

Excerpts From Testimony Before the Senate

Special to The New York Times

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Following are excerpts from testimony on the 37th day of hearings on the Watergate case before the Senate Select Committee on Presidential Campaign Activities:

MORNING SESSION

Richard D. Kleindienst

MR. DORSEN: Mr. Kleindienst, when for the first time did you learn that there was electronic surveillance of the Democratic National Committee headquarters at the Watergate?

MR. KLEINDIENST: I learned it for the first time after June 17 [1972] when the individuals who were arrested at the headquarters were arrested. I don't know whether I learned of the electronic surveillance on Saturday, June 17, or sometime in the early part of the next week.

Q. But on June 17 you were notified of the fact that there had been a break-in?

A. At approximately 8 o'clock in the morning, Assistant Attorney General Henry Petersen of the Criminal Division of the Department of Justice called me at my home and indicated to me that there had been a break-in at the Democratic National Headquarters at the Watergate Hotel. All the information that he had at that time was that there was a break-in and I believe he said to me it looks like it might have been a bombing case.

Q. Did you participate in a conversation with Mr. Henry Petersen and Mr. Dean concerning the possibility of going to the President because the circumstances and events indicated that there was more to the Watergate break-in than appeared?

A. Well, the characterization that you put at the end I don't think was relevant to our meeting. But I believe it was either Monday or certainly no later than Tuesday that Mr. Dean, Mr. Petersen and I had a conference that took place in my office. The purpose of Mr. Petersen and Mr. — and myself being with Mr. Dean was to indicate to Mr. Dean the apprehension and the grave seriousness with which we received the news of this fantastic event that had occurred at the Watergate Hotel, to inform him as counsel to the President that the Department of Justice and the F.B.I. would be compelled and would immediately launch a full-scale intensive, thorough investigation into all the facts surrounding it, that this was a felony, that in addition to being a felony, if you can think of anything worse, it also went to the very heart of our political system, and that it was an act of such a heinous nature that we were going to call forth and bring about an investigation immediately.

I think Mr. Petersen interrupted or said that either myself or Mr. Dean should contact the President personally to indicate to him the gravity

of the situation, the consequences of it, and I believe Mr. Petersen said in that remark that either Mr. Dean or I should urge the President to make a statement immediately setting forth his attitude in response to this fantastic event.

I believe that Mr. Dean volunteered at that point to the effect that, well, I am going out to San Clemente, and I will convey your suggestion, Mr. Petersen, because I will be seeing the President myself. I believe I concurred in that. I don't know how long that meeting lasted but I think that that is the substance of what transpired at that time.

Gray-Dean Relationship

Q. During the summer of 1972, were you aware that Patrick Gray was making available to John Dean F.B.I. teletypes and 302's?

A. No, sir. The first time I became aware of that was in the confirmation hearing of Mr. Gray to be the permanent director of the F.B.I.

Q. Had Mr. Dean spoken to you about the possibility of the F.B.I. supplying to the White House such documents?

A. Mr. Dean raised a question with both myself and Mr. Petersen. Both of us were very quick to tell him that we did not—that we would not give him raw investigative data from F.B.I. files.

I told him based upon his representation to us and my belief throughout this matter that he was counsel to the President; he represented him continually. He was dealing strictly with the President, that the President had delegated him to more or less be responsible for an overview of the investigation insofar as it might relate to White House personnel.

I told Mr. Dean that since I had been in the Department of Justice—I hadn't been Attorney General but a week when this fantastic situation occurred—that it had always been my policy and one that was shared by Attorney General Mitchell, that only under the most restricted circumstances should raw F.B.I. investigative data be given to anybody.

I believe I did indicate that we wouldn't mind summarizing pertinent information that was relevant to his inquiry orally for him so that he could make a report to the President. I believe I also

indicated that if there was a particular file that the President of the United States personally wanted to see, that I would be willing to take that file personally up to the President, sit down with the President and let him look at it and then bring it back.

Meeting With Silbert

Q. Am I correct that on the early morning hours of April 15, 1973, you had a meeting with Mr. Petersen,

United States Attorney Harold Titus and the prosecutors at your home? A. It was just one of the prosecutors and that was the chief prosecutor, Mr. Silbert.

