

Excerpts From Ehrlichman's Testimony

Special to The New York Times

WASHINGTON, July 25—
Following are excerpts from
the transcript of testimony
by John D. Ehrlichman today
on the 28th day of hearings
on the Watergate case before
the Senate Select Committee
on Presidential Campaign
Activities:

MORNING SESSION

SENATOR TALMADGE:

Now, if the President could
authorize a covert break-in
[of Dr. Ellsberg's psychiatrist's
office] and you do not know
exactly what that power
would be limited, you do not
think it could include murder
or other crimes beyond co-
vert break-ins, do you?

MR. EHRLICHMAN: I do
not know where the line is,
Senator.

Q. Where is the check on
the chief executive's inherent
power as to where that power
begins and ends, that is
what I am trying to deter-
mine. Do you remember when
we were in law school we
studied a famous principle of
law that came from England
and also is well known in
this country, that no matter
how humble a man's cottage
is that even the King of Eng-
land cannot enter without his
consent.

A. I am afraid that has
been considerably eroded
over the years, has it not?

Q. Down in my country we
still think it is a pretty legiti-
mate principle of law. Now,
you authorized this in the
name of national security I
believe. A. We believe that
we had a serious national se-
curity problem at that time,
yes, sir.

Q. What relationship did
Dr. Fielding have with na-
tional security?

A. Well, the C.I.A. has
perfected a technique, as I
understand it, in which they
can find out a lot about a
foreign agent, a foreign of-
ficial, through the device of
what they call a psychiatric
profile. Two people in this
special unit, Mr. Young and
Mr. Hunt had both had ex-
perience with the use of
these profiles in the past,
and they felt strongly that
in this case, where there
were dealing with a serious
penetration of the nation's
military and other secrets, in

THURSDAY, JULY 26, 1973

Before Senate Committee

on Watergate

such an uncertain situation
that a profile of this kind
might add some important
additional ingredient which
would help to understand the
dimensions of the problem.

Doubts on Psychiatry

I cannot vouch for this. I
have a kind of an inherent
personal doubt about the
psychiatry in general, but I
cannot second-guess, I can-
not second-guess the inves-
tigation experts who have
used this technique and, as I
say, the C.I.A. maintains a
staff and they do this thing
on a regular basis.

Now, I understand from
testimony before the McClel-
lan committee that the
C.I.A.'s position is that they
have not ever used it before
in a case of espionage in-
volving a United States citi-
zen. I do not know whether
that is so or not. But in any
event, the people involved
here were very concerned
about what they were deal-
ing with, and they felt that
this would be a helpful tech-
nique.

Q. You did not think that
Dr. Fielding was a security
risk to the country, did you?

A. Of course not, no. The
identity of the individual
here had nothing to do with
it, the doctor. The C.I.A. had
prepared a psychiatric pro-
file, and it was not helpful,
and when Mr. Young went
back to the C.I.A. 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 investiga-
tion of this individual and
his co-conspirators and his
pattern and how he got these
documents and so on to in-
clude the assemblage of such
other information as might
be helpful to the C.I.A. in
finishing this psychiatric
profile project.

Q. If you had thought that
the psychiatrist's profile had
been in a lock box in a bank
in Washington you would not
authorize the entry, would

you, Mr. Ehrlichman?

'The Largest Raid'

A. Mr. Chairman, I wonder
if we could perhaps escalate
this to the level of serious-
ness that it was viewed in
the Government at the time.
This was not simply an ef-
fort to pick up gossip. This
was an effort to crack what
was at that moment the
largest raid on top secret
documents that had ever been
made in the history of this
Government. I think it would
be much more.

