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Ehrlichman Invokes Privilege on Plumbers

By Lawrence Meyer and Peter A. Jay
Washington Post Staff Writers

Sen. Howard H. Baker Jr. (R-Tenn.) said yesterday that the Senate select Watergate committee has been placed in an "untenable position" by an assertion of executive privilege by President Nixon to block testimony about certain secret activities of the special White House investigating unit known as "the plumbers."

By invoking executive privilege at the President's direction for the first time in the hearings, former top White House aide John D. Ehrlichman frustrated attempts by Baker, the Senate committee's vice chairman, to probe a possible relationship between the Watergate cover-up and the plumbers' activities.

Baker referred to President Nixon's 4,000-word May 22, 1973, Watergate statement, in which Mr. Nixon said he had taken steps to make sure that the investigation of the Watergate affair did not "compromise" activities of the Central Intelligence Agency or the plumbers, "some of which remain, even today, highly sensitive," and thus secret.

The Senate committee needs to know more about the activities Mr. Nixon was referring to, Baker indicated, in order to establish whether they were legitimate matters of national security or merely an excuse for justifying the cover-up of the involvement of high White House and Nixon campaign officials in the Watergate bugging and other illegal activities.

Baker's complicated and often vague discussion with Ehrlichman about the shroud of national security surrounding the plumbers unit came as several senators on the committee expressed open skepticism to Ehrlichman about his testimony.

By Frank Johnston—The Washington Post

JOHN D. EHRLICHMAN
... "plenty busy with other things."

Speaking about specific acts involved in the Watergate cover-up, which Ehrlichman has denied knowing about or actively participating in, Sen. Herman Talmadge (D-Ga.), said, "It's hard to believe that a man of your intelligence could have been involved in so much complicated complicity and knew nothing about it."

"I beg to differ with you, senator," Ehrlichman replied. "This was not my beat. This was not my business. I was, as my log will demonstrate to you, plenty busy with other things."

Sen. Sam. J. Ervin Jr. (D-N.C.) referred to the Biblical parable of the Good Samaritan to make his point that Ehrlichman, along with other White House and Nixon re-election committee officials "like the priest and the Levite walked by on the other side and pretended that this thing did not occur."

Following his examination of Ehrlichman on Wednesday, Sen. Daniel K. Inouye (D-Hawaii) was clearly heard on national television saying, "What a liar," although Inouye later said he was not referring to Ehrlichman.

During yesterday's questioning of Ehrlichman, Sen. Lowell P. Weicker Jr. (R-Conn.) forced him to change his initial explanation of why the plumbers had broken into the offices of Daniel Ellsberg's psychiatrist in September, 1971.

Ehrlichman has denied that there was any connection between the Ellsberg break-in and the Watergate cover-up, arguing initially that the Nixon administration had no reason to fear public exposure of the Ellsberg episode by an unrestrained Watergate investigation.

See **HEARING**, A25, Col. 1

HEARING, From A1

Ehrlichman based this argument on the contention that the Ellsberg break-in was legal within the President's "inherent power" to authorize what otherwise would be illegal acts in defense of the national security.

Several members of the committee —including Talmadge, Ervin and Weicker—have disputed the legality of the Ellsberg break-in and Ehrlichman's broad definition of the President's powers. Under their questioning, Ehrlichman also has conceded that revelation of the break-in during the 1972 election campaign might have been "embarrassing" after all.

Baker's questioning yesterday suggested that if the other still secret activities of the plumbers are similarly controversial, the White House may have had added reason to curtail the Watergate investigation. By blocking testimony about the undisclosed national security matters referred to in President Nixon's May 22 statement, the White House is, in effect, asking the committee to take on faith the President's assurance that they were legitimate actions.

Baker lumped his questions about this issue with the committee's attempts, now headed for court action, to secure tape recordings and presidential papers dealing with the Watergate affair. At the same that he is refusing to turn over the tapes and documents, Mr. Nixon has invoked executive privilege concerning the plumbers' activities.

