

WXPost Ehrlichman Prosecutor

By Timothy S. Robinson
Washington Post Staff Writer

Assistant Watergate Special Prosecutor William H. Merrill asked a federal jury here yesterday to return guilty verdicts against former White House aide John D. Ehrlichman and three other Ellsberg break-in defendants, saying that violations of constitutional rights against illegal searches cannot be condoned.

"This isn't patriotism, it's anarchy," Merrill said in reference to the break-in by members of the White House Plumbers unit.

"We fought a revolution to establish these rights. They cannot be violated by people who turn their backs and close their eyes," Merrill continued.

Ehrlichman's attorney, William S. Frates, contended that his client was innocent of a conspiracy charge and four counts of lying to investigators probing the break-in at the office of Daniel Ellsberg's psychiatrist.

Frates, in his closing arguments, said that Ehrlichman

had no knowledge that an illegal entry would take place, and pictured him as tricked by the original Watergate prosecutors into making misstatements to the grand jury. They said that as soon as he remembered certain memos concerning his approval of the "covert operation" that was the break-in, he tried to set the record straight.

Frates also said that Ehrlichman could not remember specific details of events leading to the plan because of his heavy duties as the top domestic affairs adviser to the President, and described one prosecution witness—David R. Young, who had testified against Ehrlichman—as "a man who couldn't answer a question straight if you wanted him to."

Peter Maroulis, attorney for former White House aide G. Gordon Liddy, said his client was merely following orders when he carried out the operation and thought the plan was legal.

"Mr. Liddy was in the White House and reported to the government—his superiors in the White House," Maroulis said. He also criticized various coconspirators who were given immunity and others who testified during the trial—such as CIA officials—who were not prosecuted although they were involved in some of the same events.

Daniel Schultz, attorney for Eugenio Martinez and Bernard L. Barker, said his clients were in the case "as a result of a cruel fraud practiced on them by E. Howard Hunt Jr." Hunt, who was given immunity from prosecution and testified during the trial, hired the two Miamians for the operation with the explanation that it was in furtherance of national security, the two defendants have testified.

Schultz said the two men had an unblemished record of service for this country as CIA agents until Hunt "stole it from them . . . and didn't blink twice."

He said that any danger to the personal liberty of individual Americans through illegal entries did not come from "these two little men in Miami . . . the danger comes from people in power that abuse that power."

Schultz said his two clients "have been victimized enough already by this sorry chapter in our history," and asked the jury to let them return to their homes in Miami as free men.

The four men are charged with conspiring to violate the civil rights of Pentagon Papers co-defendant Ellsberg's psychiatrist, Dr. Lewis Fielding, by breaking into his Beverly Hills, Calif., office on Sept. 3, 1971.

After receiving final instructions on the law from U.S. District Judge Gerhard A. Gesell this morning, the 12-member U.S. District Court jury will begin its deliberations.

Assistant prosecutor Merrill said at the outset of his closing argument that the government did not dispute that the White House plumbers unit had begun as a legitimate operation.

"Our only claim is that these people also got involved in conspiring to enter Dr. Fielding's office" il-

legally, Merrill said, and that the office was entered "only after receiving Mr. Ehrlichman's approval." In the first count of the indictment, the four men are charged with the conspiracy to violate Dr. Fielding's civil rights by conducting an illegal search for Ellsberg's psychiatric files.

The main issue in the first count, Merrill said is "who was aware of a plan to search Dr. Fielding's files . . . not who was aware of the break-in" that actually occurred. He pointed out that the forcible break-in that occurred was not originally planned, according to witnesses who testified during the trial.

Merrill said that Barker and Martinez had both testified that they were recruited by Hunt "for a surreptitious entry" and admitted that they went into the operation knowing they would have to enter the doctor's office to look at the files. "This shows they were involved in this conspiracy," Merrill said.