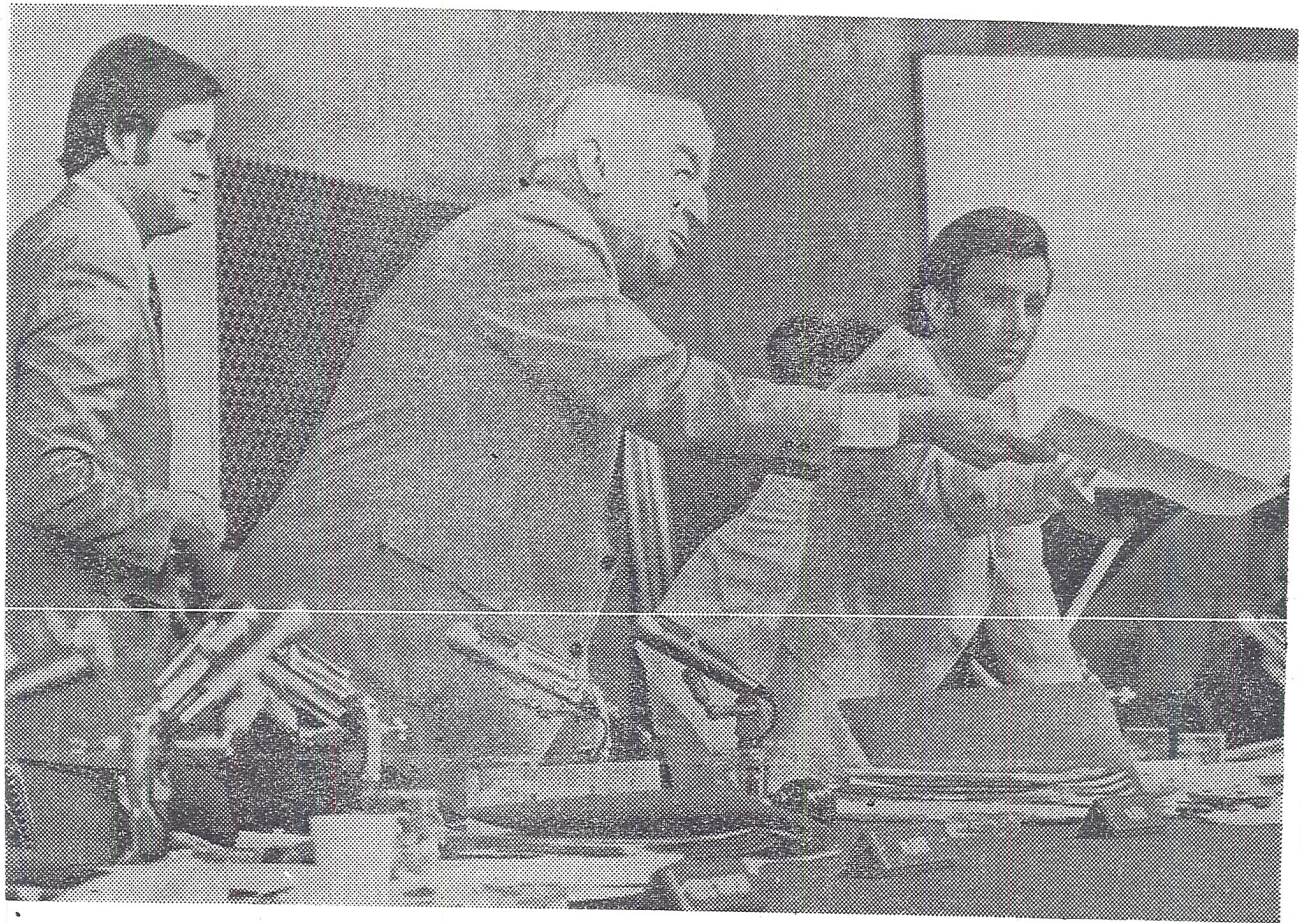
Q. I agree with your state-
ment that I thought it was a
very reprehensible act but
does one reprehensible act
authorize another? Now, did
the President authorize that
break-in? A. Not in express
terms, no sir. At least not to
my knowledge.

Q. As a matter of fact, in
a subsequent statement he
expressly denied it, didn't he?

A. I read his statement,
and I have heard testimony
here. I would not be totally
responsive to your question,
however, if I did not add
one thing, Senator. On the
24th of July, [1971] I sat in a

meeting where the President
gave Mr. Krogh his charter,
his instructions. I must say
that the President put it to
Mr. Krogh very strong that
he wanted Mr. Krogh and
the people in this unit to
take such steps as were
necessary and I can recall in
that conversation specific
reference to the use of poly-
graphs and summary pro-
cedure for the discharging of
Federal employes who might
have been involved in this
episode.

Q. Let me read the Presi-
dent's own language to you
taken from the Congressional
Record of May 23, 1973.
"Consequently, as President,



Senator Sam J. Ervin Jr., Watergate committee chairman, handing over his notes to be marked as evidence The New York Times

I must and do assume responsibility for such acts despite the fact that I, at no time, approved or had knowledge of them." And he was talking about the break-in of Fielding's office.

