

6 Indicted in El

3/8/74
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Former White House officials John Ehrlichman and Charles W. Colson and four other men were indicted by a federal grand jury here yesterday for allegedly conspiring to burglarize the office of Daniel Ellsberg's psychiatrist in 1971, a crime inextricably interwoven with the Watergate affair.

Of the six defendants named yesterday in the second major indictment of top Nixon administration figures within a week, five have been convicted of participating in the 1972 Watergate burglary or were charged with conspiring to obstruct justice in the continuing cover-up of Watergate. Ehrlichman, Colson, G. Gordon Lid-

dy, former White House and Nixon re-election campaign aide and the three men accused of actually carrying out the burglary—Bernard L. Barker, Eugenio Martinez and Felipe De Diego—all were indicted yesterday for conspiracy to violate the civil rights of Ellsberg's psychiatrist, Dr. Lewis Fielding.

In addition, Ehrlichman—who was the President's assistant for domestic affairs—was charged with four counts of lying to FBI agents and a federal grand jury. Liddy also was charged in a separate indictment with two counts of being in contempt of Congress for his refusal to testify before a congressional committee investigating the Watergate scandal.

Last Friday, Colson, Ehrlichman and five other former White House or

Nixon campaign aides were indicted by another Watergate grand jury directed by the Watergate special prosecutor's office for conspiracy, perjury and other charges in connection with the Watergate cover-up.

Yesterday's indictments are believed to be the last major grand jury action involving persons previously accused in the Watergate burglary and its cover-up. However, indictments are expected, perhaps as soon as next week, from the Watergate grand juries' investigations of the ITT affair and other alleged illegal campaign contributions in the 1972 elections.

All of the persons charged yesterday directed or worked for a special White House investigative unit set up by President Nixon in the summer of 1971

Isberg Break-In

to investigate and plug leaks of government information to the press. Three other members of the unit, which came to be known as the White House "plumbers," were named yesterday as unindicted coconspirators and are expected to be government witnesses at any future trials.

However, the indictment returned yesterday did not mention the plumbers unit as such or explicitly characterize the Ellsberg burglary as one of its activities. Neither did the indictment mention President Nixon by name or discuss his role in the organization of the unit.

The White House yesterday refused to comment specifically on the new indictment. A White House spokesman instead reread a statement issued last Friday when the Watergate cover-up

indictments were returned. That statement expressed the President's hope that the country "will join him in recognizing that those indicted are presumed innocent unless proof of guilt is established in the court."

Named in yesterday's indictment were:

- Ehrlichman, 48, now a private practice lawyer and resident of Seattle, Wash., who was charged in his former capacity as domestic affairs adviser to the President with the civil rights conspiracy and the four false statement counts. The maximum penalties for these charges total 30 years in jail and \$50,000 in fines, or both. If convicted of the charges of conspiracy, obstruction of justice, and making false statements alleged in last Friday's indictment, Ehrlichman could face prison terms to-

taling 25 years, fines of \$40,000, or both.

- Colson, 42, a Washington attorney, who was charged in his former role as special counsel to the President with one conspiracy count on which he could be sentenced to 10 years in jail, fined \$10,000, or both. Last week's indictment charged Colson with conspiracy and obstruction of justice, for which he could face, if convicted, a total of 10 years in jail, a \$10,000 fine, or both.

- Barker, 56, of Miami, who was charged with one conspiracy count that carries a maximum jail term of 10 years, a maximum fine of \$10,000, or both. Barker, who served a year in jail after his guilty plea in the Watergate

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burglary, is presently free on an appeal of his motion to change his plea in that case to innocent.

• Martinez, 51, of Miami, who was charged with civil rights conspiracy, which carries a possible fine of \$10,000, a possible jail term of 10 years or both. He had served a year in jail after his guilty plea in the Watergate burglary, and was released on parole from an Eglin, Fla., federal prison just a few hours before yesterday's new indictment was returned against him.

• De Diego, 45, of Miami, who was charged with civil rights conspiracy, and could be sentenced, if convicted, to 10 years in jail, a \$10,000 fine, or both. De Diego has been granted immunity from prosecution in previous Watergate-related investigations, and yesterday's indictment marks the first criminal charge against him.

• Liddy, 43, a former assistant to the President, who was charged with one conspiracy count for which he could be fined \$10,000 or be sentenced to 10 years in jail. He is currently serving a prison term of up to 20 years after his conviction in connection with the Watergate break-in and for contempt of court for refusing to testify before a Watergate grand jury.

Liddy has refused offers and subpoenas to testify anywhere about his involvement in the Watergate affair. The additional indictment filed against Liddy yesterday charged him with contempt of Congress for refusing to testify before the Special Subcommittee on Intelligence of the House Armed Services Committee.

