

Ehrlichman Defends As Legal, Backs Fund

Ellsberg Break-in for Watergate 7

Cites National Security

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John D. Ehrlichman, the highest former White House official to testify in the Watergate hearings, yesterday defended the covert domestic intelligence operations conducted by the White House—including the burglary of Daniel Ellsberg's psychiatrist—as legal, proper and necessary in the interest of national security.

Ehrlichman also defended the payment of about \$400,000 in Nixon campaign funds to the Watergate break-in defendants, which he said he knew about and approved, as being a "commonplace of American life." He characterized these payments as comprising a legal defense fund similar to those established for Ellsberg, Angela Davis and the Berrigan brothers.

Ehrlichman's long-awaited appearance before the Senate select Watergate committee moved its hearings to a new plateau. As the committee headed for a constitutional showdown with President Nixon over access to his private papers and tapes of conversations he had with White House aides, it had before it one of the select group of White House aides who had direct and immediate access to the President.

Beginning with his opening statement and continuing through often hostile exchanges with committee chairman Sam J. Ervin Jr. (D-N.C.) and chief counsel Samuel Dash, Ehrlichman appeared confident, articulate and aggressive in describing his role in the White House from 1969 until he resigned under fire last April 30.

In his opening statement, which was almost a civics lecture on the presidency in the 1970s, Ehrlichman pointed an accusing

finger at former White House counsel John W. Dean III, indicating that Dean bore the primary responsibility for the cover-up of the Watergate affair. The rest of the White House leadership was described by Ehrlichman as burdened by the constant pressure of other duties forced on it both by the world outside and the President, whose own time was severely limited by a multitude of demands on him.

Describing a job he once held, Ehrlichman said that a White House counsel—like Dean—"must be a self-starter. He must take the initiative because in the Nixon White House there is no one else who is going to have time to supervise, make assignments, decide what should be looked into. Everyone else is fully occupied with his own area of responsibility."

Dean has accused Ehrlichman, who was Mr. Nixon's top domestic adviser, and former White House chief of staff H. R. (Bob) Haldeman and President Nixon of involvement in the Watergate cover-up.

Ehrlichman, who has been notified by the federal Watergate grand jury that he may be indicted along with Haldeman for his role in the Watergate affair, denied any guilt yesterday.

"Because I sincerely do not believe I am guilty of any wrongdoing," he told the committee, "I have not invoked the Fifth Amendment, nor have I attempted to negotiate 'immunity' for myself from anyone."

Although he told the committee he would try to answer their questions "fully" within the guidelines of executive privilege stated by President Nixon, Ehrlichman declined to answer several questions on the grounds of national security.

See HEARING, A12, Col. 1



Sen. Sam Ervin gestures with papers as he questions John Ehrlichman during hearings yesterday. Counsel Samuel Dash sits at his left.

By Joe Heiberger—The Washington Post

HEARING, From A1

And although Ehrlichman was aggressive as a witness in presenting his own point of view, he was often evasive and pointedly literal in his testimony when cross-examined. Dash asked Ehrlichman at one point, "Did there come a time when you were asked to develop a capability in the White House for intelligence-gathering?"

"Intelligence-gathering, the answer would be no," Ehrlichman said.

"Were you ever asked to set up a special unit in the White House for the purpose of determining whether certain leaks had occurred in major national security areas?" Dash asked.

"In point of fact," Ehrlichman replied, "and strictly in terms of your question, I was not asked to set it up. Mr. (Egil M.) Krogh was asked to set it up." Ehrlichman later acknowledged that he, in fact, supervised the special unit or "plumbers" — so called by others in the White House because the unit was supposed to "plug leaks."

Ehrlichman, whose close association with Haldeman is taken for granted in Washington, also sought to separate himself somewhat from the former White House chief of staff. Although Haldeman and Ehrlichman have been variously referred to as "Hans and Fritz" and the "Berlin Wall" because of their German ancestry and their well-known friendship and supposed joint activity in the White House, Ehrlichman told the committee he was no one's "Siamese twin."

"I did many things with and for the President, especially in the legislative and policy area, of which Mr. Haldeman was unaware."

Although Ehrlichman did not mention it, his close association with Haldeman apparently is continuing. They have retained the same team of lawyers, John J. Wilson and Frank H. Strickler, to represent them. Wilson, an elderly man with snow-white hair, sat at Ehrlichman's side as he testified. Strickler sat directly behind Ehrlichman.

