

# Ervin, Ehrlichman and The 4th Amendment

By Harry Rosenthal  
Associated Press

Washington

Senator Sam, that country lawyer from North Carolina who ingests the Constitution with his grits, was ready to spring. The eyebrows had been up ever since John D. Ehrlichman claimed President Nixon had a right to authorize burglary.

His jowls worked throughout the day while the committee counsel and minority counsel took Ehrlichman through the Senate Watergate questioning.

When it came his turn, Senator Sam J. Ervin Jr., was ready. The eyebrows jiggled and he asked about the statute Ehrlichman claimed as the President's support in the burglary of Daniel Ellsberg's psychiatrist.

"This statute has nothing to do with burglary," he said. "It only has to . . ."

## Turf

Ehrlichman cut him off and stepped onto Senator Sam's turf.

"It has to do with the United States Constitution," he said.

"No, sir," thundered Ervin. "That's not the purpose of the statute. The constitution takes care of itself . . . This statute has only to do with the interception or disclosure of wire or oral communications prohibited."

Ehrlichman, until then a confident smiling witness, started to claim again it had to do with constitutional powers of the President.

"Is it your opinion now that the President can authorize burglaries?" Ervin asked.

## Debate

At that point, Ehrlichman's lawyer — who like Ervin's in his eighth decade of life — broke in. "This being a legal point," said John J. Wilson, 72, "don't you think that you and I should debate this?"

But Senator Sam, 76, likes to have at the first team. Ehrlichman, he pointed out, is a lawyer, too.

"You don't claim that burglarizing Dr. Ellsberg's psychiatrist's office to get his recorded opinion of the intellectual or psychological state of his patient is an attack by a foreign power, do you?"

The laughter and applause induced even Ehrlichman to smile.

"May I get into this, may I get into the debate?" said Wilson.

"Well, yes," said Senator Sam. But it didn't sound like a hearty invite, as they say back in Morganton, N.C.

"You read the end of that sentence which says . . . 'or to protect national security information against foreign intelligence activities,'" said Wilson.

## Opinion

Ervin didn't like that either. "The foreign intelligence activities has nothing to do with the opinion of Ellsberg's psychiatrist about his intellectual or emotional or psychological state," he said.

Ehrlichman: "How do you know that, Mr. Chairman?"

"Because," Ervin shot back, "I can understand the English language. It is my mother tongue."

Now the spectators really applauded. Ervin's brows jiggled and his gavel pounded.

Wilson again: "Mr. Chairman, may I answer that?"

Ervin: "Well, if you want to be a witness, Mr. Wilson."

Wilson: "I'll be glad to be sworn."

Ervin: "I don't care for you to be sworn."

"The CIA must have thought it had some foreign relationship because they had done an ineffective profile on Ellsberg," Wilson said.

## Internal

But Ervin won that round: "The CIA had no business doing that because the law prohibits them from having anything to do with internal security."

Then Ehrlichman managed to get in. "We had here an unknown quantity in terms of conspiracy. . . . I submit there is in 2511 (the statute) ample congressional recognition of the President's inherent constitutional powers to form a foundation for what I said to this committee."

It gave Ervin one more shot — the constitutional scholar's hard-rock pedestal:

"Well, Mr. Ehrlichman," he said, "The Constitution specifies the powers to me and the Fourth Amendment says the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated. . . ."

Eventually, Sam Ervin's inborn Southern courtesy came to the fore. He invited Wilson to outline his legal precepts today.

# Lawyer Talk



*UPI Telephoto*  
John Ehrlichman (foreground) debated constitutional law with Watergate chairman Sam J. Ervin Jr. (center) and committee counsel Samuel Dash (right) as Senator Howard Baker Jr. (left) listened