

Nixon Tells Judge He Intended Leak Probe To Be Legal

By Timothy S. Robinson
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President Nixon has said in a letter to a federal judge hearing the Ellsberg burglary case that he intended to use his "fullest authority under the Constitution and the law" to end leaks of classified materials.

The statement was made in a two-page letter written April 29 and made public yesterday as U.S. District Judge Gerhard A. Gesell began hearing pretrial motions by six defendants. They are charged with conspiracy to violate the civil rights of Pentagon Papers co-defendant Daniel Ellsberg's psychiatrist, Dr. Lewis Fielding, by breaking into the doctor's office in Los Angeles in September, 1971.

Attorneys for the defendants, meanwhile, pressed their claims that their clients—former White House aides John Ehrlichman, G. Gordon Liddy, and Charles Colson, and Miamians Bernard L. Barker, Eugenio Martinez and Felipe De Diego—thought they were acting in the interest of national security when the break-in occurred.

Judge Gesell had indicated in meetings with the lawyers that he would be interested to know what, if any, evidence could be offered showing that the President had explicitly ordered the burglary in the interest of national security. Judge Gesell had asked that President Nixon file a letter concerning his knowledge of the burglary.

However, the President reiterated in that letter that he did not have any prior knowledge of the burglary and did not learn of it until about 1½ years after it occurred.

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President Nixon also told Judge Gesell that he had discovered a conversation with Assistant Attorney General Henry Petersen on April 19, 1973, concerning the break-in. A transcript of that conversation, which has not been made public, was turned over to the judge by the President, according to the letter.

Without the President's express approval of the Fielding operation, the attorneys for the defendants were forced to fall back to their claims that their clients might have acted overzealously, but still within the broad presidential directive of plugging leaks for national security reasons, when the break-in occurred.

Said Judge Gesell at one point during the hearing, "my concern is the wisdom of creating a situation where persons who are not law enforcement officers, but with a sense of what they think is right, bust into the homes of private citizens," Gesell told Colson's attorney, David Shapiro, on one occasion.

At another point, he described the case against the six defendants as being one that "is concerned with how much intrusion (the President) can permit of citizens who are not directly involved" in national security investigations, even if the President knew of the break-in in advance. The break-in of Ellsberg's psychiatrist's office has been described as an attempt by the White House to discover if Ellsberg had told the doctor to whom else he had leaked information.

Shapiro said the defendants "had reasonable grounds" to think the break-in was the proper way to gain information from Ellsberg's psychiatrist, and that it was within the power of unindicted co-conspirator E. Howard Hunt—as an aide to the President—to approve such an operation.

Judge Gesell pointed out, however, that the operation was only decided upon after Fielding had twice refused to allow the FBI access to the same information.

The defense argument on national security pretrial motions was only one of several heard yesterday by Judge Gesell in preparation for the June 17 trial. He is expected to rule on several of those motions today, and begin to hear testimony from White House counsel J. Fred Buzhardt concerning the types of classified information to which Ellsberg had access at the time of the break-in.

That testimony will show the White House was also concerned at the time of the break-in that Ellsberg would leak other national security documents to which he had access, Shapiro said.

In other pretrial arguments yesterday:

• Judge Gesell indicated he might dismiss one of five counts against Ehrlichman, in which he was charged with lying to an FBI agent. He said the charge does not even indicate what questions the FBI agents asked Ehrlichman, and was representative of a "cat and mouse" game the FBI plays with people it is investigating.

• Judge Gesell indicated he was considering holding the trial for Felipe De Diego at a later date because of problems arising out of De Diego's being granted immunity by the state of California for testimony concerning the Fielding burglary. The Watergate special prosecutor's office said its attorneys would not use those immunized statements during the trial, but Judge Gesell said that the situation may necessitate an evidentiary hearing before De Diego went to trial that would delay the June 17 trial date.