Ehrlichman departed from the prepared text of his opening statement to throw one personal jab at Dean. Despite the heavy work load imposed on the White House staff, Ehrlichman said, to audible groans from the audience, that "John Dean, however, never found things so quiet and he planned the most expensive honeymoon in the history of the White House staff." Dean has testified that he borrowed \$4,850 from Nixon re-election committee funds in his control to pay for his honeymoon and other expenses.

Besides disagreeing with major portions of Dean's testimony, which Ehrlichman said contained "falsehoods," he also disputed portions of the testimony given by former Attorney General John N. Mitchell and Herbert W. Kalmbach, President Nixon's personal lawyer.

Although voluble in his response to several questions, Ehrlichman also quibbled with committee chairman Ervin and chief counsel Dash over their choice of words. Where Ervin said Ehrlichman had "bugged" a phone conversation with Kalmbach, Ehrlichman said he had "recorded" it. When Dash attempted to draw a connection between a series of covert White House intelligence operations that he had questioned Ehrlichman about, Ehrlichman told him haughtily, "You've just scrambled the eggs, Mr. Dash. . . ."

"You have dumped them all in a hat and stirred them around and said, see what those bad fellows in the White House were doing."

The dominant theme of the day's testimony was national security and the covert White House investigations made under this justification since 1969.

Ehrlichman acknowledged his involvement in or knowledge of a number of covert intelligence operations that he said were undertaken generally for national security. In 1969, he said, he authorized "an attempt which never came to anything" to tap columnist Joseph Kraft's telephone.

He also traced the evolution of the so-called "plumbers" from a special unit designed he said to "stimulate" other agencies to plug "leaks" of classified information to a group that conducted its own intelligence-gathering activities. The most famous operation of the plumbers, discussed at length at yesterday's hearing, was the break-in at the office of Ellsberg's psychiatrist following the publication of the Pentagon Papers in June, 1971.

Although Ehrlichman provided few details that were not already known about these investigations, he defended them as being inseparable from President Nixon's efforts to extricate the United States from Vietnam and make arms limitation agreements with the Soviet Union and other foreign policy goals.

Ehrlichman also cast his net around the White House effort to contain protest demonstrations against the Nixon Vietnam policy. Denying Dean's recitation of the "old story about fear and paranoia in the Nixon White House," Ehrlichman said the events in 1969 and 1970—when the covert operations began—"included hundreds of bombings of public buildings, a highly organized attempt to shut down the federal government which you'll all remember; intensive harassment of political candidates and violent street demonstration which endangered life and property."

"Taken as isolated incidents," Ehrlichman said, "these events were serious. Taken as part of an apparent campaign to force upon the President a foreign policy favorable to the North Vietnamese and their allies, these demonstrations were more than just a garden variety exercise of the First Amendment."

Ehrlichman acknowledged that he had authorized or knew about many wiretaps conducted in the name of national security. He acknowledged that he had known, at least soon after the fact if not before, that Watergate conspirators G. Gordon Liddy and E. Howard Hunt Jr. had conducted a break-in at the offices of Daniel Ellsberg's psychiatrist in Los Angeles in an apparently futile effort to obtain psychiatric information about Ellsberg.

Ehrlichman said he could not recall, however, having called then deputy CIA director Gen. Robert E. Cushman Jr. to seek CIA assistance for Hunt in connection with the covert operation against Ellsberg.

In his discussion of the Ellsberg break-in in September, 1971, Ehrlichman made a number of assertions that seemed to discount the theory that the Watergate cover-up was conducted as a reaction to blackmail attempts by Hunt, who threatened, according to earlier testimony, to reveal activities like the Ellsberg break-in if money for legal fees and family support was not made available.

Ehrlichman listed a number of reasons why Hunt's attempts to blackmail the White House played no role in the Watergate affair, in his view. For his own part, Ehrlichman said he was unaware of blackmail attempts by Hunt until March 20, 1973.

In addition, Ehrlichman said, the Justice Department had already known about the Ellsberg break-in for a year. Ehrlichman said John Dean had told him that the Justice Department had photographs of the break-in, turned over to it by the CIA, and "the whole business."

This appeared to conflict with both President Nixon's May 22 statement on the Watergate affair, in which he said he learned of Hunt's involvement on April 25 of this year, and the statement by Assistant U.S. Attorney Earl Silbert introduced at Ellsberg's trial that the Justice Department prosecutors learned of it April 15, 1973.