Q. Am I correct that this meeting dealt with the disclosure of Mr. Magruder and Mr. Dean to the prosecutors? A. Yes, sir.

Q. Following that meeting, am I correct that you made an appointment to see the President later in the day on April 15, 1973?

A. That meeting commenced at approximately 1 o'clock in the morning; it terminated around 5 o'clock in the morning. I was up at 8:30. As a result of that meeting we agreed that I had to see the President. I put a call in to the White House at 8:30; the President returned my call at 9:30.

I told him it was absolutely imperative that I see him right away. He said that I have the Sunday service at the White House at 11. I told him that rather than go to church with my wife and children I would go up there and attend that service at 11 and be available to see him after that was over.

I think the reception lasted until approximately 1 o'clock and around 1 o'clock in the afternoon, approximately, I met with the President in his office in the Executive Office Building.

Q. Now, am I correct that at least part of the meeting was devoted to briefing the President and that one of the decisions made on the afternoon of April 15 by you would be that you would in effect withdraw from the supervision of the prosecution of the Watergate case?

A. The whole meeting was devoted solely to talking about the information that I had obtained that night and the consequences that inevitably must flow from it.

Talk With Ehrlichman

SENATOR ERVIN: Did John Ehrlichman tell you he was bugging, I use that word unadvisedly, rather recording your conversation with him? A. No, sir. If I ever felt he had I don't know if I would have ever talked to him again.

Q. You stated, as I understand your testimony, that the President indicated by his conversation when you reported what you knew about the Watergate affair, to him, that— A. What meeting are you talking about, Mr. Chairman?

Q. The 15th. A. Yes, sir.

Q. That he indicated by his reply that he did not know, that he was ignorant about the Watergate affair?

A. Well, I would say that the information, the nature that I described with him, would have come to his attention contemporaneously. If Mr. Ehrlichman is talking to Magruder all afternoon the day before I would just assume, although he didn't say,

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that Mr. Ehrlichman would have made a report like this to the President. But I would gather from my meeting with the President that he had no such knowledge until immediately prior to my meeting Mr. Chairman.

SENATOR BAKER: It appears that when on June 17, 1972, you were approached on trying to get these Watergate burglars out of jail, you in fact said no, they are going to be treated like everybody else. Is that essentially correct? A. Yes, sir.

Q. And when John Dean asked for F.B.I. files, you in effect said if the President wants F.B.I. files, let the President ask, but you are not going to get them, is that right? A. Yes sir or anybody else.

Q. And when John Ehrlichman called your people and complained and then called you to complain about the way certain matters were being handled, you told John Ehrlichman, don't you talk to my people any more. If you want to talk, talk to me. Is that essentially correct? A. Yes, sir.

Q. And when you received information about the Ellsberg break-in, you found it to be of extraordinary importance and you went to the President and talked to him about it. A. Yes, sir.

Notification to Nixon

Q. When on April 15, 1973, the U. S. Attorney's office and others came to you at the late hours of the night and laid out a detailed case of extraordinary involvement by White House officials apparently and the Committee to get brushed with tar when I you promptly set up a meeting with the President, is that right? A. Yes, sir.

Q. And you told the President about it? A. Yes, sir.

Q. And when you told the President about it, you wrote a note on the spot virtually saying that because of my personal and professional relationship with some of the people that may be charged with crimes, mentioning John

Mitchell and others, that I excuse myself and require, Petersen, that you assume these responsibilities and act as Attorney General, is that correct? A. Yes, sir.

SENATOR GURNEY: Did the President at any time during all of this period of time instruct you to go soft or slow upon this F.B.I. investigation? A. Never at any time.

Q. One thing about these affairs is that some people get brushed with a when I don't think that is probably a fair thing. I must say as far as you are concerned, I think this is a good time to bring it out, that when you departed you were lumped with Haldeman, Ehrlichman and Dean, I thought this was most unfortunate myself because actually you were not in their class; I guess we might put it that way, in any respect. Do you want to mention on that?

A. No, the President asked me whether I would consent to have my name mentioned that following night. I did, and I would prefer not to make any other comment about it.

