

MEM 789-10-8
JAN 14 1974

Ehrlichman, Kissinger Linked to Profile

By Timothy S. Robinson
Washington Post Staff Writer

A CIA psychiatrist testified during the Ellsberg break-in trial yesterday that he was informed in August, 1971, that John D. Ehrlichman and Dr. Henry A. Kissinger, then President Nixon's top domestic and foreign affairs advisers, had ordered a psychological profile prepared of Pentagon Papers defendant Daniel Ellsberg.

The psychiatrist, Dr. Bernard Malloy, said that former Kissinger aide David R. Young told him of the directive on Aug. 12, 1973, and that Young also told him that one of the

purposes of the profile would be to use the press to try the charges against Ellsberg.

Dr. Malloy was one of the first defense witnesses called by attorneys for Ehrlichman, one of four men on trial in federal court here on charges of conspiring to commit and cover up the break-in of Ellsberg's psychiatrist's office. The purpose of the break-in was to gain information for the profile, according to previous testimony.

Dr. Malloy was called by defense lawyers in an apparent attempt to justify their subpoena for Kissinger, now Secretary of State, as a defense

witness. They have argued that Kissinger will deny giving such orders. The defense hopes such a denial will raise doubts as to the credibility of Young, a key prosecution witness who was first to testify that Kissinger was involved.

Judge Gesell refused again yesterday to block the subpoena for Kissinger, saying he will reserve that decision until he sees whether Kissinger is an essential witness in the defense case as it develops. Kissinger should "hold himself in readiness" as a possible witness until that decision is made, Judge Gesell said.

The testimony of the CIA

psychiatrist brought Kissinger's name prominently into the trial for the second time this week. On Wednesday, former White House special counsel Charles W. Colson testified that President Nixon and Kissinger had requested him to disseminate derogatory information on Ellsberg, for which Colson has pleaded guilty to obstructing justice in the Pentagon Papers trial.

Judge Gesell also refused yesterday to transmit to President Nixon written questions drawn up by Ehrlichman's defense attorneys. At another

See EHRlichman, A4, Col. 2

EHRlichman, From A1

point, however, the judge volunteered his opinion that any orders from the President blocking a grand jury investigation into the Ellsberg break-in were "illegal orders."

The defense had said it intends to call Assistant Attorney General Henry Peterson as a witness to bolster their claims that any concealment of the break-in could be attributed to presidential orders.

Defense attorneys, who say Ehrlichman's attempts to hide the break-in after it occurred were at the President's specific direction and not because of a guilty conscience, had agreed to questioning the President about those directions by written questions. However, Judge Gesell said those questions presented to him yesterday were too broad, and he told the attorneys to try again if they wanted to continue to press the issue.

The defense said Petersen would testify in detail about a previously-disclosed conversation with the President, in which the President told Petersen the break-in was related to national security matters and should not be investigated.

"If those orders were given, those were illegal orders and I will so instruct the jury," Judge Gesell said in response. "There is no way a grand jury inquiry can be limited by the President of the United States."

The prosecution rested its case against Ehrlichman and the three others yesterday morning, and Ehrlichman's defense began yesterday afternoon.

Judge Gesell denied defense attorneys' motions for directed verdicts of acquittal at the end of the government's case, but indicated that he later could still dismiss a charge against Ehrlichman of lying to FBI agents.

Ehrlichman, former White House aide G. Gordon Liddy Eugenio Martinez and Bernard L. Barker are charged with conspiring to violate the civil rights of Dr. Lewis Fielding, who was Ellsberg's psychiatrist, by breaking into his Beverly Hills, Calif., office on Sept. 3, 1971. Ehrlichman also is charged with four counts of lying to federal investigators probing the break-in.

The prosecution rested its case at 11:41 yesterday morn-

ing after having presented four and one-half days of testimony against the four men. The first two days of the trial was taken up by the jury selection process.

The government's case leans heavily upon the testimony of Young and Egil (Bud) Krogh, both of whom headed the White House plumbers unit that was set up to investigate leaks of classified information to the news media. Krogh pleaded guilty to civil rights conspiracy in the break-in, and Young was granted immunity from prosecution in return for his testimony.

Although both men agree that the words "break-in" or "entry" were never used in conversations with Ehrlichman before the Ellsberg operation, they testified that they felt he had approved the break-in in conversations on Aug. 5 and Aug. 30.

The government has also produced numerous memoranda addressed to Ehrlichman concerning the covert attempt to gain access to Ellsberg's psychiatric files that resulted in the break-in, including an Aug. 11 memo on which Ehrlichman initialed his approval.

Four persons—Ehrlichman's former White House secretary, his former executive assistant on the domestic council of the White House, the CIA psychiatrist, and a former assistant secretary of Labor testified in Ehrlichman's defense yesterday afternoon.

The secretary, Jana Hruska, and assistant, Todd Hullin, testified that Ehrlichman worked 13 to 14 hours a day, seven days a week during his years at the White House. Miss Hruska read aloud Ehrlichman's appointment records for the month of August, 1971, during which he allegedly conspired to break into Dr. Fielding's office.

The defense contends that Ehrlichman's many duties at the White House and his heavy work load show that he would not necessarily have known the details of operations planned by the plumbers unit.