Ehrlichman's lawyer, John J. Wilson, read the committee a letter from special White House counsel J. Fred Buzhardt instructing Ehrlichman not to answer questions about a "1971 investigation" by the plumbers that was not otherwise described in Ehrlichman's extensive testimony on the plumbers.

Ehrlichman offered to discuss the matter with the committee in closed session if the White House were to give its approval. Baker probed Ehrlichman steadily in an effort to determine whether the national security matter was of great significance. Ehrlichman responded, without providing details, that it was.

Baker: Well, my question is this: If in fact, the conduct of the White House and its major staff after the Watergate inquiry was based on national security considerations, just assume for the moment that there was some element of an obstruction of the investigation of the Watergate situation because of some national security issue, how great must that national security issue be to take all the punishment that an administration and witnesses have taken? What I am asking you is it that important or am I playing games?

Ehrlichman: In my opinion it is that important.

Wilson, Ehrlichman's lawyer, then read the White House letter from Buzhardt, which said, "The 1971 investigation about which you inquired was in no way related to the Watergate affair, the alleged cover-up or to any Presidential election. This matter does involve most sensitive national security matters the public disclosure of which would cause damage to the national security."

Baker, clearly not satisfied, returned to the same question again:

Baker: I need to know whether or not we are playing games or whether in fact this was a legitimate area of inquiry with the committee or am I being stopped?

Ehrlichman: We are not playing games ... it is simply a matter which, in the scale which you have just described, heavily weighs.

Baker: Which way?

Ehrlichman: In favor of national security, in my opinion. Now you may disagree with me but I don't think you will.

Baker: It won't float. Not simply on that basis.

"We have on one hand," Baker said, "rather elliptical or not complete allegations of national security concern of such grave importance that the risk is run that it might be misunderstood, that the allegations and claims of national security considerations are suspect in the minds of some.

"And on the other hand, the concern that if there are in fact vital national interests involved, we have an obligation as senators and as citizens to find it out the right way. But where we are left right now, where we are left is in an untenable position," Baker said.

"We have got to press this further in conjunction with the tapes," Baker continued, "in conjunction with the documents, in conjunction with the President's May 22d statement, in conjunction with a dozen other things I could name.