Q. But in any event your resignation was your own decision and you were the one who suggested to the President that you resign? A. Yes, sir.

SENATOR WEICKER: When you first arrived at Camp David, did you want to announce your own resignation? A. Yes, sir. I had so informed him before our conversation.

Announcement Plan Altered

Q. So it was at the impromptu of the President you did not announce your own resignation but, rather went along with his request to be put into this group, is that correct?

A. Well, he is the President of the United States. I was serving him. He asked me to do it. I did.

SENATOR MONTOYA: When Mr. Ehrlichman was testifying before this committee I asked him if the White House knew of the burglary of the Ellsberg psychiatrist's office on or about September 4th, why didn't you tell the Department of Justice, and he indicated in his answer that that information had been imparted to the Department of Justice. A. That is absolutely untrue.

MR. DORSEN: Do you recall attending a luncheon with Mr. Ehrlichman and Mr. Dean between the time of the conviction of the Watergate defendants and the time of their sentence at which the subject of possible leniency for the defendants came up.

A. I did not when I talked to you or Mr. Haire yesterday. I talked to Mr. Petersen yesterday to see if he could recall anything and I now remember that at a luncheon I had there, I think we had several matters to discuss, the question came up as to the procedures of sentencing, what happens, and Mr. Ehrlichman did not have much of a knowledge of the criminal justice system and I think they were talking about what happens when somebody is convicted of a crime, how the sentence is meted out, what is the probation report, what happens when you go to jail, when are you eligible for a pardon, when do the circumstances arise for executive pardon, and it was a technical procedural discussion that I had. No individual name was mentioned at that time.

AFTERNOON SESSION

HENRY E. PETERSEN

MR. DASH: Do you recall a meeting on or about June 20, 1972, in Mr. Kleindienst's office, where Mr. Dean was and at which Mr. Dean made some statements to you, according to his testimony, that this investigation should go very high, in fact it might

involve the White House; in fact he testified he didn't know how far it might go.

MR. PETERSEN: I remember the circumstances, I don't remember it as Mr. Dean testified to it. I was called up to Mr. Kleindienst's office. Mr. Dean was already there. They asked for a status report and I gave them a general status report on the nature of the investigation. We had some discussion. I think commonplace discussion. My God, what has happened, who is doing this and what type of a situation is this.

And I told him that, I re-

member the words very distinctly, I said, "John, I don't know who I am talking about but whoever is responsible for this is a damn idiot and there is only one thing that the President of the United States can do and that is cut his losses and the way that he should do that is to instruct the Attorney General publicly to run an all-out investigation and let the devil take the hindmost. And that ought to be done immediately."

We had some discussion of that and finally Dean said, "Well, the President is out in San Clemente." I said it is well enough for somebody to go out there and Mr. Kleindienst said, "John, set that up." Dean then got up to leave and we had some conversations about the investigations and I told him I had no intention of conducting a fishing expedition but we were certainly going to conduct a thorough investigation of this matter. Later on I asked him what had been decided and he said, "Yes somebody is going to go out but it has been decided it should be me."

Q. Meaning Mr. Dean?

A. Mr. Dean rather than Mr. Kleindienst, which I thought was a little awkward, but quite honestly I

took it as another indication or as an indication that perhaps the Attorney General who I think most highly of was perhaps not in the best graces at the White House and that they would rather have Mr. Dean brief the President.

After that there was an all consuming silence, I never heard anything and I finally asked Dean about it and he said, "Yes, you are to run an all-out investigation" but unfortunately we never heard anything from the President.

If I can jump ahead. In my later conversations with the President on April 15, I told him this and he said, one, Dean had never come to him, and I said if it occurred again, and I certainly hoped it did not, I would be up there knocking on the door myself.

Use of F.B.I. Files

Q. Did it ever come to your attention that such raw [F.B.I.] files were being used by Mr. Dean, that he had them in his possession during any inquiry that he was making?