Miss Hruska testified further that she remembers Young bringing a box of files about the Ellsberg case to Ehrlichman's office in March, 1973. Young has testified with elaborate detail that those files were contained in a brief-

case. That testimony, according to the defense, goes to the point of Young's credibility.

However, upon cross-examination by Watergate Sepcail Prosecutor Charles Breyer, Miss Hruska was presented with an FBI interview that she had given in February of this year in which she said that she did not remember Young bringing any files to Ehrlichman's office in March, 1973. The contradiction was not pursued, and there was no attempt to reconcile it.

Hullin, whose father is a former law partner of Ehrlichman in Seattle, Wash., also testified as to the heavy duties Ehrlichman had in the White House.

At one point, in an apparent attempt to shorten examination in that area, Judge Gesell interrupted: "Mr. Ehrlichman had a busy, responsible job. There's no dispute about that."

Breyer again handled the cross-examination for the special prosecutor's office. He asked Hullin if he regularly saw memos written to Ehrlichman from Young in the plumbers unit.

Hullin said he did not usually see those memos. Breyer then showed Hullin a copy of an Aug. 11 memo in which the covert operation to obtain Ellsberg's psychiatric files was discussed, and which contained the notation "See E" in the corner.

"Do you recognize the handwriting, Mr. Hullin?" Breyer asked.

"It could be very similar to my own . . ." Hullin replied.

The character witness presented in Ehrlichman's behalf yesterday was Arthu Fletcher of Columbia, Md., a former assistant secretary of labor who said he is now an employment standards consultant.

He said that Ehrlichman's reputation for truth and veracity was "very good at the time (in 1968) in the state of Washington, where I'm from . . . and to my knowledge, still is."

The government's last witness before resting its case against the four men was the court reporter who had recorded Ehrlichman's testimony before the federal grand jury. The reporter, Karen Scheinberg, played the role of Ehrlichman giving his answers as Special Prosecutor Philip Bakes repeated the questions

that Ehrlichman had been asked.

Ehrlichman is charged with three counts of making false declarations to the grand jury, each of which carries a maximum jail term of five years or fine of \$10,000, or both. The specific exchanges in which Ehrlichman is said to have given false answers are:

• "Q. And even part of that investigation was going to center on his (Dr. Ellsberg's) psychological profile, his mental attitudes, his habits, and possible motivations. Is that correct?"

"A. Well, I learned about that after the fact . . ."

"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 call a psychological profile. I was not aware of that before the fact."

"Q. . . . Just so that the grand jury and we are clear on this, prior to receiving information about the break-in, you had no informant, direct or indirect, that a psychological profile of Dr. Ellsberg was being drawn up?"

"A. I can't recall hearing of a psychological profile until after I had heard of the break-in."

The government has introduced into evidence six memoranda addressed to Ehrlichman before the break-in occurred that it says prove that Ehrlichman knew about the profile before the California operation.

The second exchange in which Ehrlichman is charged with lying is:

"Q. Now were you aware before his break-in, which took place on or about September 3, 1971, that an effort was going to be directed towards obtaining information from Dr. Ellsberg or Dr. Ellsberg's psychiatrist?"

"A. Ahead of the fact? No."

Coconspirator Egil (Bud) Krogh has testified for the government that he told Ehrlichman on Aug. 5 that an examination of Dr. Ellsberg's psychiatric records would have to be undertaken by the plumbers unit because the psychiatrist had refused to give the operation to the FBI.

In addition, Ehrlichman signed a memorandum on

Aug. 11 in which he approved a "covert operation to examine files held by Dr. Ellsberg's psychiatrist," and that memorandum has been introduced into evidence by the government.

The third false declaration count contains these exchanges in which Ehrlichman is said to have lied, upon questioning by prosecutors as to the whereabouts of files relating to the Pentagon Papers case. Ehrlichman said that he thought Krogh had a file, and was then asked:

"Q. Anybody else have a file?

"A. I don't know.

"Q. So far as you know, prior to the break-in, whenever that was, I think it was sometime in September, Sept. 3, the only person that had a file that you knew of was Mr. Krogh?

"A. I believe that's right.

"Q. Any other files in the custody of anybody else involved in this operation?

"A. Not that I know of. I would assume that Krogh had them all.

"Q. Did you even learn that anybody had any files before or after Sept 3?

"A. No, I don't believe so."

Coconspirator David R. Young testified during the trial that he kept files on the case, and that Ehrlichman had

asked to see them about six weeks before the grand jury testimony was given.

Young testified as well that Ehrlichman then removed certain "sensitive documents" from those files, including the Aug. 11 memorandum, because they showed "too much forethought" about the break-in. Young had turned those documents over to the prosecutors to be given immunity by the time Ehrlichman gave the allegedly false testimony to the grand jury.

Ehrlichman also is charged with lying to FBI agents investigating the break-in when he told them on May 1, 1973, that he had not seen anything on the Pentagon Papers investigation conducted by the White House in more than a year. If convicted on that charge, he could be sentenced to five years in jail, fined \$5,000 or both.

At the end of the government's case, Ehrlichman's attorneys asked that the former top Nixon aide be acquitted of all five charges because of insufficient evidence, a normal move for the defense at the end of a prosecutor's case. Judge Gesell denied the motions relating to the three grand jury perjury counts and the conspiracy count, but denied the count relating to the FBI only after indicating that he might not allow any conviction on that to stand.