The Washington Post

John Ehrlichman listens intently to a question placed to him by Samuel Dash.

you interpret in this connection your assistance recommending to you in this connection, "We would recommend that a covert operation be undertaken to examine all medical files still held by Ellsberg's psychoanalyst covering the two-year period in which he was undergoing analysis", and their recommendation taking place sometime prior to

the entry and approved by you?

Ehrlichman: Well, no interpretation necessary, Mr. Dash. This was in the setting of a previous conversation in which it was contemplated that these two men would go to the coast to do this investigation as the President's statement of May 22 says.

The effort here was to find out everything that

could be found out about the people and the circumstances surrounding Ellsberg in all respects. . .

Dash: Now, would your understanding of covert operation be that by a, not a breaking and entering, but being let in by impersonating themselves to be somebody else into the building. Isn't that a covert operation?

Ehrlichman: I suppose that phrase could include that. It could include a lot of things. . .

Dash: Did Mr. Young and Mr. Krogh call you while you were in Cape Cod after Mr. Hunt and Mr. Liddy came back, and tell you that they had established that it was feasible that they could get access and that you said, "OK, go ahead and let them do it."

Do you recall that call that Mr. Krogh and Mr. Young made to you in Cape Cod?

Ehrlichman: No. . .

Dash: Would you be surprised if I told you that Mr. Young would so testify?

Ehrlichman: Yes, I would.

Dash: That Mr. Liddy and Mr. Hunt did in fact go out to carry out the feasibility study, did engage in what they considered to be a covert activity, not a break-in, and through a cleaning lady gained access to the building and saw they could gain access in similar way to the office, did return and that Mr. Young and Mr. Krogh got on the phone with you while you were in Cape Cod and told you that they were able, therefore, to prove that was feasible and said, "OK" when you were assured that Mr. Hunt and Mr. Liddy would not themselves be involved. Do you recall that?

Ehrlichman: Well, now, that is about how many questions all in one?

Dash: I am just giving you a set of facts.

Ehrlichman: Yes, and I don't recall any such set of facts.

Dash: . . . I think you have already indicated that you had a discussion with them before the memo was sent, and before it was approved in which they discussed the possibility of getting access to the files of the psychoanalyst.

Ehrlichman: No, no, you

misunderstood me. The discussion that I had with them related to the necessity of putting investigators out on the coast to investigate Ellsberg over and beyond the FBI effort.

Dash: You do not recall that some time in July or August, that you had a discussion with Mr. Krogh and Mrs. Young in which this specific question came up?

Ehrlichman: Which specific question?

Dash: . . . As to getting the . . . psychoanalyst's files on Ellsberg?

Ehrlichman: In July or August?

Dash: Yes, prior to the date of the memo of August 11? This was a discussion that you had with Mr. Young and Mr. Krogh.

Ehrlichman: I do not recall it. I cannot rule it out

Later in the session, Ehrlichman was questioned by Sen. Sam Ervin (D-N.C.), chairman of the select committee, about the money raised for the Watergate defendants by Herbert W. Kalmbach, President Nixon's personal lawyer:

Ervin: . . . Mr. Ehrlichman, do I understand that you are testifying that the Committee to Re-Elect the President and those associated with them constituted an eleemosynary institution that gave \$450,000 to some burglars and their lawyers merely because they felt sorry for them?

(Applause and laughter.)

Ehrlichman: I am afraid I am not your best witness on that, Mr. Chairman. I do not know what their motives were. I think those will appear in the course of the proceeding.

Ervin: You stated this was a defense fund just like that given to Angela Davis and to Daniel Ellsberg, did you not?

Ehrlichman: I stated that was my understanding of it.

Ervin: Yes, Well, Daniel Ellsberg and the Angela Davis defense funds were raised in public meetings and the newspapers carried news items about it, did they not?

Ehrlichman: I am not sure that we know who the donors to those funds were. I dare say there are many people in this country who contributed to those funds

who would not want it known.

Ervin: Yes. But do you not think most of the people contributed their funds because they believed in the causes they stood for?

Ehrlichman: I assume that.

Ervin: Well, certainly, the Committee to Re-Elect the President and the White House aides like yourself did not believe in the cause of burglars or wiretappers, did you?

Ehrlichman: No.

Ervin: Can you—

Ehrlichman: I didn't contribute a nickel. Mr. Chairman.

Ervin: Yes.

(Laughter.)

Ervin: You authorized somebody else to contribute?

Ehrlichman: No. I would like to set that straight, if I might, Mr. Chairman.