Ehrlichman said that if Dean told him the truth about the prosecutors knowing a year ago about the break-in, the information had been kept from the President and Silbert. But he added that "it's hearsay and it's only as good as the testimony or reliability of Mr. Dean, and I would be the last one in the world to vouch for that at this point."

The likelihood of the Ellsberg operation's being revealed were "very slight," Ehrlichman said because it was "a part of a very intensive national security investigation."

"It was never my view," Ehrlichman said, "that Hunt and Liddy, as individuals, had done something that was completely irrational in that break-in. In other words, they were operating in a national security setting and pursuant to either instructions or authorization and, that being the case, that had never been a subject which I considered to be seriously embarrassing."

Ehrlichman said he had the impression that the authorization for the break-in came from Egil M. Krogh Jr., who ran a special White House intelligence-gathering unit—the "plumbers" under Ehrlichman. Dean has testified that Krogh told him that the authorization for the break-in came from the "Oval Office," President Nixon's White House office.

Dash recalled to Ehrlichman the testimony of former Attorney General Mitchell that when he learned about the Ellsberg break-in after the Watergate arrests on June 17, 1972, he considered it a "White House horror story" that could cost President Nixon the election.

Ehrlichman disagreed with this assessment. "Trying to reconstruct my frame of mind at the time" (of the Watergate arrests), Ehrlichman said, "I considered the special unit's activities to be well within the President's inherent constitutional powers, and this particular episode, the break-in in California, likewise to have been within the President's inherent powers as spelled out" in federal law.

"I think if it is clearly understood that the President has the constitutional power to prevent the betrayal of national security secrets, as I understand he does, and that is well understood by the American people, and an episode like that is seen in that context, there shouldn't be any problem," Ehrlichman said.

Later, however, Ehrlichman appeared to contradict his own testimony of his confidence that the American

people would understand the necessity for the White House conducting an investigation.

The Ellsberg operation was conducted covertly, he explained under close questioning by Dash, because "I was not keen on the concept of the White House having investigators in the field and known to be in the field, and I just don't think from a public standpoint, from a public relations standpoint, from a public policy standpoint, that is a desirable situation."

Besides appearing to contradict himself, Ehrlichman also appeared to dispute the statement made by President Nixon on May 22 concerning Watergate, the Ellsberg break-in and other matters. Mr. Nixon said he impressed upon Krogh the "vital importance to the national security of his assignment" in connection with the "plumbers," but "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 motivated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention," Mr. Nixon said.

Ehrlichman remained a composed if aggressive witness throughout the long day, but he provoked uncharacteristic displays of testiness on the part of both the committee's chairman and its chief counsel.

Ervin, visibly angry and brandishing his eyeglasses, sharply challenged both Ehrlichman and his lawyer, John J. Wilson, on their interpretations of the law and the Constitution. His questions were lengthy at times, and frequently, when Ervin paused for breath, Ehrlichman would begin to respond only to be cut off again in mid-answer.

As he has before when confronted by administration witnesses seeking to explain why hundreds of thousands of dollars in cash were paid secretly to the Watergate defendants, Ervin demanded to be told if the White House is "an eleemosynary institution."

To the delight of the decidedly partisan audience in the Senate Caucus Room, which applauded Ervin every time he entered the room and often when he spoke, Ervin asked Ehrlichman if the money was provided to the burglars because the White House "was sorry for them?"

Ehrlichman answered that the money was for a legal defense fund similar to that raised for Angela Davis, the Berrigan brothers and other defendants in trials with political overtones, but Ervin snapped back that in those cases the money was raised and distributed publicly.

At one point, when Wilson broke in apparently to protest Ervin's repeated interruptions of his client's answers, the chairman exasperatedly retorted that the witness "goes off and answers something I don't ask him."

Earlier in the day, during one of several prickly exchanges with Ehrlichman, Dash raised a similar objection. The witness, he said, was "anticipating the meaning of my question."

Here, from the official transcript, is another exchange in which Dash was apparently piqued by Ehrlichman's responses:

Dash: Well, after the (proposed White House domestic security) plan . . . did not go forward, as you understood it to be . . . were you assigned a role to create in the White House a capability for intelligence-gathering at any time?

Ehrlichman: I do not know quite what you are getting at . . .

Dash: I do not know why you have to find out what I am getting at, if you just answer my question as I asked it.

Ehrlichman: It is an obtuse question.

Dash: It is a simple question. If the answer is no, say no. If the answer is yes, say yes.

