

Prosecutor Says Ehrlichman

From News Dispatches

A Watergate prosecutor said yesterday John D. Ehrlichman may not have ordered a break-in by the White House Plumbers but nevertheless sent them on an illegal mission to the office of Daniel Ellsberg's psychiatrist.

Ehrlichman's attorneys, pointedly reminding the jury they were not defending President Nixon, argued that the former top White House aide never meant to authorize anything illegal and knew nothing about the break-in at the office of Dr. Lewis Fielding until after it had occurred.

Assistant Special Prosecutor William H. Merrill, in closing arguments, said two weeks of testimony had shown Ehrlichman approved a project to look at Fielding's files on Ellsberg without his permission, which would have been a crime even without a break-in.

Merrill argued that look-

ing at Fielding's files against the psychiatrist's will still violated his civil rights and that there was "direct evidence" of Ehrlichman's "approval and authorization."

Ehrlichman, former White House aide G. Gordon Liddy, Eugenio Martinez and Bernard Barker are charged with conspiring to violate the rights of Dr. Fielding by breaking into his Beverly Hills office on Sept. 3, 1971, to examine the doctor's files on Ellsberg. Ehrlichman also is charged with four counts of lying to federal investigators about the break-in. The case is expected to go the jury this afternoon.

William H. Frates, Ehrlichman's chief lawyer, told the jury in his closing argument that Ehrlichman ordered only a legitimate investigation and there was nothing wrong with having it done secretly.

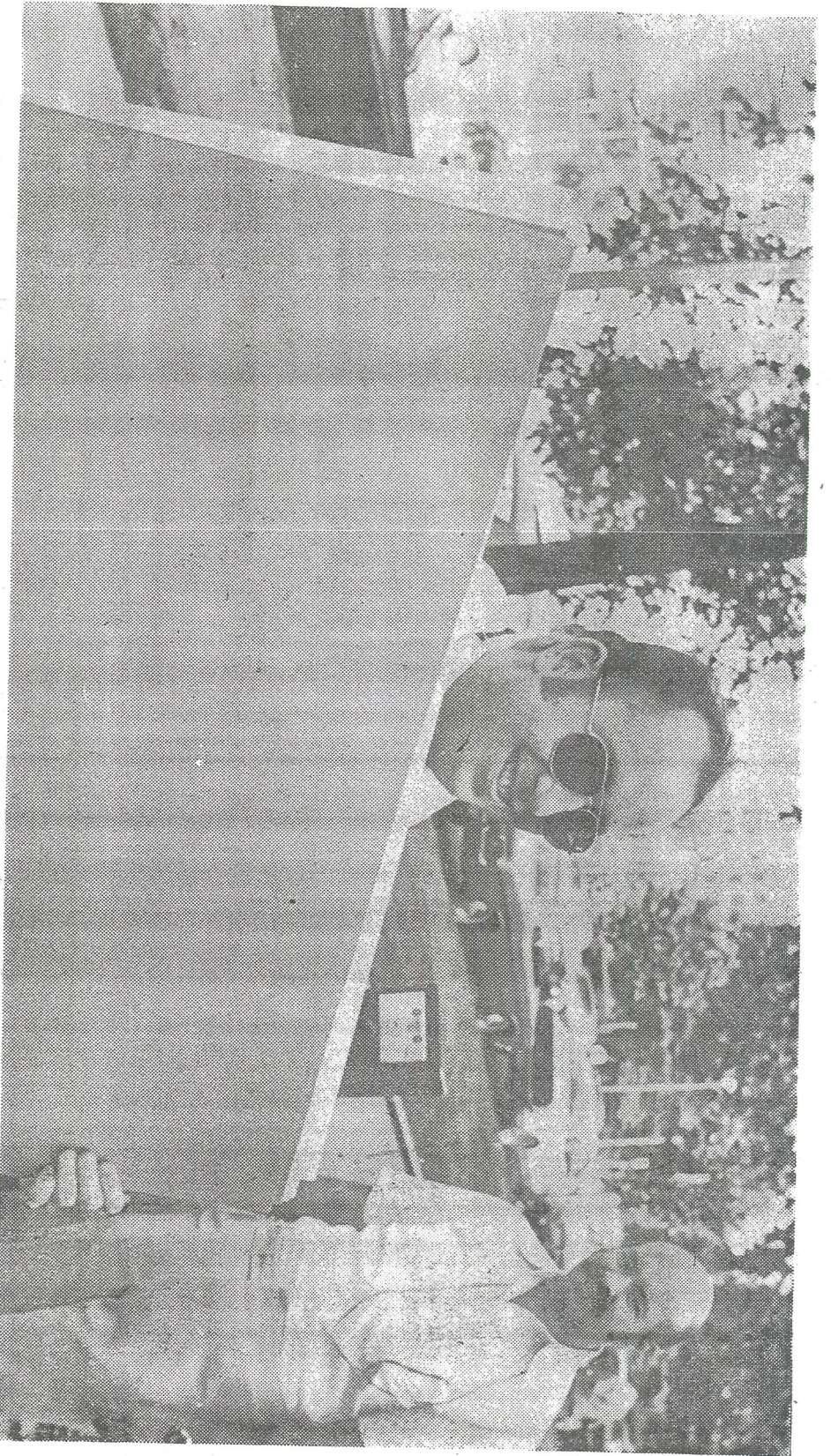
"They're trying to have you believe the word



Associated Press

Assistant Watergate Special Prosecutor William Merrill arrives at U.S. District Court for final arguments.