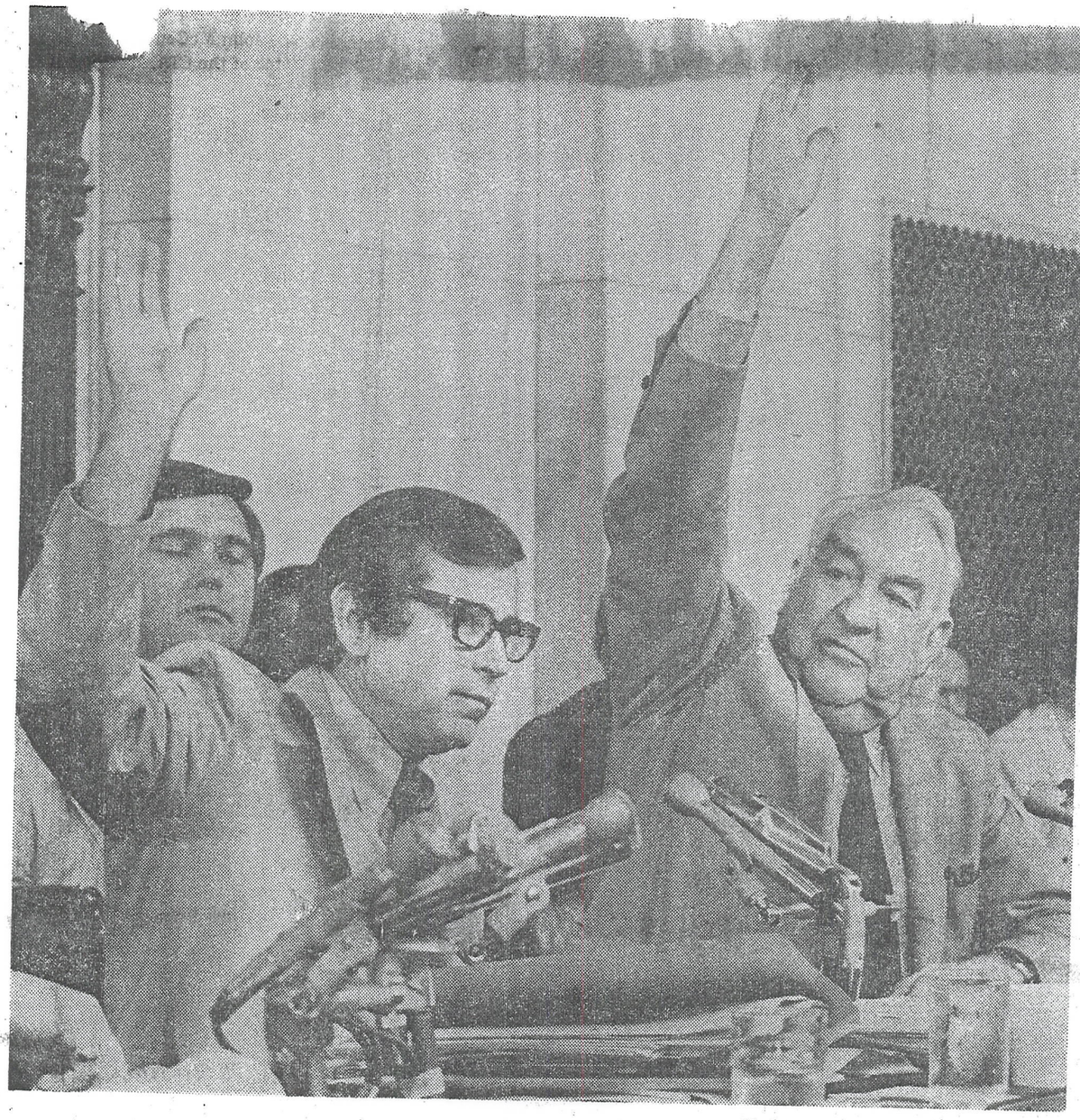


Photo by Frank Johnston—The Washington Post

Vice Chairman Baker, left, and Chairman Ervin join in Senate committee's unanimous vote to take President to court.

"We need to know what factors were taken into account to verify or invalidate the claim of national security, which itself is in some quarters suspect, and I, for one, hope that we can add that to the long list of things that I believe the committee needs to make a definitive statement."

Referring to President Nixon's May 22d statement, in which Mr. Nixon tried to explain the plumbers' activities and his knowledge of the Watergate affair along with other secret activities of the White House, Baker said:

"The President's statement of May 22d could be entirely correct in every respect, and I suppose we all assume that it is, but it is still so general and subject to so many interpretations that it cannot stand unaided by the close scrutiny that this committee is trying to undertake.

"Now I want to know on whatever basis I can find out, what those considerations were. I do not want to know them in a way that, as a citizen of the United States, I think they might jeopardize the safety or the future of my nation, but I have got a delicate balancing job on my hands here trying to find out and trying to evaluate whether they are in fact of that importance. I am sort of at a loss as to how I do that."

For Baker, the Tennessee Republican who has repeatedly struck a conciliatory pose in publicly trying to encourage President Nixon to cooperate with the committee in its inquiry, his statement to Ehrlichman yesterday was the first public sign of frustration and exasperation.

His comments provoked no reaction from the packed Senate Caucus Room, where the hearings are being held, because committee chairman Ervin again warned spectators yesterday to give no sign of approval or disapproval to anything that was said.

During his interrogation of Ehrlichman, Ervin turned to the FBI's investigation of the Watergate affair. Ervin probed the relationship between the FBI investigation and what Ehrlichman has described as Mr. Nixon's "concern" that the Watergate investigation not endanger any CIA activities.

