

Senator Inouye

Q. Mr. Kleindienst,

A. Yes, sir.

Q. In response to a question relating to the famous conversation you had with Mr. Ehrlichman which was electronically recorded, I believe you said that you just couldn't find the appropriate words to describe this, but you used two words, it was "reprehensible" and "unethical." Now, was it reprehensible because Mr. Ehrlichman could make self-serving statements whereas you, not knowing that this was being recorded, would make statements --

A. I think my attitude is a little bit more subjective than that, Senator. I have never taped a telephone call in my life, I've never had it transcribed or written down. I think on a couple of occasions since I was in the department, because of an unusual call I had my secretary make notes on another line, and that was a very unusual situation. But when you're dealing in good faith with people who you regard with trust and confidence, who are with you discharging a mutual obligation and undertaking - in this case on behalf of the President of the United States - to me, it's the grossest breach of good faith imaginable for one person to make a tape recording of that conversation without telling the other person. And if I had suspected that Mr. Ehrlichman was doing that without telling me, I - I would never speak to him again.

Q. On April the 15th, about 1 p.m., you've testified that you had a meeting with the President, to advise him of the conversation you had at your home early that morning.

A. Yes, sir.

Q. Where was this meeting held, sir?

A. In my home?

Q. No, I mean with the President.

A. Oh. In his office in the Executive Office Building.

Q. Were you aware that this office was electronically wired to --

A. No, sir.

Q. -- tape your conversation?

A. No. I don't have the same feeling about the President of the United States.

Q. You don't consider that reprehensible.

A. Well, I don't -- [laughs] -- If I were president of the Chamber of Commerce I wouldn't do it. I'll never be President of the United States. I don't like it, I was surprised to learn of it. I think I was in Europe a couple of weeks ago when I heard of it, and I gave one of my characteristic attitudinal responses. I don't personally like it, but I do distinguish between a President and somebody like Mr. Ehrlichman talking to me, both of us who are working on behalf of the President, when our business was for the President of the United States.

Senator Inouye

Q. I just have a few questions. Mr. Kleindienst, you are aware that Mr. Ehrlichman met with Judge Byrne while the judge was presiding over the Ellsberg case?

A. I learned that, yes, sir.

Q. Did you think that this was highly improper?

A. Oh - boy. I know that I, as the Attorney General of the United States and as an officer of the Department of Justice that had a case before Judge Byrne, it would have been highly improper for us to have done it, and to have done it only through our prosecutors in the presence of the attorneys on the other side, regardless of what the situation was. Whether or not the same restrictions would apply to a person on behalf of the President of the United States, I'm doubtful, Senator Inouye, in all fairness to Mr. Ehrlichman, because the mission was very limited and very specific, it had nothing to do with the case. I think, just generally speaking, because of the nature of the Ellsberg trial, and the involvement of the administration and the Department of Justice, and its - you know, its controversy - it was, in my opinion, probably ill-advised, just because from the appearance, you know, of the administration of justice. My knowledge of Judge Byrne, however, is such that I can't imagine a circumstance existing when - under which he would permit himself to be compromised or in any way interfere with the administration of his duty as a federal judge.

Q. Was it highly improper to involve the President of the United States? Testimony shows that the President was brought into the conversation, even briefly.

A. I understand that the President just walked out and said hullo, went back, and all I know about it is what occurred here in this hearing, Senator Inouye.

Q. Canon Nine says a lawyer should avoid even the appearance of professional impropriety. A lawyer should promote public confidence in our system and in the legal profession. You don't think that this --

A. Well, Senator, I don't know - and I'm trying to be fair about this - I don't know whether what Mr. Ehrlichman did was as a lawyer, as an officer of the court. He wasn't representing the United States in that thing, he had nothing to do with the trial. I think I would prefer to characterize Mr. Ehrlichman's role there as an agent of the President of the United States, pursuing an objective of the executive branch of the government. And I don't know if that Canon would be applied to him in that situation.

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See also excerpts, Kleindienst testimony, WXPost 8 Aug 73, p. 17, col. 8.