Instigated Illegal Mission



Andrew Hall, one of John D. Ehrlichman's lawyers, arrives at U.S. District Court with a presentation for final arguments.

By Joe Helberger—The Washington Post

'covert' is an illegal operation," Frates said. "But what is the evidence from that witness stand? It doesn't mean illegal.

"The question is did John Ehrlichman conspire to an illegal entry," Frates said. "The answer is no."

Frates said statements made by Ehrlichman to the FBI and Watergate grand juries about the incident which brought perjury counts against him were the result of normal lapses of memory.

"I think it's a failing of all of us," said Frates who portrayed Ehrlichman as a hard working public servant who took 10,000 telephone calls and over whose desk passed 252 feet of paper during the period in 1971 of the break-in incident.

The defense sharply attacked key government witnesses, including Egil Krogh and David Young who once worked under Ehrlichman as codirectors of the Plumbers.

Frates said Young "couldn't answer a question straight if he wanted to" and characterized Krogh as "a young man trying to move too fast."

Twice Frates tossed in a reminder to the jury that he was defending Ehrlichman, formerly Mr. Nixon's chief domestic adviser, and not the President or his administration.

"I am not here defending President Nixon or the Nixon administration or Watergate or anything like that," Frates said. "And again let me emphasize I am not here defending Richard Nixon," he interjected near the close of his two-hour statement.

U.S. District Judge Gerhard Gesell is scheduled to deliver his charge to the jury Friday morning. The jury is then expected to begin its deliberations after the lunch break.

Assistant Watergate Special Prosecutor William Merrill said at the outset of his closing argument that the government did not dispute that the White House plumbers unit had begun as a legitimate operation.

"Our only claim is that these people also got involved in conspiring to enter Dr. Fielding's office" illegally, Merrill said, and that the office was entered

"only after receiving Mr. Ehrlichman's approval." In the first count of the indictment, the four men are charged with the conspiracy to violate Dr. Fielding's civil rights by conducting an illegal search for Ellsberg's psychiatric files

The main issue in the first count, Merrill said is "who was aware of a plan to search Dr. Fielding's files... not who was aware of the break-in" that actually occurred. He pointed out that the forcible break-in that occurred was not originally planned, according to witnesses who testified during the trial.

Merrill said that Barker and Martinez had both testified that they were recruited by Hunt "for a surreptitious entry" and admitted that they went into the operation knowing they would have to enter the doctor's office to look at the files. "This shows they were involved in this conspiracy," Merrill said.

The government has

proven that Liddy was part of the conspiracy as well, Merrill said, as he recounted the testimony of various witnesses about, among other things, Liddy's involvement in a "vulnerability study" of Fielding's office before the actual break-in, and his knowledge that the FBI had not been able to gain access to the documents.

But Merrill saved the bulk of his time to outline in detail the specific evidence the government has presented against Ehrlichman.

He recounted on Aug. 5, 1971, meeting in which Krogh and Young testified they told Ehrlichman the unit would have to become operational because the FBI could not obtain Ellsberg's files. They testified they brought up the subject with Ehrlichman because they felt they could not approve such an operation on their own, Merrill continued.

In that Aug. 5 meeting, Ehrlichman said the operation would be agreeable with him as long as it was not traceable, Merrill re-

minded the jury from Krogh and Young's testimony.

Ehrlichman wrote similar words on an Aug. 11 memo in which he approved a "covert operation to examine files still held by Dr. Ellsberg's psychiatrist," Merrill said in rereading the document to the jury.

In the second count of the indictment, Ehrlichman is charged with lying to the FBI in the April 27 and May 1, 1973, interviews, when he said he had not seen Pentagon Papers files for a year. They said that Young's testimony about the March 27 meeting concerning the files and Krogh's statement about Ehrlichman's dissembling prove that count.

In discussing the remaining two counts of lying to the grand jury, Merrill made reference to what he called Ehrlichman's "changeable memory."

Count three of the indictment charges that Ehrlichman lied when he denied knowing before the break-in that a psychological profile was being prepared on Ellsberg.

He said Ehrlichman thought he could hide any knowledge of that profile because he had "removed the only incriminating documents and put them in the President's vaults in hopes they would never see the light of day."

However, with Young's turning two of those memos over to the prosecutors in turn for immunity, the prosecutors have been able to show six memos that Ehrlichman received before the break-in and a copy of the profile itself that Ehrlichman received with one of the memos, Merrill said.

Count four of the indictment charges that Ehrlichman lied when he said he was not aware of "any effort" to obtain information from Ellsberg's psychiatrist or his psychiatric record in general.

Merrill told the jury of at least one meeting, two telephone calls and five memoranda testified about during the trial "that show that his answer was false."

In count five of the indictment, Ehrlichman is also

charged with lying to the grand jury when he said that he thought Krogh had all of the files relating to the Ellsberg case. The government contended yesterday that Young's testimony proves that on May 14, 1973, when Ehrlichman testified to the grand jury, he knew that Young had files as late as March 27, 1973.

Merrill wound up his one hour and 20 minute argument by charging that Ehrlichman's claim of a weak memory was a "limp" excuse.

"Everyone else knew someone was going to go into Dr. Fielding's office," Merrill said. "Mr. Martinez knew that, Mr. Barker knew that, Mr. Hunt knew that, Mr. Liddy knew that, Mr. Krogh knew that, Mr. Young knew that... and Mr. Krogh and Mr. Young thought that Mr. Ehrlichman knew that."

He turned to face each defendant individually as he asked the jury to return a verdict of guilty on all counts because "all of them are guilty."