A. No, sir. Mr. Kleindienst called me at one stage and I recall this very vividly, it was on the telephone, and he said I have just spoken to John Dean and he has asked if he can have the F.B.I. reports and I answered him very quickly and abruptly and said, tell him no, and I was so abrupt that he just started to laugh, his reaction was you are a big help. And I then was a little embarrassed to think he might feel that I was inconsiderate of his relationship with the President or the White House and I said, well, hear me out. If the President calls you up and says I want those reports, you click your heels and say, yes, sir, or if they want to send out a memorandum, say, from the Presi-



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Former Attorney General Richard G. Kleindienst, in the witness chair at the Watergate hearing yesterday morning, talking with his children Wallace and Anne as shouting spectators in the rear of the room were removed.

Figures in Senate Inquiry

Special to The New York Times

WASHINGTON, Aug. 7—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.
 James Hamilton, assistant chief counsel.
 David M. Dorsen, assistant chief counsel.
 H. William Shure, assistant minority counsel.
 Robert Silverstein, assistant minority counsel.

WITNESSES

Richard G. Kleindienst, former Attorney General.
 Henry E. Petersen, Assistant Attorney General who headed Watergate inquiry.

PERSONS NAMED IN TESTIMONY

Charles Bowles, Justice Department official.
 John W. Dean 3d, former counsel to the President.
 John D. Ehrlichman, former White House domestic adviser.
 Dr. Daniel J. Ellsberg, key witness in Pentagon papers case.
 L. Patrick Gray 3d, former acting director, Federal Bureau of Investigation.
 Phillip Haire, assistant chief counsel to Watergate committee.
 H. R. Haldeman, former White House chief of staff.
 E. Howard Hunt Jr., ex-White House aide, pleaded guilty in Watergate break-in.
 Jeb Stuart Magruder, former deputy director of the Committee for the Re-Election of the President.
 Kevin T. Maroney, Deputy Assistant Attorney General.
 John N. Mitchell, former Attorney General.
 Donald H. Segretti, alleged political saboteur for Nixon campaign.
 Earl J. Silbert, former chief prosecutor in Watergate break-in.
 Maurice H. Stans, Nixon campaign finance director.
 Harold H. Titus Jr., United States Attorney for the District of Columbia.

dent and say send those reports over to X, Y and Z, I said we can do that, but we ought not to give those reports on an oral request to any White House staffer, and he said, I think I agree with that. That is the last I heard of it.

Q. What was the basis, Mr. Petersen, of your decision to safeguard these reports?

A. Prudence, prudence. I didn't think there was, I had no suspicion of John Dean as such. Indeed, on April 15 when I heard by his own admission that he was involved I was the most surprised person in Washington, I guess, but it was simply prudence. I didn't think when Mr. Hunt, who had worked over there, was involved and where there was so much opportunity for cynicism that prudence dictated we should make those reports available. I thought Mr. Dean if he was as I understand charged by the President to keep abreast of this situation, was entitled to ultimate facts, but I didn't think he needed evidentiary facts.

Q. Did you ever discuss with Mr. Dean Mr. Magruder's appearance before the grand jury?

A. John Dean called me at the time of Magruder's appearance before the grand jury and asked how Magruder made out. I did not know and I called Earl Silbert and he said, "well, you know, as you all know, he is a very articulate young man, and he described him, "he made a good witness in his own behalf, but, Henry, nobody believes the story about the money." And, you know, that is—in those words are what I told Mr. Dean.

The 'Poor Boy Syndrome'

Q. Did you know what that was all about?

A. Well, we were focusing

on the money, Mr. Dash. Maybe it is a poor boy syndrome but we could not imagine how \$350,000 was just tossed out and nobody wants to know where it went or what it was used for and, of course, the grand jury had the poor boy syndrome, too, I guess. They could not understand that either.

Q. Actually, you said that Mr. Dean called you about how Mr. Magruder made out. This was, I take it, after his final appearance before the grand jury? A. After his appearance before the grand jury. I do not know whether—

Q. Had he shown some interest prior to that? Of course, I think there were three appearances that he had.

A. Yes, of course, first of all, the statements were at the White House, coming out the White House that John Dean was charged with preparing a report and what have you. John Dean's statements that were made to me were "I am responsible to keep the President informed" and, "you know if I get in there and he asks me a question, he really chews me out if I do not know the answer" and, "Henry, you have got to keep me posted on these things," and they wanted to know—if there was going to be a newsworthy item they would like to know about it at or about the time it happened. So to that extent I tried to keep him informed of the ultimate facts and when I did not, he would call.