The only reason that anybody ever came to me about Mr. Kalmbach raising money was because of this arrangement that we had entered into that we would protect Mr. Kalmbach if he wished to be protected from requests to raise money. Now that is—it was a situation where obviously he didn't wish to be protected. He made the judgment, he made it independent of me, and whether I conceded to it or not obviously didn't make any difference.

Ervin: Did he ever talk to you about that?

Ehrlichman: Not until after the fact.

Ervin: I will ask you if he didn't come to you and not only talk about having known you a long time and you having known his family but didn't he ask you whether it was a proper or legal operation?

Ehrlichman: Mr. Chairman, the testimony is that that meeting, according to Mr. Kalmbach, was the 26th of July when he was long into this, and as I have already testified.

Ervin: He testified he had become dubious about the propriety of it and he went to you for reassurance? . . . And he also testified when he got to you you told him it was all right and to see that the money was delivered in secret because if he didn't deliver it in secret their heads would be in their laps. Didn't that occur?

Ehrlichman: No. As a mat-

ter of fact, Mr. Chairman, as I have just told Mr. (Fred) Thompson (minority counsel) I would be terribly slow to reassure Herb Kalmbach, whom I consider a good and close friend, of the propriety of any such undertaking, of any such undertaking without checking it first, if he had asked me, and I am testifying to you, Mr. Chairman, that he did not ask me.

Ervin: Well, you recall his testimony was to the effect that I have given you?

Ehrlichman: You mean about the head in the lap business?

Ervin: Yes, that the heads would roll.

Ehrlichman: I suspect that what was said there was that certainly Mr. Kalmbach's involvement—

Ervin: I am not asking about that. My question is didn't he have a conversation in which you told him to do it in secret because otherwise "if it get's out, our heads will be in their laps."

Ehrlichman: . . . I had a conversation with Mr. Kalmbach, Mr. Chairman, and I have no doubt that we, if he says so, that we discussed the question of secrecy because I do recall his saying that Mr. (Anthony Ulasewicz) was carrying money back and forth.

Now, I had in my mind at that time the realization that this, what I considered to be a legitimate undertaking, could be terribly misconstrued if someone were to impute the efforts of the President's lawyer to this defense fund for Watergate burglars. I mean there is room for misunderstanding, I think you have stated the misunderstanding very eloquently in your opening question . . .

Ervin: Well, let us go on to something else. You said something about the burglarizing of the office of the psychiatrist of Ellsberg was justified by the President's inherent power under the Constitution, did you not?

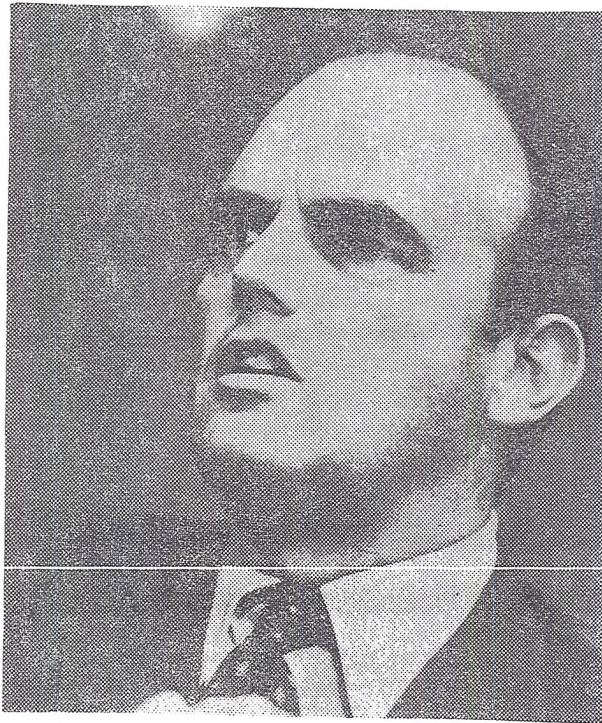
Ehrlichman: Yes, sir.

Ervin: And you referred to a certain statute.

Ehrlichman: I referred to a statute in which the Congress in 1968 made a recognition of that inherent power.

Ervin: Is that 18 U.C. Code 2511?

Ehrlichman: Yes, sir.



United Press International

The break-in at Daniel Ellsberg's psychiatrist's office was "well within the President's inherent constitutional powers," John Ehrlichman tells the committee.

Ervin: Will you please tell me—now, this statute has nothing to do with burglary . . . This has to do with the interception or disclosure of wire or oral communications prohibited.