Ehrlichman said that at President Nixon's instruction White House chief of staff H. R. (Bob) Haldeman had arranged a meeting between Haldeman and Ehrlichman and CIA Director Richard Helms and Deputy CIA Director Gen. Vernon A. Walters "to discuss the question of whether a full, all-out vigorous FBI investigation might somehow turn up and compromise some on-going CIA activity."

Ehrlichman has testified that "some problems" were discovered and that Walters subsequently met with acting FBI Director L. Patrick Gray III. When it was then determined that the Watergate investigation would not endanger any CIA operation, Ehrlichman said, "the President's instructions to the FBI were to conduct a totally unlimited all-out, full-scale investigation of that and every other aspect of this Watergate matter and that Mr. Gray, and Mr. Gray alone, was to determine the scope. That the President would not limit the scope at all."

"Well," Ervin replied, "they didn't find out much, did they?"

"Yes, sir," Ehrlichman replied, "they found out a great deal. They conducted in fact, Mr. Chairman, on that score, they conducted the most intensive FBI investigation that had been conducted in this country in terms of the numbers of witnesses contacted, the number of leads followed out, the number of agents involved in the investigation, the devotion of, vigor of the Bureau of Investigation, the most intensive investigation since the Kennedy assassination."

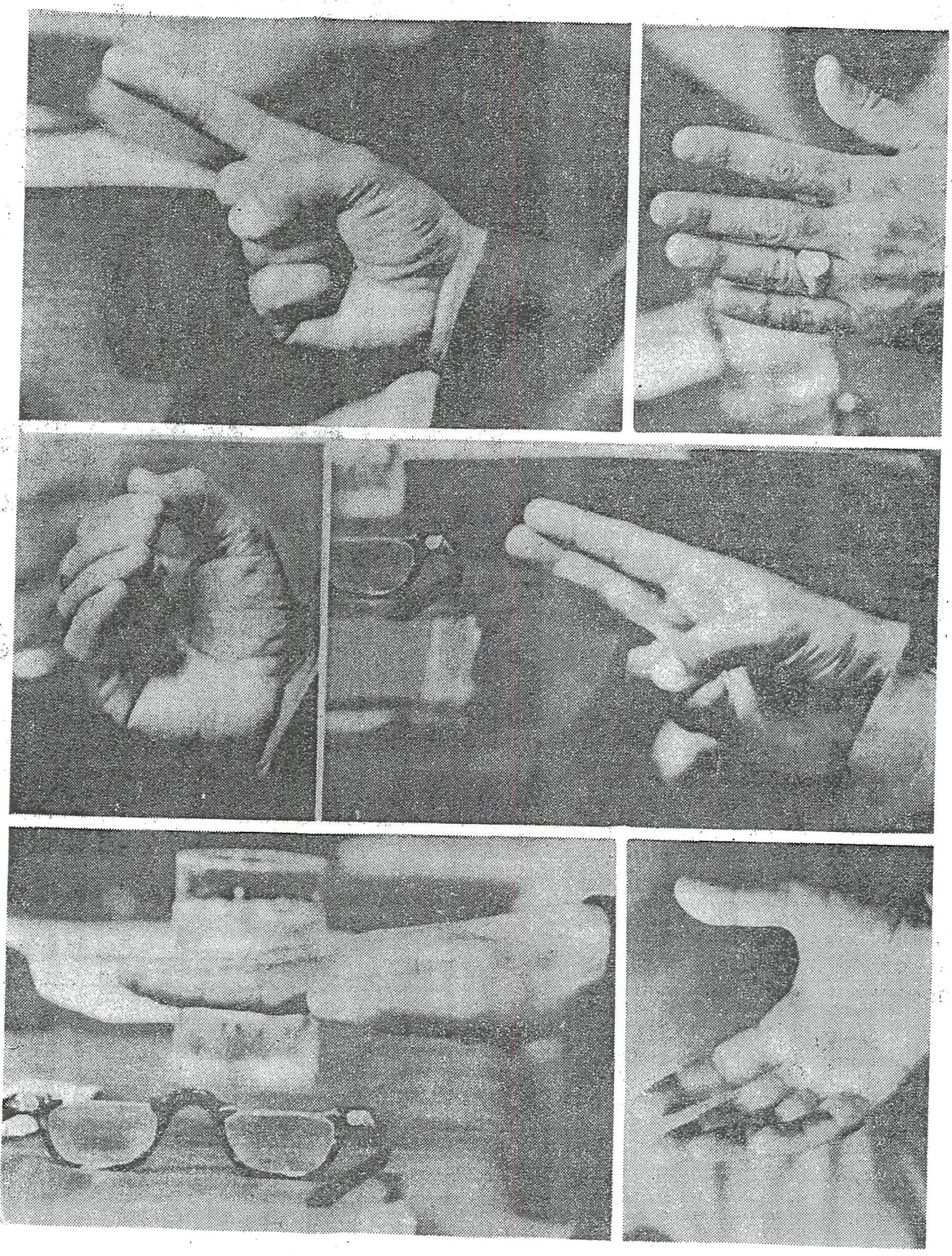
"And they didn't find out enough to indict anybody except the original seven men notwithstanding the fact that the transaction of the burglary ran right from the Watergate to the Committee to Re-elect the President?" Ervin asked.