That subcommittee was investigating the question of involvement of the Central Intelligence Agency in the Watergate affair. He could be fined \$1,000 and sentenced to one year in jail on each count.

Named as unindicted coconspirators in yesterday's indictment were E. Howard Hunt Jr., Egil (Bud) Krogh and David R. Young.

Krogh, handpicked by President Nixon to head the White House plumbers unit, pleaded guilty to involvement in the Ellsberg burglary conspiracy and is now serving a six-month jail term. Hunt and Young have been granted immunity from prosecution in return for their testimony in connection with the burglary of Ellsberg's psychiatrist's Los Angeles offices.

By naming the three men as coconspirators, the prosecutors will be able to use their testimony about conversa-

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tions they had with the persons named as defendants.

Yesterday's federal indictment raises the possibility of potential legal problems between this and a previous Los Angeles County grand jury indictment of Ehrlichman, Young, Liddy, and Krogh for burglary. The three Miami-ans named in yesterday's federal indictment have been granted immunity in the Los Angeles County investigation, and much of the fruits of their cooperation in that probe reportedly has been shared with the federal grand jury that returned yesterday's indictment.

Los Angeles County prosecutors have planned a meeting Monday with Watergate Special Prosecutor Leon Jaworski to discuss this and other possible problems. Until that meeting occurs, it is unclear what effect the current indictment will have on the pending Los Angeles case.

It is expected that defendants in the civil rights conspiracy case here will raise as a defense the assertion that they were acting in defense of "national security" when the burglary was plotted and carried out.

Krogh had attempted a similar defense when he was first charged with false declarations before a grand jury in the case, but he was rebuffed by U.S. District Judge Gerhard A. Gesell who ruled that Krogh had no right to lie in the name of national security.

Yesterday's indictment was handed up to U.S. District Chief Judge John J. Sirica. He has not yet said which federal judge will handle the case, or when an arraignment date will be set.

Attorneys for Ehrlichman have said that the former White House aide has rejected an offer by the special prosecutor's office to plead guilty to the specific conspiracy crime with which he was charged yesterday. If he had accepted and pleaded guilty to that single charge, all other charges against him would have been dropped, the attorneys said.

John J. Wilson, one of Ehrlichman's defense attorneys, said after yesterday's indictment that he would have "no comment whatsoever" on the charge or any previous plea bargaining.

The 11-page indictment returned yesterday was specific in its charges, but contained little new in that has not already become public knowledge since the burglary was revealed during Ellsberg's Pentagon Papers theft trial in Los Angeles last May.

The indictment lists 19 overt acts allegedly committed as part of the conspiracy. The acts comprise a chronological list of events, beginning with a memo on July 27, 1971 from Krogh and Young to Ehrlichman "which discussed a request for the preparation of a psychiatric study on Daniel Ellsberg."

The 19th and final overt act listed in the indictment charges that on March 27, 1973, Ehrlichman "caused the removal of certain memoranda related to the entry into the offices of Dr. Lewis J. Fielding from files maintained at the White House in which such memoranda would be kept in the ordinary course of business."

The 17 overt acts in between trace a series of memos, conversations and acts that allegedly carry the conspiracy from a suggestion by Hunt that Ellsberg's psychiatric files be obtained from his psychiatrist through the break-in at Fielding's office on Sept. 3, 1971.

The description of overt acts relies heavily on documents already made public during the Senate select Watergate committee hearings last summer and fall. Among these documents is one dated Aug. 11, 1971 from Krogh and Young to Ehrlichman recommending "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."

Ehrlichman had initiated his approval with the notation, "if done under your assurance that it is not traceable."

On Aug. 23, the indictment charges, Ehrlichman and Young discussed financing for "Special Project No. 1, a planned entry into the offices of Dr. Lewis J. Fielding to obtain confidential information concerning Daniel Ellsberg."

Subsequently, according to the indictment, Colson and Krogh had a telephone conversation about providing money for Hunt and Liddy. The indictment charges that Colson also discussed the need for money with Young.

The indictment charges that Ehrlichman, in an Aug. 27, 1971 memo asked Colson for a "game plan" for the use of materials to be derived from the "proposed undertaking by Hunt and Liddy," which was again identified as "Hunt/Liddy Special Project No. 1."

On Aug. 30, 1971, the indictment states, Krogh and Young spoke with

Ehrlichman by telephone, assuring him "that the planned entry into the offices of Dr. Lewis J. Fielding would not be traceable."

The following day, Colson arranged by telephone to "obtain \$5,000 in cash," the indictment charges. On Sept. 1, according to the indictment, Colson arranged for the transfer of \$5,000 from the Trust for Agricultural Political Education (TAPE) to repay the \$5,000 he had borrowed. TAPE is a political fund-raising arm of the Associated Milk Producers, Inc. (AMPI).