Moments later, when Ehrlichman said it was true that in a "literal sense" he administered an investigative unit while at the White House, Dash—who teaches law at Georgetown University—asked if it were not also true "in an actual sense?"

"Well, here I am dueling with a professor," said Ehrlichman, with the thin swift smile he flashed from time to time.

"I am not dueling with you," said Dash. "I am just trying—"

"Professor, if you say 'actual,' it's 'actual,'" Ehrlichman said, to perhaps the day's only burst of laughter elicited from the audience by an Ehrlichman response, rather than a committee question.

Ervin pressed Ehrlichman hard to explain how the law could allow, as Ehrlichman contended it did, the break-in by Hunt and Liddy at the office of Ellsberg's psychiatrist on the ground of national security.

Ehrlichman responded that the President has statutory authority to "pro-

tect national security information against foreign intelligence activity," which he said the White House believed at the time might be behind the leaking of the Pentagon Papers. "Yes, I have studied that statute," Ervin said. "... and there is not a syllable in there that says the President can suspend the Fourth Amendment (barring unreasonable searches and seizures) or authorize burglary. It has no reference to burglary."

Ehrlichman said he did not know if it is illegal to obtain confidential information from a psychiatrist, as Ervin contended.

"Well, if you had known the law," Ervin said, "I would submit that in all probability you would also have known that the only way you could get the opinion of the psychiatrist ... was by some surreptitious manner."

"I don't know what you mean by surreptitious, Mr. Chairman," said Ehrlichman. "I do know this from experience, that information of this kind is obtainable ..."

"You don't know what the word surreptitious means? ... Don't you know, really?" asked Ervin.

Ehrlichman said he did but thought

Ervin had used the word "in a pejorative sense."

In earlier testimony yesterday, Ehrlichman said that "the Pentagon Papers, which were marked secret and top secret and which were Defense Department, largely Defense Department documents, were turned over to the Russian Embassy." The theft of the papers, he went on to say, "had evidently been perpetrated by a number of people, a conspiracy, and that some of the people were identified by the Department of Justice as having had ties to domestic Communist activities."

(Some of the Pentagon Papers were reportedly turned over to the Soviet Embassy by an unidentified man shortly after The New York Times began publishing the text of the documents in June, 1971.

(Justice Department sources have told The Washington Post that the FBI, which has been investigating the matter for two years, has found no evidence to link the copy of papers delivered to the Soviet Embassy to Ellsberg or to the newspapers that published the documents.)

Ehrlichman echoed testimony given by other witnesses that the late J. Edgar Hoover, then director of the FBI, was reluctant to investigate Ellsberg at the time of Pentagon Papers controversy because of his personal friendship with toy manufacturer Louis Marx, Ellsberg's father-in-law.

For that reason, Ehrlichman said, he concurred in a decision to send Hunt and Liddy to investigate the case specifically for the White House.

Under questioning by minority counsel Fred Thompson, Ehrlichman partially contradicted Kalmbach's earlier testimony about the distribution of Nixon campaign funds to the Watergate defendants. He said he never reassured Kalmbach that the payments were legal and proper, and that Kalmbach should follow John Dean's direction, in the matter.

Kalmbach had testified that in a meeting July 26, 1972, in the White House, Ehrlichman earnestly told him the procedure was legitimate and that secrecy was only necessary to prevent the situation from being "misinterpreted" in the press.

This Ehrlichman denied yesterday. "I would never in my life ask Herb Kalmbach to do anything I thought was shady or improper, certainly not illegal," he said, and if Kalmbach had asked him to vouch for the propriety of a project "I would have been very, very slow to make any kind of assurance to Herb without doing a lot of research to satisfy myself."

And as he had done no research to learn what would be done with the money Kalmbach was raising, he said he was "morally certain" that Kalmbach didn't ask him for any assurances and that he didn't give any.

Asked later about his recording of a telephone conversation with Kalmbach without Kalmbach's knowledge, Ehrlichman said he had routinely used a dictating machine attached to his telephone. "The result is about the same as having your secretary listen in on the other line and take it down in shorthand," he observed.

"Yes, but you didn't tell Mr. Kalmbach that you were recording his conversation, did you?" Ervin wanted to know.

"No, sir," replied Ehrlichman. "No more did he tell me that he had two lawyers in the room with him."

The conversation took place the day before Kalmbach was called to testify before a grand jury investigating the Watergate affair. The committee obtained the recording along with other material subpoenaed from Ehrlichman's office by federal prosecutors.

Ehrlichman resumes his testimony today at 10 a.m.