"That certainly is not the President's fault," Ehrlichman said, "He turned the FBI loose."

"Well," Ervin said, "it might be the fault of some of his aides in not insisting it be a little more vigorously done."

"I assure you that the President—excuse me Mr. Chairman," Ehrlichman said, "I assure you there was no restraint on the FBI in this investigation whatsoever to my knowledge. None whatsoever."

Earlier, under questioning by Sen. Joseph M. Montoya (D-N.M.), Ehrlichman had criticized the FBI's checks on potential appointees to adminis-



Associated Press

The hands of former presidential counsel John Ehrlichman emphasize his testimony before the Senate committee.

tration posts as being "not very good . . . very superficial."

In asserting that the FBI investigation of the Watergate affair was the most comprehensive since the Kennedy assassination, Ehrlichman returned to a theme that Nixon administration officials have repeatedly struck to answer criticisms of the investigation.

The criticisms include citations of the failure of the FBI to contact all the persons listed in the personal address books seized by police in the hotel rooms of Watergate conspirators Bernard L. Barker and Eugenio Martinez and the failure to interview Nixon re-election committee official Robert Reisner, who has since testified that he knew of plans by campaign officials to commit perjury.

The Watergate prosecutors have acknowledged in private conversation that the FBI did not investigate leads that involved no clear violation of law —a reversal of the FBI's standard practice to investigate leads first and determine what laws had been violated later.

During his examination of Ehrlichman, Talmadge cited a memo that Deputy CIA Director Walters had written on July 6, 1972, concerning a conversation he had had that day with acting FBI director Gray.

"In all honesty," Walters said in the memo, "I could not tell him (Gray) to cease future investigations on the grounds that it would compromise the security interests of the United States. Even less so could I write him a letter to this effect.

"He (Gray) said that he fully understood this. He himself had told Ehrlichman and Haldeman that he could not suppress the investigation of this matter," Walters said.

"Gray thanked me for my frankness," the Walters memo continues, "and said that this opened the way for fruitful cooperation between us. He would be frank with me, too. He could not suppress this investigation with the FBI. He had told (Attorney General Richard) Kleindienst this. He had told Ehrlichman and Haldeman that he would prefer to resign, but that his resignation would raise many questions that would be detrimental to the President's interests."

"I do not believe," Ehrlichman said after parts of the memo were read to him by Talmadge, "that there is anything in it which asserts that I ever asked Mr. Gray to suppress the investigation."

"I wondered why he (Gray) would volunteer mentioning the fact that he had told you if you had not asked him," Talmadge said.

