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Memories of the Ellsberg Break-In

transcribed remarks of
THE HONORABLE STEPHEN TROTT*

Introduction by Fred Altshuler, Esq.: As a deputy district attorney in Los Angeles County, Stephen Trott prosecuted presidential assistant John Ehrlichman and G. Gordon Liddy for the burglary of the office of Daniel Ellsberg's psychiatrist. I would now like to ask Judge Trott to give some of his views of the type of White House conduct that occurred during the Watergate era.

Judge Trott: I had a fascinating window into this whole business. I was a deputy district attorney in Los Angeles County in charge of the organized crime division. I spent my time on cases involving CIA-trained Cuban bombers, militants shooting up UCLA, drugs, a rattlesnake being placed in the mailbox of a lawyer who was suing an operation called Synanon, and various pornography cases involving X-rated films like "Deep Throat" and "The Devil and Miss Jones."

One odd day, my boss, Los Angeles County District Attorney Joe Busch, called me in and said: "Get your butt over to federal court, someone named Howard Hunt is about to blow the whistle on a burglary in Beverly Hills." Now, what was going on? In June of 1972, the Watergate break-in took the lid off this whole thing. As things began to unravel, and people began to put heat on some of the Watergate participants, facing severe sentences in the courtrooms of Judges Sirica and Gesell, some of the Watergate suspects started to talk. One of the things they started talking about was the break-in of a psychiatrist's office that had occurred ten months earlier in September of 1971, in my jurisdiction in Beverly Hills, California. The purpose of the burglary was to try to steal Daniel Ellsberg's psychiatric files from Dr. Lewis Fielding. This was the same Daniel Ellsberg who had recently released what are known as the "Pentagon Papers" to the New York Times. Ellsberg, who belonged to a think-

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tank in Santa Monica, California, had a hold of the Pentagon Papers which, in his view, undercut all of the high flying rhetoric that was being used to justify our continued participation in the Vietnam War.

From my perspective, the whole Watergate phenomenon started out of the political mismanagement of the Vietnam War. If you remember, President Johnson was driven out of office by the Vietnam War. This was a circumstance inherited by President Nixon, who faced the question of what to do with a mess that was burning up the country and had driven his predecessor out of office. Needless to say, when Ellsberg released these papers, the White House went into some kind of damage control mode. As a result of the release of these papers to the New York Times by Ellsberg, a Special Investigations Unit called "Room 16" was formed in the White House. The purpose of this unit was to find out what was "going on" with Daniel Ellsberg, and it was always conducted under the banner, especially later, of "national security." But from my experience in the Grand Jury proceeding and work with the Watergate Special Prosecutor's office, it became clear to me that the real purpose of breaking into Daniel Ellsberg's office was to get his psychiatric files. Armed with that material, Charles Colson could then run a campaign designed to paint Daniel Ellsberg as a crazy, rather than a patriot.¹ Charles Colson had already planted stories about Leonard Boudine, who was Daniel Ellsberg's lawyer, trying to suggest that Boudine was a communist, and that the release of the Pentagon Papers was really a backdoor communist attempt to screw up our participation in the Vietnam War.

The Special Unit started out with David Young and Egil Krogh, two young people without a lot of experience, each still wet behind the ears. Without much notice, John Ehrlichman, the domestic affairs advisor, directed them to "start this unit and find out everything you can about Ellsberg." Well, the FBI tried to interview Dr. Lewis Fielding, Ellsberg's psychiatrist, to find out what they could, and Dr. Fielding appropriately said, "up yours." Young and Krogh then got permission from Ehrlichman to bring aboard the constitutional equivalent of Ted Bundy, John Wayne Gacy and the Hillside Strangler. I am referring to G. Gordon Liddy and Howard Hunt. Very quickly Hunt, who was ex-CIA, and Liddy, who was ex-FBI, came up with the idea of breaking into the psychiatrist's office, stealing the file and, as Young said in a memo to Ehrlichman, "giving it to Colson so he can put it in the Detroit News." They thought they

1. Charles Colson was a Special Counsel to President Nixon who helped plan the Watergate cover-up and advised Nixon on legal matters related to the Watergate affair. He later served seven months in prison for his role in Watergate.

could start a campaign to trash the reputation of Ellsberg who was about to go on trial in federal court for the unauthorized and felonious criminal release of classified information. This is how nasty this whole thing was.

