

President Says That 'Illegal' Ellsberg Break-in
Need Never Have Been Disclosed

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WASHINGTON, Aug. 22 —

President Nixon said today that he had approved a preliminary decision to block disclosure of the break-in at the office of Dr. Daniel Ellsberg's former psychiatrist because the raid by White House "plumbers" had found a "dry hole," barren of evidence against the man charged with leaking the Pentagon papers.

After a 10-day reconsideration, the Justice Department reported the burglary late last April to the judge presiding at the trial of Dr. Ellsberg in Los Angeles. Two weeks later, the judge, William Matthew Byrne Jr., dismissed the charges against Dr. Ellsberg, citing the burglary among the "bizarre events" by which he said the Government had offended "a sense of justice" and destroyed its case.

Yet Mr. Nixon said today that even though the Ellsberg burglary was "illegal, unauthor-

ized" and "completely deplorable," it need never have been disclosed to the judge or the defendants in the trial.

While condemning the Ellsberg raid, Mr. Nixon argued that a shortlived 1970 White House security plan that envisioned similar "illegals" burglaries and interception of mail did not exceed the "inherent power" of the Presidency in national security matters.

Earlier Administrations

He added that during the six years of the Kennedy and Johnson Administrations that immediately preceded his own, "burglarizing of this type did take place" when it was authorized, on a very large scale. There was no talk of impeachment, he said, answering a news conference question whether approval of official burglaries violated his oath of office, "and it was quite well known."

To Nicholas deB. Katzenbach, however, who was Deputy Attorney General in the Kennedy Administration

and Attorney General under President Johnson, President Nixon's charge was a surprise and a mystery.

"If official burglary did take place, I did not know about it," Mr. Katzenbach said in a telephone interview from his vacation home. "It's inconceivable to me it could have taken place without my knowledge. If such things did happen, the President should say who authorized them. I do not know what he is talking about."

President Nixon volunteered at his news conference that a higher level of wiretapping was officially reported in the Kennedy and Johnson Administrations than in the Eisenhower and Nixon Administration.

Mr. Nixon referred obliquely to a Supreme Court decision last year that rejected the Administration's claim of an inherent authority to use electronic surveillance, without court authorization, in domestic security cases.

Then referring to the police burglaries outlined in the 1970

security plan, he said that the Supreme Court's opinion last year "indicates inherent power in the Presidency to protect the national security in cases like this."

Robert Kennedy Cited

After mentioning "burglarizing of this type" between 1961 and 1966, he continued:

"I should also like to point out that when you ladies and gentlemen indicate your great interest in wiretaps, and I understand that the heights of the wiretaps was when Robert Kennedy was Attorney General in 1963. I don't criticize him, however. He had over 250 in 1963, and of course the average in the Eisenhower Administration and the Nixon Administration is about 110."

If Robert Kennedy had been able to discover Lee Harvey Oswald's plan to assassinate President Kennedy, the Attorney General's brother, Mr. Nixon went on, "It would have been worth it."

Mr. Nixon's comments on the

administration of justice began in response to a question from Dan Rather, White House correspondent of the Columbia Broadcasting System, about Mr. Nixon's brief meeting with Judge Byrne last April when the Ellsberg trial was under way.

Mr. Rather asked whether the approach to Judge Byrne, in which a Presidential assistant asked the judge if he wanted to head the Federal Bureau of Investigation, constituted "a subtle attempt to bribe the judge" in the Ellsberg case.

Mr. Nixon bristled even before the question was posed, when Mr. Rather said that he was inquiring, "with due respect to your office."

"That would be unusual," Mr. Nixon interrupted.

"I'd like to think not," Mr. Rather replied.

In answering the question, Mr. Nixon said that he met with Judge Byrne "for perhaps one minute," on April 5, 1973, in

San Clemente, and that John D. Ehrlichman, then his chief domestic assistant, had pointedly avoided mentioning the Ellsberg case in discussing the F.B.I. opening.

Mr. Nixon also put the burden on Judge Byrne for talking with the White House during the pendency of a case that involved other White House officials directly. Mr. Ehrlichman had asked the judge whether an unrelated discussion would "in any way compromise his handling of the Ellsberg case," the President said. "Judge Byrne made the decision that he would talk to Mr. Ehrlichman."