Q. Now, can you recall a time when Mr. Ehrlichman got in touch with you concerning the appearance of Mr. Stans before the grand jury? A. Yes, sir, I can. Q. Can you briefly tell the committee about that in your own words? A. I cannot give you the date, Mr. Dash. I

think that— Q. Approximately what period? A. It is isolated. It was during the summer. It was before the indictment. It can be fixed because it was immediately before the return date of the

subpoena that was served on Mr. Stans.

I received a call at 11:45 in my home. I was sitting at the kitchen table and it was Mr. Ehrlichman and he charged Earl Silbert with harassing former Secretary Stans and I told Mr. Ehrlichman that Mr. Silbert was not a responsibility, that I had approved of that, and that it was not harassment, that it was true he had been interviewed at least twice by the F.B.I. but we simply—I am hesitating because I want to be fair to Mr. Stans—basically his testimony, his interviews were the same as he gave the committee. Let me put it that way.

As I recall his appearance up here, there was some question about whether the committee believed his statements that he did not know what happened to the money, that all he did was collect it. We had some difficulty, the same difficulty, and we felt that if that was his story, that we ought to have it under oath. So to that extent we called him basically the third time and it was right—

Desire of Ehrlichman

Q. What did Mr. Ehrlichman want? A. What did he want? I asked him that question twice and he never spelled it out except to stop harassing Mr. Stans and I said we were not harassing him and he charged that Earl Silbert was acting like a local prosecutor. Well, Mr. Silbert is a local prosecutor.

Q. Did you get the impression that Mr. Ehrlichman was perhaps asking that Mr. Stans be excused from going to the grand jury?

A. Well, that is what he was driving at. I asked him twice what he wanted and he never answered other than to say stop harassing. I asked him, I said, well, if Stans has a problem with the subpoena, why doesn't his lawyer call him, and he said it was not necessary, that Ehrlichman was calling me and we ended up telling him to tell his lawyer to call me.

Q. Well, how, did you participate in a decision not to get into the so-called "dirty tricks" activity of Donald Segretti. A. I sure did. I sure did.

Q. Can you recall, did Mr. Dean raise that question to you? A. No, sir. Well, I don't remember whether he did or not. I don't recall him raising it. That question was raised with me by two people, one, Earl Silbert, who said, you know, in effect, we are not experts on the Corrupt Practices Act. We don't see any violation. Do you? And I said, no, not on the basis of what we have. This is around August or September. The F.B.I. in October — Charley Bowles, who was in charge of the accounting and fraud section called me and said, "Henry, you know we are not investigating these. Do you see a violation," and I said, "no."

You know, dirty tricks per se are not a violation to my knowledge and the only violation we have been unable to uncover in connection with these things is the failure to accurately subscribe to a political statement that is promulgated—failure to subscribe being a violation of U.S. 18,613, and that is what the investigations have gone off on, but mere dirty tricks, oral false schedules, for example, or passing an item of information on, was not a violation to my knowledge.

The Expendable Ones

Q. On the 26th [of March, 1973] Mr. Gray has testified that on that day, apparently that is the day he did admit to you that he destroyed the documents [from Hunt's safe], that you said to him, that you were scared and that you and he, Mr. Gray, were expendable and Mr. Haldeman and Mr. Ehrlichman were not expendable. Did you say anything like that to him and, if so, why?

A. I am not sure you have the time right, Mr. Dash. As I recall it, that was the night before Mr. Gray resigned. It was the day on which this item that we are discussing was publicized and I received a call from the President as did Mr. Kleindienst in the evening, and the President asked me whether or not I thought Mr. Gray ought to resign and I told him that I thought Mr. Gray's position was untenable. And he said we will discuss it with the Attorney General.