'Matter of Priority'

A. Senator, I think it's important in that same connection, however, to read the previous two paragraphs which say "At about the time the unit was created Daniel Ellsberg was identified as the person who had given the Pentagon papers to The New York Times. I told Mr. Krogh—"this is the president speaking"—that as a matter of first priority the unit should find out all it could about Mr. Ellsberg's associates, and his motives. Because of the extreme gravity of the situation and not then knowing what additional national secrets Mr. Ellsberg might disclose, I did impress up Mr. Krogh the vita limportance to the national security of his assignment. I did not authorize and had no knowledge of any illegal means to be used to achieve this goal. However, because of the emphasis I put on the crucial importance of protecting the national security I can understand how highly moti-

vated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention."

Now that refers to this July 24 conversation between the President and Mr. Krogh, and I must say that I think that is a fair characterization of the urgency which the President expressed to Mr. Krogh and undoubtedly a recognition of the fact that one in Mr. Krogh's situation might well believe that he had been charged with taking extraordinary measures to meet what the President Described in very graphic terms.

Q. Mr. Ehrlichman, isn't it a fact, assuming for the sake of argument that your theory is correct, that the President could authorize such a break-in, isn't it a fact that the President himself and not Mr. Ehrlichman would have to authorize that break-in? A. Sir, I did not ever authorize a wiretap or any other extraordinary measure on my own.

Date of Break-In

Q. Isn't it a fact that the break-in occurred more than 60 days after publication of those papers in The New

York Times?

A. Oh, I think two things have to be said here: One, the investigation was not to prevent the newspapers from publishing the Pentagon papers because that was, of course, an accomplished fact. The investigation here was to find out who had stolen top secret documents, and disseminated them, not only to the newspapers but, and we had at the time strong reason to believe that the documents delivered to the Soviet Embassy were not the same documents as were printed in The New York Times.

Q. Why didn't the F.B.I. handle the job?

A. Well, I have explained that yesterday. The situation was a unique one, which the Attorney General described to us, in which the director simply refused to permit his top people, Mr. Brennan, particularly, to conduct interviews of some of Mr. Ellsberg's family, and it was a

situation where the case was not being treated as a primary case by the bureau, and Mr. Krogh came to us and said, "I can't move the bureau on this with the kind of cooperation that the case deserves."

Q. You are not saying that the President of the United States was helpless in trying to get the cooperation of the F.B.I. are you?

A. I am saying that the Attorney General reported to the President an extremely difficult situation with the director which he felt could lead to the resignation of some of the top people in the bureau. That while the Attorney General felt that he could reverse the director's decision with regard to the suspension of Mr. Brennan he did not think that at the time he could force the director to an acceleration of the bureau effort on this subject without a total rupture with the director.

Q. You don't mean to intimate in any way, shape, fashion or form, do you, Mr. Ehrlichman, that J. Edgar Hoover was in any way soft on Communism or national security, do you?

A. J. Edgar Hoover clearly was not that. At the same time it appears that Dr. Ellsberg's father-in-law was a very close friend of his and I think everyone who knew of the director knew of his loyalty to his close friends.

Q. Now, as you recall, Mr. Dean testified before this committee and was very positive in his testimony that as a result of this meeting on Jan. 3 [1973] Ehrlichman checked with Nixon and told Colson to give Bittman [attorney for E. Howard Hunt] assurance clemency would be offered. Would you comment on that?

A. Yes, sir. That is a story that had an out-of-town try-out like many of Mr. Dean's episodes. Now, what we would see is that a story would appear in one of the news magazines or a newspaper in a certain version and when Mr. Dean got here to testify, he had a slightly different version, but the differences were extremely material. This was one of them. The version which got the try-out was that I had jumped up from the meeting, run out—presumably to the President's office—come back and said, fine, fellows, it is all set, you have got it. And that had its problems, because, of course, the meet-



The New York Times

Daniel K. Inouye, Democrat of Hawaii, questioning John D. Ehrlichman yesterday

ing to which he was referring did not take place until 7:00 o'clock in the evening and the President's log makes very clear the fact that I had no meetings with the President that day. So factually, the printed story in the media would not wash.

Dean Statement Denied

Now, when Mr. Dean testified, his story was, well, we had this meeting and this was discussed, and then I heard a day or two later that Mr. Ehrlichman had given assurances to Mr. Colson that he had checked this and that it was O.K.

Now, that likewise is not going to wash, because the only meeting that I had with the President, as shown by the President's log and by my log, was a meeting which involved other people at half past—No, at 3:02 on the 4th of January. Mr. Haldeman was in the meeting the entire time, Dr. Kissinger was in the meeting a substantial portion of time, and I can assure you, Senator, that executive clemency was not discussed at any time.