"For this simple reason," Ehrlichman said, "that following our meeting with director Helms and Gen. Walters on the 23d of June, he had a series of conversations with Gen. Walters, and the subject of those conversations, as I understand it, was a question of whether or not the FBI could press forward with its investigation . . . without compromising some CIA operation, and Mr. Gray informed me, as he informed the President, that he

could not possibly conduct his Watergate investigation without looking into that aspect of it."

At the conclusion of his questioning of Ehrlichman, Talmadge expressed his disbelief that Ehrlichman could have been ignorant of the Watergate cover-up. When Ehrlichman attempted to argue that he was too busy with matters concerning his job as President Nixon's top domestic adviser, Talmadge took issue with his explanation:

Talmadge: You didn't operate in a complete vacuum, did you?

Ehrlichman: I operated in a maelstrom of domestic issues. And my life was full of problems but it wasn't those kinds of problems. I was concerned with legislation, I was concerned with budget, I was concerned with getting messages up here in the Congress on domestic subjects. I was concerned about helping the Congressional liaison people with congressional votes. I was concerned with briefing the press on domestic issues. My life was very full for 14, 15, 16 hours a day, Senator, but I certainly was not omniscient in the White House. I didn't keep track of Mr. Dean, I didn't keep track of Mr. Haldeman, I didn't see Mr. Strachan for months at a time down there.

Talmadge: I might draw a little parallel, Mr. Ehrlichman. Every public servant I know has a very busy life. A United States senator compared to the President of the United States is a relatively minor office but our office also works 18 hours a day. I have got some very loyal, hard-working, dedicated people on my staff but they don't work in a vacuum. Every one of them knows what the other one is doing, and in our office we don't keep secrets from each other, and when something of importance arises that they think I, as a United States senator from Georgia, ought to know they don't conceal it. They bring it to me and inform me, and I can act on it intelligently and not in the dark.

Again and again during yesterday's meandering interrogation of Ehrlichman, which was once again interrupted frequently by votes on the Senate floor, the unyielding witness and his persistent questioners clashed over particulars of the version Ehrlichman has given of his and the President's actions concerning Watergate and the activities of the plumbers.

Ehrlichman told the committee that President Nixon, upon learning that acting FBI director L. Patrick Gray had destroyed politically sensitive papers found in Hunt's safe at the White House, ordered a corroborating investigation conducted to determine if action should be taken against Gray.

The President, Ehrlichman said, "forbore to take a number of steps (against Gray) on his own motion in order to work in concert" with Attorney General Richard Kleindienst and Assistant Attorney General Henry Petersen.

Weicker, obviously nettled by the answer, observed that "So on April 15th (1973) you and the President learned that the files had been destroyed, and the reaction of the President is 'We are going to get a report.' "

In contrast, Weicker said, when he learned from Gray—a personal friend of his—about the destruction of the documents in a conversation on April 25, he "made sure that the story was laid out in front of the public as soon as I got it." (Newspaper stories about the incident were published on April 27, and Gray resigned his post the next day.)

When Weicker asked the witness to comment, Ehrlichman smiled and said tartly that "the President notified the chief law enforcement officer (the Attorney General) and you notified the newspapers. As I say, it's two different approaches to the same problem."

By April 15, testimony yesterday made clear, the White House's support for Gray—whose nomination as permanent FBI director had been withdrawn 10 days before — had virtually evaporated.

Weicker reminded Ehrlichman that in March, when the nomination already appeared to be in trouble, Ehrlichman had said of Gray that "I think we ought to let him hang there. Let him twist slowly, slowly in the wind." Ehrlichman smiled and acknowledged that that was "my metaphor."

Weicker also questioned Ehrlichman closely on his contention that a close relationship between the late FBI director J. Edgar Hoover and toy manufacturer Louis Marx resulted in the FBI's unwillingness to investigate Ellsberg, who is Marx's son-in-law.

Ehrlichman has said that FBI resistance, because of Marx, to pursuing the investigation of Ellsberg and the leak of the Pentagon Papers to the New York Times prompted the White House to give the leak-seeking "plumbers" unit the assignment that resulted in the break-in at the office of Ellsberg's psychiatrist in 1971.