Because the White House did not want any White House fingerprints on anything, Howard Hunt, who had been active in the Bay of Pigs, contacted a man named Bernard Barker. Barker knew the bunch of Cubans who were later involved in the Watergate break-in itself, one of whom was Eugenio Martinez, whose job had been infiltrate Cuba on behalf of the CIA. The group included Felipe De Diego and people who thought, "when the United States government calls, we answer." Liddy and Hunt then went out to California and sent the Cubans into the psychiatrist's office to look for Ellsberg's file. They botched it—they could not find the file. Dr. Fielding later told me: "I didn't have any files on my clients in terms of what their mental problems were." So, to try to cover it up, they made it look like a two-bit burglar had broken into a doctor's office looking for pills. They threw things all over the place, crow-barred into things, found some pills, threw them around, bailed out, and reported that they could not find anything.

Well, this was long before the Watergate break-in, and nobody found out about it because the Beverly Hills Police Department shortly thereafter picked up a two-bit burglar named Elmer Davis on a burglary in Beverly Hills. This was a commercial burglary, and in the way local police officers tend to do, they said: "Well this is our opportunity to clear all kinds of unsolved business burglaries." So they sat Elmer Davis down in a corner and started putting police reports in front of him one after the other. The BHPD closed the Fielding burglary—conducted by the White House plumbers in order to stop leaks—on the basis that Elmer Davis did it, but they never prosecuted him. He pleaded guilty to something else. The Beverly Hills Police Department thought this matter was closed.

Well, in any event, the Room 16 Unit got away with it for the time being until they got caught in Watergate, and two federal judges put pressure on them. Hunt appeared up in Judge Matt Byrne's courtroom in Los Angeles during the Ellsberg case and testified to the Dr. Fielding break-in. Judge Byrne, because of that and some other gross missteps on the part of the government in connection with the prosecution of Daniel Ellsberg, threw out the Ellsberg case on the ground of outrageous government conduct. So Daniel Ellsberg walked. Parenthetically, the State Department and the Defense Department had both examined the release of the Pentagon Papers, and with respect to 98% of them concluded that there had been no damage to the national security.

Nevertheless, as I said the whole thing popped up again, in Beverly Hills, California. My boss called me upstairs and told me to "get over and listen to Hunt's testimony in federal court." I came back, told him what I had heard, and he called Henry Peterson, who was in charge of the Criminal Division of the United States Department of Justice in Washington, D.C. to find out what Washington was going to do about the matter. Now, by this time of course, Washington was in flames over the political break-in. When we called back, my boss Joe Bush was told that "we're not going to do anything about the Fielding burglary, you handle it." Well, I felt like a guy with a toothpick tackling the Soviet Union when my boss told me to start a grand jury and investigate the whole thing. Holy Moses, I was pretty wet behind the ears myself, but I was smart enough to know that we were getting into a tall mountain. I went to Florida and got the Cubans, went to Washington and subpoenaed Egil Krogh, and we got John Ehrlichman and Charles Colson and dragged them all out to Los Angeles and we conducted a grand jury. The result was that we indicted Ehrlichman for burglary and perjury, and we indicted Egil Krogh, G. Gordon Liddy, and David Young. We also gave immunity to all the Cubans and had them testify against their bosses. The Cubans, through their lawyers, argued that they "were honestly on a national security adventure, authorized by the White House, Howard Hunt and the President: therefore, 'where is our mens rea?'" Interestingly, some time later, the Cubans were convicted by the Watergate Special Prosecution office of the Fielding burglary, and, on appeal, the Circuit Court for the District of Columbia said that the Cubans were entitled to this type of mens rea defense, stated that there was a failure of jury instructions, remanded it for a trial, and the case was dismissed.