Q. You never took up this matter with President Nixon

at any time? A. I did not have to.

Q. Except in July?

A. I knew what the marching orders were from July, and I particularly knew because it was my strong feeling, that he [Mr. Nixon] ratified and adopted, that this was a closed subject and we must never get near it, and that it would be the surest way of having the actions of

these burglars imputed to the President.

Q. To put it bluntly, your testimony is that John Dean told an untruth? A. Yes, sir, twice. Once in the out-of-town try-out, once here.

Q. Let us go to another area which involved you and Mr. Dean and that is the papers that were taken from Hunt's safe after it was opened by Dean's people. Some of these papers, as you know, were very sensitive. Some were contained in a briefcase of Mr. Hunt's. The testimony, of course, here is that Dean had a conversation with you about this and you made some suggestions about disposing of the papers that were in the briefcase. My recollection is that you ad-

framers of the Constitution regarded "high crimes and misdemeanors" as having a limited and technical content, Mr. Berger decided, and did not mean to leave the President at the pleasure of the Senate.

If, after conviction, the President maintains that his conduct did not constitute a high crime and misdemeanor, Mr. Berger would favor the Supreme Court's determining whether the acts indeed fell within the technical limits intended by the Constitution.

All this was outlined in Mr. Berger's second book, "Impeachment—The Constitutional Problem," published last February, fortuitously in time for unexpected relevance.

Takes Up New Issues

Two good things led to another, so Mr. Berger began working again on executive privilege and separation of powers, on which he had in 1965 written a long monograph. "Separation of powers does not confer a power, it protects a power elsewhere granted," he said. "So the question is, did the Constitution give Congress the power to investigate, and if so, did it authorize the President to withhold information?"

The Supreme Court looked to Parliamentary practice and found investigation an inherent legislative attribute which the framers intended both houses to have. Parliamentary history shows the most comprehensive, untrammelled power to inquire across the board, going all the way back to 1621, and no evidence that any minister objected to the scope of inquiry. Nor is there any minister objected to the scope of inquiry. Nor is there any evidence in the records of the Constitutional Conventions that the Founders intended to curb in any way the power of 'the grand inquest of the nation.'

"You can't bootstrap and create power by saying: 'I have it.' President Nixon cannot root his claim in the Constitution when he refused that a Secret Service agent be present under the circumstances, because we were breaking into a safe in the White House. And that was the arrangement that was agreed upon when we broke up on the 19th.

My purpose in doing that was twofold. One, this was a kind of extraordinary procedure and I thought there ought to be people who could,

one, later on tell what had happened, two, I was concerned about the custody of these documents, the chain of evidence, the perfectibility of proof if the time came and there were documents in there that bore on Mr. Hunt's liability.

So that was done, and it was done, I believe, that same day or that evening.

Q. Yes.

A. Now, it seems to me that it would have been folly for me at some later time, then, to suggest that the briefcase be thrown into the flood tide of the Potomac.

Now, there was in this story also the suggestion of shredding. I don't think in my life that I have suggested to anybody that a document be shredded, shredding is just not something that I have ever resorted to under any circumstances, nor proposed to anybody under any circumstances. As I said, we have a great disposal system at the White House. If you really want to get rid of a document, you put it in a burn bag and you seat it up and it's never opened again, and it goes into a furnace and that is the end of it.

Q. But to get back to this second meeting when John Dean comes to you and tells you, we have got some pretty sensitive papers here, and, as he alleges, you say, "Well, deep six this briefcase." What's your testimony on that? A. I did not. I have no recollection of that kind of a conversation.

Q. Did you make any other suggestion to him that he dispose of these papers in any other way?

A. We discussed what to do about some papers which he told me about in the safe which really should not be leaked. Again, we have to come back to our F.B.I. problem. And he was genuinely concerned and when he explained it to me, I shared his concern, that if these documents were simply wholesaled to the Washington field office, the F.B.I., we would be reading about it in Time magazine in very short order.

Q. Now you are talking about the ones that were turned over to Gray? A. And so Mr. Dean came up with this idea, turning them over to Pat Gray personally. And I certainly concurred in it. I thought that was an ideal solution to the problem.

Q. Did that come up in this meeting when supposedly the deep six conversation came up?

A. Well, I gathered that that meeting was supposed to have been the meeting when Mr. Kehrl and the others were there. It would have necessarily been at that meeting, because the die was cast thereafter. You know, the 20 bishops had witnessed the opening of the safe at this point. So it had to be that meeting.