The last time Hoover and Marx met was in Dinty Moore's restaurant (in New York) some 30 years ago, Weicker said, though they corresponded afterwards.

Ehrlichman suggested to Weicker that perhaps Hoover, who he said was "well known for his Del Mar race-track vacations in southern California every year, had an acquaintanceship with Mr. Marx which arose from his time in California on those vacations.

He maintained, as he has in previous testimony, that the "plumbers" had as their main objective the plugging of a leak of classified information—not obtaining material that could be used against Ellsberg, either in court or politically. "The object here was not to prosecute Mr. Ellsberg and as far as I am concerned not to persecute" him, Ehrlichman said.

Weicker, citing a memorandum from White House aides David Young and Egil M. Krogh Jr. and approved by Ehrlichman, sought to show that the Ellsberg break-in was an effort to collect material that could be used against Ellsberg in the press.

The memo noted that "we have already started on a negative press image for Ellsberg," and suggested that additional derogatory material received could be leaked to Congress during an investigation of the Pentagon Papers case.

Ehrlichman then asserted that the plumbers operation was intended solely to gather information to determine if Ellsberg "acted as a member of an international spy ring" or simply by himself.

Ervin, declaring that Ehrlichman had spoken unfairly of Hoover, announced that he would "speak for his defense beyond the grave since he is not here." He cited the late FBI director's "devotion to the basic rights of American citizens (including the right not to be burglarized."

Having heard the testimony about the break-in at the office of Ellsberg's psychiatrist, Ervin said, "I can understand why you say that Mr. Hoover would not cooperate with the White House. He was on the side of liberty."

Weicker and Ehrlichman, who plainly irritate one another, clashed several times during the hearing. But at one point, Ehrlichman smilingly told the senator that "my wife chided me a little bit last night because I appear to scowl at you when I answer your questions. The fact is that you have over your head two of the brightest lights I have ever encountered."

Ehrlichman was asked during yesterday's hearing by Sen. Joseph Montoya (D-N.M.) if, when he was at the White House, the administration had ever received copies from the Internal Revenue Service of individuals' tax returns.

Ehrlichman said it had not, as far as he knew. Montoya then produced documents from the IRS showing that the White House, in 1972, had requested 915 "tax checks" on various individuals.

This Ehrlichman defended as standard procedure not involving disclosure of tax returns themselves. A "tax check," he said, was simply a check by the IRS to see if an individual—a prospective appointee, for example—had any pending tax problems.

When he was "kind of new to the business" at the White House, Ehrlichman recalled, "I thought that what one did was, you know, get the (tax) returns and flip through, and I discovered that the White House could not get an individual's income tax return . . . even for such a situation as the appointment of a Supreme Court justice."

As he has before, Ehrlichman also found himself engaged in sarcastic rhetorical exchanges with Ervin. The committee chairman, pointed out, for example, that Congress authorized the creation of the FBI, CIA and other intelligence agencies, and then asked Ehrlichman if Congress had also authorized the plumbers.

"Of course the Congress doesn't do everything, Mr. Chairman," Ehrlichman answered.

In other testimony, Ehrlichman told the committee that it was true that when Hugh W. Sloan Jr., the treasurer of the Finance Committee to Re-elect the President, came to him to talk five days after the Watergate break-in, he refused to discuss the matter with him.

He said he did so out of fairness to Sloan, not wanting him to discuss something Ehrlichman might later be called to testify about in court.

Sloan, who resigned from the committee soon afterwards, said in a sworn deposition in a civil suit on the Watergate case that Ehrlichman had told him "his position was that he would have to take executive privilege until after the election in any case."

Ehrlichman is expected to complete his testimony when the Watergate committee resumes its hearings at 10 a.m. today. Former White House chief of staff H. R. (Bob) Haldeman is tentatively scheduled to testify before the committee on Monday.