The \$5,000 from TAPE was part of \$427,500 in contributions made by three dairy co-ops to the Nixon re-election campaign in 1971 and 1972. These contributions are the subject of a separate investigation being conducted by the special Watergate prosecutor.

The indictment charges no further overt acts between the time of the Sept. 3, 1971 break-in and March 27, 1973 when Ehrlichman allegedly "caused the removal" of memos related to the break-in from White House files.

That alleged act of removal by Ehrlichman appears to be central to the subsequent counts in the indictment charging Ehrlichman with three counts of making false statements to a grand jury.

Although the indictment does not say so, testimony and comments made during the Senate Watergate committee indicated that Young told the prosecutors about Ehrlichman's alleged act on March 27.

During his testimony last July 24, Ehrlichman was asked by chief committee counsel Samuel Dash if he recalled "receiving a number of papers from Mr. Young and then returning them minus this memorandum (of Aug. 11, 1971) . . . ?"

"No," Ehrlichman answered. "The receipt of documents, as I recall, was in Krogh's—this document has been in my files and I saw it there the other day."

"Do you know if Mr. Young raised the question concerning the memorandum and that you said it was too sensitive a memorandum and that you had retained it?" Dash asked Ehrlichman.

"No. No," Ehrlichman replied.

The Aug. 11 memo, made public by the Senate committee, indicates that Ehrlichman was aware before the Ellsberg break-in that the investigation of Ellsberg included a psychological profile and that information was going to

be sought from Ellsberg's psychiatrist.

Yet, according to yesterday's indictment, when Ehrlichman testified before a federal grand jury here on May 14, 1973, about eight weeks after he allegedly removed the memos from the White House files, he repeatedly said that he "learned about" the planned psychological profile with information to be sought from Ellsberg's psychiatrist "after the fact."

Ehrlichman was then asked by the grand jury, according to the indictment:

Q. When you say you learned about it after the fact, what do you mean by that, sir?

A. Well, I learned after the break-in that they were looking for information for what they called a psychological profile. I was not aware of that before the fact.

And a moment later, Ehrlichman said in answer to another question: "I can't recall hearing of psychological profile until after I had heard of the break-in."

In each instance, the grand jury charged that the italicized portion of Ehrlichman's sworn testimony was a lie.

This grand jury testimony by Ehrlichman also appears to contradict his sworn testimony before the Senate Watergate committee last summer, when he said that "I recall distinctly when I testified before the grand jury, I was asked which came first, the psychiatric profile draft or the trip, and what order and I could not recall."

Later, Ehrlichman told the Senate committee: "The CIA had prepared a psychiatric profile (on Ellsberg at the plumbers' request), and it was not helpful, and when Mr. Young went back to the CIA and said, 'This is not helpful,' they said, 'Well, we do not have enough raw material to go on. You are going to have to get us some more factual information,' and so this was then an expansion of the original covert investigation of this individual (Ellsberg) and his coconspirators and his pattern and how he got these documents and so on, to include the assemblage of such other information as might be helpful to the CIA in finishing this psychological profile project."

But Ehrlichman testified that he had nothing illegal in mind in the assembling of the information needed from Ellsberg's psychiatrist. "I imagine," he told the senators, "those of you who have been in private practice (as at-

torneys) well recognize there are a lot of perfectly legal ways that medical information is leaked, if you please . . ."

When he approved the "covert operation" to obtain the information, Ehrlichman testified, ". . . the thing that occurred to me was that by one way or another this information could be adduced by an investigator who was trained and who knew what he was looking for."

Ehrlichman also was charged with lying to FBI agents who were trying to discover if information taken during the Fielding office burglary was used in the government's prosecution of Ellsberg for the Pentagon Papers theft.

According to the indictment, Ehrlichman lied on May 1, 1973 when he told agents he had not seen any material concerning the Pentagon Papers investigation for more than a year. Elsewhere in the indictment, it is charged that Ehrlichman "caused the removal" of a Pentagon Papers probe file from his office about one month earlier.

The "false statements to an FBI agent" charge carries a penalty of up to five years in jail, a \$10,000 fine, or both. This statute has been under legal scrutiny in recent years, and various courts have differed on whether it should be enforced.

The specific conspiracy statute under which all six men were charged yesterday differs from the general conspiracy count that has been used in previous Watergate crimes. Conspiracy against the rights of citizens is a crime in itself, punishable by a 10-year jail term and/or a \$10,000 fine; the general conspiracy statute can only be applied in the furtherance of a more specific crime, such as obstruction of justice or bank robbery, and is punishable by five years in jail and/or a \$5,000 fine.

The civil rights conspiracy statute was written during the Reconstruction years of racist nightriders and contains in it the language: "If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege . . ."

Yesterday's indictments bring to 29 the number of persons charged or convicted as a result of the Watergate affair. In addition, 11 corporations or officers or both have pleaded guilty to making illegal campaign contributions.