

Break-In Role Is Denied

Ehrlichman Takes Stand in Own Defense

By Timothy S. Robinson
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Former top Nixon adviser John D. Ehrlichman, appearing in his own defense yesterday, denied flatly ever having discussed, authorized or heard about the Ellsberg break-in before it occurred.

Ehrlichman's denials came as he was asked repeated questions by Watergate Special Prosecutor William Merrill concerning 10 memorandums and meetings and telephone calls in which various aspects of the break-in were discussed prior to Sept. 3, 1971. Many of the memos and meetings he said he could not remember at all; as to some of the others, he said he could only remember sections that did not relate to the Ellsberg break-in.

Ehrlichman's decision to take the stand in his own defense marked the first time since the Senate Watergate committee hearings last summer that Ehrlichman has testified publicly about his role in Watergate-related scandals.

He is the highest ranking former Nixon aide to be tried on criminal charges. His lawyers questioned him for about two hours yesterday morning before turning him over to the prosecutors for the extensive cross-examination to which he opened himself by taking the stand.

Ehrlichman has pleaded innocent of the charges against him. His versions of meetings about which prosecution witnesses have testified differed sharply from the prosecution witnesses' testimony.

Much of the prosecution questioning centered on an Aug. 11, 1971, memorandum from White House plumbers unit co-directors David R. Young and Egil Krogh in which Ehrlichman approved a "covert operation" to examine files still held by Dr. Lewis Fielding, who was Pentagon Papers codefendant Daniel Ellsberg's psychiatrist.

Ehrlichman, former White House aide G. Gordon Liddy, See EHRlichman, A8, Col. 1

EHRlichman, From A1

Eugenio Martinez and Bernard L. Barker are charged with conspiring to violate Dr. Fielding's civil rights by breaking into his Beverly Hills, Calif., office in an attempt to obtain those files. Ehrlichman also is charged with four counts of lying to federal investigators probing the break-in.

U.S. District Judge Gerhard A. Gesell joined the questioning when it approached the circumstances surrounding the Aug. 11 memo, in which Ehrlichman initialed his approval of the covert plan to get the files.

"What did you think you were approving when you signed that memorandum?" Judge Gesell asked.

"I thought I was approving a legal, conventional investigation," Ehrlichman said, turning to face Judge Gesell.

"Why did you have to approve it" if it was a legal government operation? Gesell asked.

"As a practical matter, I didn't think I had to approve it," Ehrlichman said. At another point, he added: "I don't see how anyone can read an illegal improper action into that memo."

Many of Merrill's questions during the cross-examination had to do with Ehrlichman's lack of recollection of specific incidents.

Ehrlichman said, in answer to one such question, that he had "trained myself" to forget certain documents so as "not to pack around in my memory a great mass of stuff . . . of no particular moment. Otherwise, you'd be packing around too much surplussage and then you could not function."

The Ellsberg memos might have fallen into this category, he added. "A great deal of this was just grist . . . I may have happened to take a glance at it and then laid it aside."

Ehrlichman repeatedly disputed many key points of the prosecution's case against him. His answers were low-key during his six hours on the stand, even when he would, in his words, "quibble" with the prosecutors over their wording of questions.

He said he did not remember a telephone call in which Krogh and Young said he gave final approval to the burglary; he said he did not remember talking to former White House special counsel Charles W. Colson about financing the operation, and he said he had no recollection of Krogh telling him before the break-in that the plumbers were having to conduct an investigation to determine what was in the psychiatrist's files because the doctor would not cooperate with the FBI.

In other trial developments yesterday, U.S. District Judge Gerhard A. Gesell:

•Tentatively approved a set

of four written questions to be sent to President Nixon for use by defense attorneys in Ehrlichman's behalf. His final decision on the interrogatories will come after the special Watergate prosecutor has a chance to comment, and will probably be made today.

•Ordered Secretary of State Henry Kissinger to be in court at 9:30 a.m. Wednesday in response to a subpoena as a defense witness in the case. Government attorneys could move today to try to block that subpoena, however.

Ehrlichman's wife and five children sat in the front row of the courtroom as he took the witness stand and was sworn in by the deputy court clerk. He identified himself as an attorney in Seattle, saying he had "worked for the government" in Washington in recent years until his attorney asked him to be more specific.

At that point, he replied: "I worked in the west wing of the White House." He continued with his personal history, from his years in World War II as a navigator on B-24 bombers flying out of England to his graduation from Stanford University law school and formation of a law partnership in Seattle.

Under questioning from defense attorney Henry Jones, Ehrlichman then moved forward to the summer of 1971, when the Pentagon Papers leak absorbed the White House's attention. He said his first role at that time was to act as a liaison between the President and attorneys handling government attempts to stop press publication of the documents.

He said the President then, on July 2, 1971, began to propose that one man be appointed to find out how the leaks occurred and how they could be prevented in the future.

"The President directed that I get out of it except in some sort of oversight way," Ehrlichman said.

Egil (Bud) Krogh, who has served six months in jail for violating Dr. Fielding's civil rights in the break-in, was named to head that unit. Ehrlichman said that David R. Young, who has previously been described as a codirector of the unit, was "very jealous of his title" but that the President always looked to Krogh as the leader of the project.

"The President told me on July 2: 'You get back on domestic policy stuff,'" Ehrlichman continued.