Ehrlichman: No, sir, it also has to do with the Congress' recognition of what the Constitution provides with relation to the powers of the President.

Ervin: Is there a single thing in there that says that the President can authorize burglaries?

Ehrlichman: Well, let us read it, Mr. Chairman.

Ervin: . . . It says here that this statute, which makes it unlawful to intercept and disclose wire or other communications, says that this shall not interfere with the constitutional power of the President to—

Ehrlichman: To do anything.

Ervin: — to do anything necessary to protect the country against five things . . . The first says actual or potential attacks or other hostile acts of a foreign power. You do not claim that burglarizing Dr. Ellsberg's psychiatrist's office to get his opinion, his recorded opinion, of intellectual or psychological state of his patient is

an attack by a foreign power, do you?

Ehrlichman: Well, we could have a lot of fun with all four of these until we get to the operative one, Mr. Chairman.

Ervin: Well, Mr. Ehrlichman, the Constitution specifies the President's powers to me in the Fourth Amendment. It says: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Nowhere in this does it say the President has the right to suspend the Fourth Amendment.

Ehrlichman: No, I think the Supreme Court has said the search or seizure or whatever it is has to be reasonable and they have said that a national security undertaking can be reasonable and can very nicely comply with the Fourth Amendment.

But, Mr. Chairman, the Congress in 1968 has said this: "Nothing contained in this Chapter or in Section 605 of the Communications Act," and so forth, "shall limit the constitutional power of the President to take such measures as he deems necessary to protect the nation against", and then it goes on, "to protect national security information against foreign intelligence activities."

Now, that is precisely what the President was undertaking. He was not undertaking it under this statute. He was undertaking it under

that constitutional power which you gentlemen and other members of the Congress recognized in this section.

Ervin: Yes, I have studied that statute . . . And there is not a syllable in there that says the President can suspend the Fourth Amendment or authorize burglary. It has no reference to burglary. It has reference only for interception and disclosure of—interception of wire or oral communications . . .

Ervin: Mr. Ehrlichman, you are a lawyer and you

know that a psychiatrist is forbidden to divulge the information about his patient, don't you, without his patient's consent?

Ehrlichman: Well, I think we are going to split hairs, it would be in circumstances.

Ervin: That is not splitting hairs. That is a Hippocratic oath which started back in ancient Greece and has been going ever since.

Ehrlichman: I am not sure psychiatrists in every case are M.D.s, but let's assume that for the sake of argument.

The fact is that as I have stated earlier, my assumption is that it is possible to get specific medical and other kinds of confidential information through a trained investigator if he knows what he is looking for without a violation of law.

Ervin: Mr. Ehrlichman, you are a lawyer and you know that a psychiatrist is forbidden by law to divulge the confidential information he gets from his client, his patient, on examination of the patient to make a diagnosis without his client's consent. Now, don't you know that?

Ehrlichman: I didn't know that was a matter of law. I know there is a privilege that exists as a matter of law, but I don't know that it's a criminal violation. It may well be. I just didn't know.

Ervin: Don't you know there's a statute to that effect in every state in this union and the only statutes that make an exception to that is a judge in a court can require the physician or the psychiatrist to testify about his patient if he finds it's in the interest of justice?

Ehrlichman: No, I didn't

know that, Mr. Chairman . . .

Ervin: Well, if you had known the law, I would submit that in all probability, you would also have known that the only way you could get the opinion of the psychiatrist, Ellsberg's psychiatrist, was by some surreptitious manner in some surreptitious fashion.

Ehrlichman: I don't know what you mean by surreptitious, Mr. Chairman. I do know this from experience, that information of this kind is obtainable. Insurance adjusters obtain it, investigators obtain it, attorneys obtain it, and they obtain it through nurses, through nurses' aides, through all kinds of sources. And we would be kidding ourselves if we didn't admit that.

Ervin: You don't know what the word "surreptitious" means?

Ehrlichman: Well, I don't know what you meant by it in that question, Mr. Chairman.

Ervin: Well, can't you answer? Don't you know, really?

Ehrlichman: I did know the word. You were using it in a pejorative sense, Mr. Chairman, and I was not sure just how.

Ervin: Some people do things in illegal fashion, obtain information in illegal fashion. But I would assert as a lawyer that when you go to getting the record of a patient, of a doctor's opinion of his patient, his recorded opinion, that you cannot get it legally without consent of the patient or without an order of a judge. The only other way you can get it is in an illegal or unethical way.