In any event, our grand jury was doing its work, and in the process of putting together our case, Archibald Cox called up and alerted us to the fact that he was now "on the ground" and that the Justice Department was out of the whole thing. Cox said, and I believe that he was probably correct, that as far as constitutional matters were concerned, he thought our case was much more important than the Watergate case itself. Now why? Well, by that time the White House was floating the idea that the President of the United States or the Attorney General, the highest levels of the Executive Branch, had the authority to conduct warrantless break-ins of citizen's houses, even in a case where there really was not a foreign agent or a foreign power involved. Archibald Cox thought these claims raised a significant issue: Can the President authorize the break-in of a psychiatrist's office to steal the file of someone on trial in order to give it to the Detroit News? I guess that is national

security in somebody's view, but Cox said he was going to open a federal investigation on this. It was fine with me: I wondered where the federal government had been for a long time. However, this posed all kinds of problems. What do we do with our indictments? As you can imagine, our indictments on the West Coast were big things, but a long time ago I got used to East Coast bias. So we may have been tearing them up out on the West Coast, but now that the East Coast got into it—a little bit late and maybe a dollar short—we had a very complicated problem on our hands. Pretty quickly, the federal government gave immunity to David Young, and we had David Young indicted. Furthermore, the federal government then indicted all of our Cubans, and we had given them immunity.

As an interesting aside, I was playing golf one day, when all of a sudden I got hailed back from about the fifth hole by people running down the fairway, yelling: "Quick, you have an emergency call from Washington D.C.!" I returned to my office where now federal judge Chuck Breyer, who could not be here today, warned: "Hide your files, the FBI is going to come and get your files, they are going to burn your files. You may have the only case left. We are all being fired, they are getting rid of Archie [Cox], we are locked in down here, [Henry] Ruth is holding his ground, and we think we may all go out the window. You are going to have the only Watergate case left."

I thought great, this is wonderful news. You know what I did? I went back and finished my golf game. I figured "it's more East Coast panic, somehow it will be resolved." And, it was. Later, after I spent five years in Washington, I then understood the mentality of the East Coast compared to the West Coast, but that is a whole different story.

In any event, finally the Watergate Special Prosecution force charged everybody, the group that I told you about, for the Fielding-Ellsberg break-in. Joe Busch and I went back and met with Leon Jaworski on March 11, 1974, and we decided just to put our case on hold. As people got convicted in federal court, we would drop our charges. Originally we tried to hold onto the Ehrlichman perjury charge, but finally it became pretty clear that it would just be a case of piling on. The federal government was convicting everybody, the prosecutions had become very complicated with their witnesses being our defendants and vice versa, so we bailed out.

I have heard Mr. Dean talk on occasion about going to the President and suggesting that one way to handle Watergate would be to cut your losses and carve the cancer out of the body. I came to believe on the basis of everything I saw from up close and down and dirty that Nixon *was* the cancer, so no wonder he couldn't cut it out. I still believe to this day, and I haven't heard the tapes, but I think they will probably verify this, that Nixon was behind the Ellsberg burglary.

He is the one who pushed this whole thing, and I will go to my grave believing that he knew exactly what was going on, even though he later came out and said "this was all justified in the name of national security, but I didn't know about it." He claimed that he sort of generally knew what was going on, but didn't know anything about the break-in itself, which was of course Ehrlichman's claim too: that he had generally authorized this attempt to find out what Ellsberg was up to, but didn't know beforehand of the burglary.

This, then, is another side of the case that, interestingly enough, not many people remember. We called it "Watergate West." The break-in of a psychiatrist's office to steal the file of someone who was a defendant in federal court and was looking at life in prison, and to use that file for the public purpose of smearing his reputation, and trying to make him look like a crazy instead of a patriot. So when Mr. Ben-Veniste was running through the list, the "parade of horrors," I certainly think that the Fielding-Ellsberg break-in ranks very high in that parade.

Thanks.