He said that former White House special counsel Charles W. Colson was in charge of the "public relations" aspect of the Pentagon Papers leak.

Colson has pleaded guilty and began a one-to-three-year jail sentence yesterday for obstructing justice in the Pentagon Papers trial by disseminating derogatory information about Ellsberg.

Ehrlichman then moved to

various issues that have come up directly during other testimony at the trial. He maintained yesterday that he had no specific recollection of a telephone call he made to Gen. Robert E. Cushman, then deputy director of the CIA, in July, 1971, that resulted in the CIA giving assistance to co-conspirator E. Howard Hunt.

Cushman has produced during the trial a transcript of that telephone call based upon his secretary's notes of the conversation.

Ehrlichman portrayed himself as cooperative with FBI agents who interviewed him in April and May of 1973, and said he was being truthful with them when he said he had not seen files relating to the Pentagon Papers for more than a year.

In taking that stand under oath, he directly contradicted testimony that has been given by prosecution witness Young during the trial. Young said that on March 27, 1973, he met with Ehrlichman and Ehrlichman told him he had removed certain "sensitive" documents from files that Young had provided to the former top Nixon aide.

Ehrlichman's version of that encounter differs, even down to the date of the meeting. He said he met with Young on March 21, 1973 — a meeting that is supported by Ehrlichman's White House logs — and that Young "volunteered to send papers over to me" relating to matter.

Ehrlichman said he never had a chance to examine those files, and sent them back to Young within a couple of days. He said his White House schedule had blocked him from perusing the documents, and that meetings with the President and others on the unfolding Watergate scandal and economic issues took up his time.

Ehrlichman turned in the witness chair to face the jury as he recounted his version of the events about which he is on trial. He used his hands liberally to stress points, smiling occasionally as he would lead the jury through the various White House filing systems and other White House procedures.

He read to the jury the testimony he has given to the grand jury during a second appearance, in which he attempted to recant the earlier statements for which he has been charged with perjury.

He said that his second appearance before the grand jury followed his search of his White House files and his finding a copy of the Aug. 11 memo there in which he had approved a covert operation. The purpose of the testimony being read to the jury yesterday was an attempt to show that any misstatements Ehrlichman might have made to the original grand jury were

not intentional but were a result of a faulty memory.

He said there is "no question in my mind that this (memo) is an authentic document and I did see it," Ehrlichman said. He is charged with lying to the grand jury in May, 1973, when he said he had not heard of a psychological profile being prepared on Ellsberg before the break-in; the memo had attached to it a copy of such a profile.

Ehrlichman and his attorneys also produced a transcript of a telephone conversation between Krogh and Ehrlichman on May 2, 1973, during which Krogh has testified Ehrlichman told him that he had had "to dissemble somewhat" with the FBI.

The transcript does not contain that word. In it, Ehrlichman said the FBI report leaves out "all kinds of stuff" that he had told them.

Ehrlichman said he tape-recorded the telephone calls as he often did when he was relaying the President's messages to someone.

Ehrlichman said under questioning by his attorneys that he did not remember ever discussing the financing of the Ellsberg operation with Colson, which Colson has testified about on the witness stand.

Ehrlichman's attorneys then attempted to introduce into evidence his handwritten notes of meetings he had with the President at the time to, in the attorneys' words, "prove a negative—that the President had not ordered a break-in, but that the unit instead was a legitimate operation."

Judge Gesell sent the jury from the courtroom, and said the notes were irrelevant to the charges. "Nobody has suggested that the President ordered the break-in," Gesell said.

After the jury was brought back into the room, defense attorney Jones ended the questioning of Ehrlichman with a series of short questions:

"Did you authorize a break-in at Dr. Fielding's office?" Jones asked.

"No, sir," Ehrlichman replied.

"Did you ever see a plan, a blueprint, for the break-in?" Jones asked.

"I've never seen that," Ehrlichman answered.

"Did (either Krogh or Young) ever tell you that you knew about the break-in before it occurred?"

"No, sir."

Merrill started his cross-examination by getting right to what prosecutors see as their strongest piece of evidence: the Aug. 11 memo.

Ehrlichman was asked if, as a lawyer, he was familiar with the doctor-patient privilege, under which a doctor cannot discuss his patient's case without the patient's approval. When asked if he understood

it related to psychiatrists as well, Ehrlichman said, "I would assume so . . . but I've had no occasion to brief that out (legally)."

Merrill asked Ehrlichman if the Aug. 11 memo contained his written approval of an operation to gain access to Ellsberg's psychiatric files.

"Yes," Ehrlichman replied. "But I didn't always remember the existence of the memo.

I totally forgot the existence of this document."

He said he rediscovered the document in White House files in June, 1973, after newspapers reported that prosecutors had been told he had approved the break-in.

Attached to the memorandum was a copy of a psychological profile of Ellsberg prepared by the CIA, which Ehrlichman told federal grand

jury he had not seen before the burglary.

He told Merrill yesterday that "I have a recollection of having seen a psychological profile, but I wouldn't have been able to specifically recall when I saw it unless reminded by this document."

Merrill moved Ehrlichman slowly and meticulously through various meetings he attended and memoranda he

received about the break-in, applying them on a count-by-count basis to the charges in the indictment.

In court four of the indictment, Ehrlichman is charged with lying to the grand jury on May 14, 1973 when he testified that he was not aware of any effort before the break-in towards obtaining information from Ellsberg of his psychiatrist.