He, too, had talked to the Attorney General and, of course, I did discuss it with the Attorney General and pursuant to the President's instructions we asked Pat Gray to meet us and we did meet in the back office of Mr. Kleindienst's office and we discussed the situation and in my conversations with the President I expressed some sympathy for Mr. Gray, who I think most highly of. I have no hesitancy, I liked the man very much. And I told the President, Mr. President, "I think he is an innocent victim," and the President said "Yes, Henry," he said, "Maybe, but there are going to be a lot of innocent victims before this is over."

So it was in that context, the context of commiseration, I did not want to be there, we were in effect, suggesting that the man resign, and when Mr. Kleindienst went out of the room to talk to the President again you

know, I said Pat, we are all going to be embarrassed before this is over, I am scared, we have a constitutional confrontation here, we have the Presidency of the strongest nation in the world teetering in the brink, I do not remember saying that we were expendable, Ehrlichman and Haldeman were not, but I may have, I was upset.

Leniency for Defendants

Q. Do you recall that sometime after the conviction of the seven Watergate defendants and the sentence having lunch with Mr. Kleindienst, Mr. Dean and Mr. Ehrlichman and a question of leniency for the defendants coming up. A. No, no, I never had—

Q. Let me rephrase the question. Are you aware of a lunch that Mr. Kleindienst had with Mr. Dean and Mr. Ehrlichman in which a question of leniency came up concerning the defendants in the Watergate case?

A. Well, I am aware of a time when I received a telephone call from Mr. Kleindienst who said I am just now leaving the White House and I am on my way to the airport and on the way by I will stop by and you go downstairs and I will pick you up and you can ride out to the airport with me and I want to get some information from you, and I cannot fix the date except that it was a time when Mr. Kleindienst was going to Boston and he was meeting his wife at the airport.

We rode out to the airport and he said, "I just had lunch with Dean and Ehrlichman and they raised a question of whether or not leniency could be accorded these defendants." And I said "absolutely not." I said "indeed, we are going to do just the contrary. It is not the practice in the District of Columbia to recommend specific terms, jail terms, but it certainly is the practice to recommend for

jail or no jail. We intend to recommend jail time for these people and beyond that, after they are sentenced we intend to call them back and immunize them and in order to compel their testimony as to whether or not other persons are involved, and if they are contumacious and refuse to testify they will be held in contempt.

We discussed more what the procedure was, the sentencing procedure, and when they would be sentenced and what have you, and he finally said, "Do me a favor, go on back and go on over to the White House and tell those crazy guys over there what you just told me before they do something they will be sorry for." And I said, "Well, OK," and I went back to my office and on the way back I thought I have not been over there yet and this is not the time to go, so I called John Dean on the telephone and told him, "John, there is no point in my coming over there, we are going to recommend jail time and these people are going to be immunized," and we then discussed what immunity meant, what the alternatives are and what they are is, one, you can be contumacious and go to jail almost immediately or you can lie and take your risk that the Government will be able to prove it, which may give you a little bit of time, or you can cooperate, and I spelled those out for him and that ended the conversation.

Meeting With President

Q. Did you set up a meeting or did Mr. Kleindienst set up a meeting with the President?

A. Mr. Kleindienst agreed he would set up such a meeting with the President and as I recall, he said he was going to—there was a prayer breakfast over there and he would attempt to set it up while he was there.

I next heard Mr. Kleindienst at approximately 2 o'clock Sunday afternoon and he asked me to come down to the office and I did so, and while there, he said he was going to go and see the President again at 3 or 3:30, and maybe it would be a good idea if I would come with him, and I said OK.

Q. Was it at that time that you and Mr. Kleindienst gave a complete briefing as to what you had learned from the prosecutors—A. Yes, sir.

Q. To the President?

Q. Can you tell the committee what the reaction of the President was at that time?

A. Well, I guess the reaction of the President was I guess one of concern. When I remember remarking to Mr. Kleindienst how I admired his calm. I would have been cussing and fuming. He was concerned, and you have to understand that I had seen the President only on ceremonial occasions or briefing on legislation. He didn't know me from Adam.

Q. This was your first face-to-face meeting with the President, then, wasn't it? A. Yes, at any time in a situation where he was relying solely on my advice, and here I was there recommending that two people whom he had known and worked with for years be dismissed.

Q. Who were they? A. Mr. Haldeman and Mr. Ehrlichman.