Q. What happened to those papers?

A. He [Mr. Dean] agonized for several days about what to do with this situation [and then] said he thought he had an idea as to how to solve this problem and that would be to deliver these documents in two parcels—one parcel to the [F.B.I.] field office and the other parcel to Pat Gray. I certainly concurred in that suggestion. It seemed to me like a good way of making sure that the documents did not leak as long as Mr. Gray held on to them.

Q. And then what happened?

A. I think what I said to him was Mr. Gray was coming over that day for another appointment and why didn't he just bring them over when Pat Gray was there and deliver them to him so two of us could say that the delivery had been made and we would put an end to this evidentiary chain, so to speak.

Q. I understand that he did come over and he did bring the documents and Gray and he and you were there. Then, what happened?

A. We were there. He said, Pat, I would like to give you these. The sense of it was that these contents of Hunt's safe that were politically sensitive and that we just could not stand to have them leaked. I do not know whether he had talked to Gray before or not, because Gray seemed to understand the setting and the premise, so to speak. And he turned the documents over to him and John Dean then left.

Sense of Conversation

Q. Did you say nothing during this whole meeting?

A. I probably chimed in on the subject of leaks, which was then kind of a, was a theme that I was hitting with Mr. Gray right along. And as I have testified before, I do not recall the specific language that was used. The

Figures in Senate Inquiry

Special to The New York Times

WASHINGTON, July 25—Following are the names of individuals who figured today in hearings by the Senate select committee on the Watergate case:

COMMITTEE MEMBERS

Sam J. Ervin Jr., North Carolina Democrat, chairman.
Herman E. Talmadge, Democrat of Georgia.
Daniel K. Inouye, Democrat of Hawaii.
Joseph M. Montoya, Democrat of New Mexico.
Howard H. Baker Jr., Republican of Tennessee.
Edward J. Gurney, Republican of Florida.
Lowell P. Weicker Jr., Republican of Connecticut.

COMMITTEE COUNSEL

Samuel Dash, chief counsel and staff director.
Fred D. Thompson, chief minority counsel.
Rufus L. Edmisten, deputy counsel.
Terry F. Lenzner, assistant chief counsel.

WITNESSES

John D. Ehrlichman, former White House adviser.
John Wilson, Mr. Ehrlichman's attorney.

PERSONS NAMED IN TESTIMONY

William O. Bittman, attorney for E. Howard Hunt Jr.
Charles D. Brennan, former assistant F.B.I. director.
William Matthew Byrne, presiding judge of Ellsberg trial.
Charles W. Colson, former counsel to the President.
John W. Dean 3d, former counsel to the President.
Dr. Lewis Fielding, Dr. Ellsberg's psychiatrist.
L. Patrick Gray 3d, former acting director of the F.B.I.
H. R. Haldeman, former White House chief of staff.
J. Edgar Hoover, former director of Federal Bureau of Investigation.
E. Howard Hunt Jr., ex-C.I.A. agent and White House aide, pleaded guilty in Watergate break-in.
Bruce A. Kehrli, staff secretary to the President.
Henry A. Kissinger, Presidential adviser on national security.
Richard G. Kleindienst, former Attorney General of United States.
Egil Krogh Jr., former assistant to Mr. Ehrlichman.
G. Gordon Liddy, former White House aide convicted in Watergate break-in.
Anthony T. Ulasewicz, former aide to John J. Caulfield.
David R. Young Jr., former White House aide.

sense of the conversation between the three of us, which was not a long conversation, was that the purpose of Pat Gray taking delivery of these was to avoid the leak problem which all of us recognized that the F.B.I. was having.

Q. Well, I seem to recall there was some testimony about, to Gray by someone, either Dean or you, that these documents should never see the light of day. Do you recall that?

A. I don't think—well, I don't know whether there was testimony about that. That is not a phrase that I have ever testified to. I don't recall that phrase being used.

7/26/73

NYT

Inouye Whispers 'Liar' To Ehrlichman Replies

WASHINGTON, July 25 (UPI)—Soon after John D. Ehrlichman, the former White House adviser, finished answering questions today by Senator Daniel K. Inouye, the Democratic Senator from Hawaii, whispered, "What a liar!"

Mr. Inouye apparently believed that his microphone was switched off. But the barely audible remark could be heard by those listening clearly to the nationally televised Watergate hearings.

During a break in the proceedings, Mr. Inouye denied that he had made the remark. But when he was told that his words had been picked up by his microphone and recorded, he said: "Well, I guess I must have been speaking of myself."