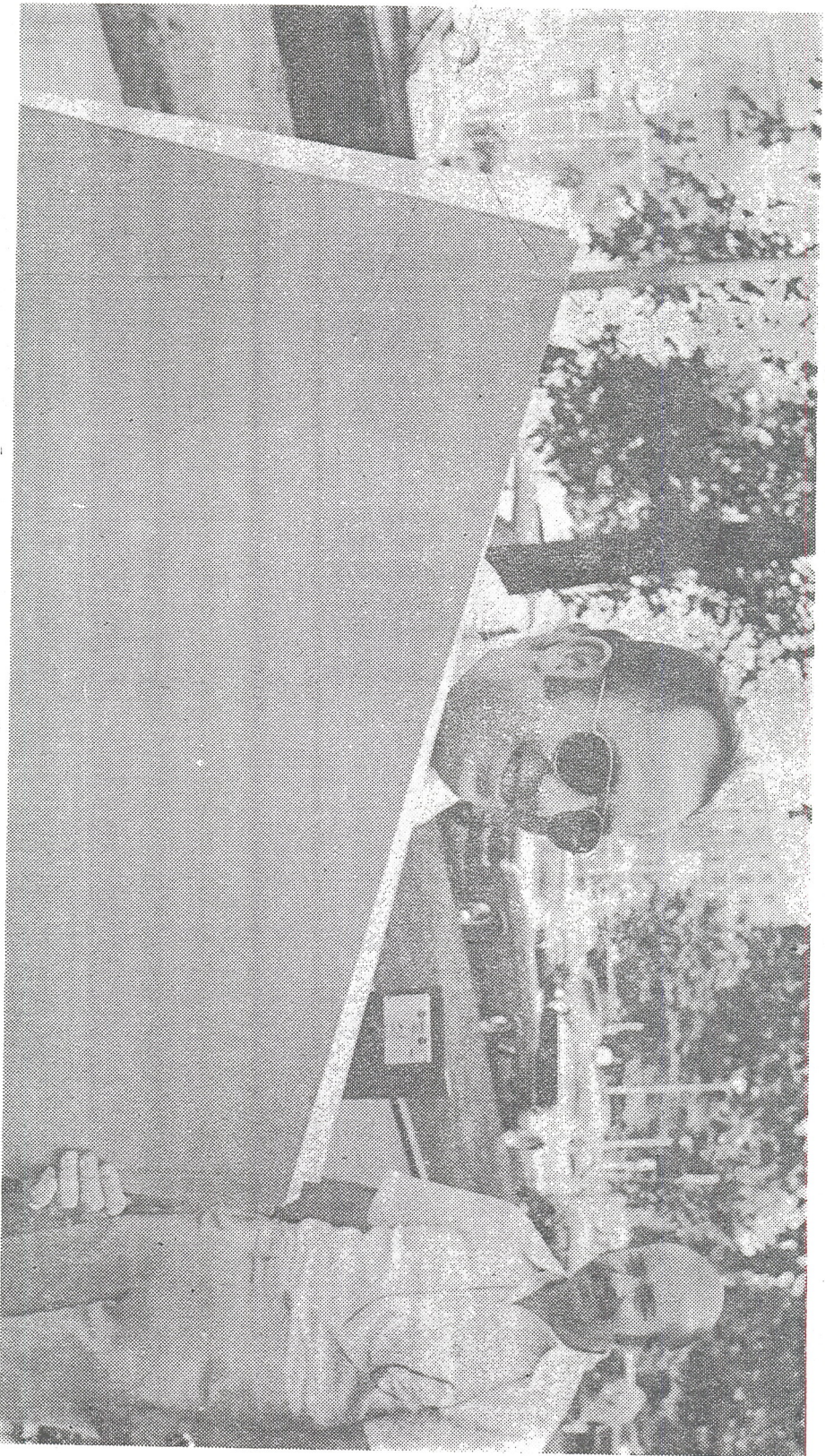
The government has



Associated Press

Assistant Watergate Special Prosecutor William Merrill arrives at U.S. District Court for final arguments.

Condemns 'Illegal Searches'



Andrew Hall, one of John D. Ehrlichman's lawyers, arrives at U.S. District Court with a presentation for final arguments.

By Joe Heiberger—The Washington Post

proved that Liddy was part of the conspiracy as well, Merrill said, as he recounted the testimony of various witnesses about, among other things, Liddy's involvement in a "vulnerability study" of Fielding's office before the actual break-in, and his knowledge that the FBI had not been able to gain access to the documents.

But Merrill saved the bulk of his time to outline in detail the specific evidence the government has presented against Ehrlichman.

He recounted on Aug. 5, 1971, meeting in which Krogh and Young testified they told Ehrlichman the unit would have to become operational because the FBI could not obtain Ellsberg's files. They testified they brought up the subject with Ehrlichman because they felt they could not approve such an operation on their own, Merrill continued.

In that Aug. 5 meeting, Ehrlichman said the operation would be agreeable with him as long as it was not traceable, Merrill re-

minded the jury from Krogh and Young's testimony.

Ehrlichman wrote similar words on an Aug. 11 memo in which he approved a "covert operation to examine files still held by Dr. Ellsberg's psychiatrist," Merrill said in rereading the document to the jury.

In the second count of the indictment, Ehrlichman is charged with lying to the FBI in the April 27 and May 1, 1973, interviews, when he said he had not seen Pentagon Papers files for a year. They said that Young's testimony about the March 27 meeting concerning the files and Krogh's statement about Ehrlichman's dissembling prove that count.

In discussing the remaining two counts of lying to the grand jury, Merrill made reference to what he called Ehrlichman's "changeable memory."

Count three of the indictment charges that Ehrlichman lied when he denied knowing before the break-in that a psychological profile was being prepared on Ellsberg.

He said Ehrlichman thought he could hide any knowledge of that profile because he had "removed the only incriminating documents and put them in the President's vaults in hopes they would never see the light of day."

However, with Young's turning two of those memos over to the prosecutors in turn for immunity, the prosecutors have been able to show six memos that Ehrlichman received before the break-in and a copy of the profile itself that Ehrlichman received with one of the memos, Merrill said.

Count four of the indictment charges that Ehrlichman lied when he said he was not aware of "any effort" to obtain information from Ellsberg's psychiatrist or his psychiatric record in general.

Merrill told the jury of at least one meeting, two telephone calls and five memoranda testified about during the trial "that show that his answer was false."

In count five of the indictment, Ehrlichman is also

charged with lying to the grand jury when he said that he thought Krogh had all of the files relating to the Ellsberg case. The government contended yesterday that Young's testimony proves that on May 14, 1973, when Ehrlichman testified to the grand jury, he knew that Young had files as late as March 27, 1973.

Merrill wound up his one hour and 20 minute argument by charging that Ehrlichman's claim of a weak memory was a "limp" excuse.

"Everyone else knew someone was going to go into Dr. Fielding's office," Merrill said. "Mr. Martinez knew that, Mr. Barker knew that, Mr. Hunt knew that, Mr. Liddy knew that, Mr. Krogh knew that, Mr. Young knew that . . . and Mr. Krogh and Mr. Young thought that Mr. Ehrlichman knew that."

He turned to face each defendant individually as he asked the jury to return a verdict of guilty on all counts because "all of them are guilty."