

# Plumbers' Plea of National Security

## Washington

An attorney for Charles W. Colson, claiming that the law on warrantless searches was "less than crystal clear" in 1971, argued yesterday that the six defend-

ants in the White House plumbers case have a right to defend themselves on the ground that their burglary of the office of Daniel Ellsberg's psychiatrist was a "national security" matter.

The attorney, David I. Shapiro, announced in U.S. District Court that he had subpoenaed White House counsel J. Fred Buzhardt to describe what classified documents would be relevant and readily available to show that there were legitimate security concerns involved in the plumbers' investigation of Ellsberg.

The arguments before Judge Gerhard A. Gesell centered around the view—voiced by attorneys for the six defendants, who include Colson, a former presidential aide, and John D. Ehrlichman, president Nixon's former domestic counselor—that the accused have the right to show that they undertook the break-in in the belief that they were on a foreign intelligence operation authorized by the President.

Gesell reserved any decision on the argument until attorneys for the special Watergate prosecutor's office rebut that argument today, but the judge repeatedly expressed skepticism at Shapiro's approach.

William H. Merrill, an associate Watergate prosecutor, depicted the issue yesterday as that of a simple burglary. "That's what this case is all about—law and order," Merrill said. The six defendants were indicted by a federal grand jury last March for their role in conspiring to burglarize the

Beverly Hills office of Dr. Lewis Fielding, who was Ellsberg's psychiatrist. The break-in took place on Sept. 3, 1971.

In a letter made public by Gesell yesterday, Mr. Nixon again noted that he had not authorized the Fielding break-in but added that "it was my intent, which I believe I conveyed, that the fullest authority of the President under the Constitution and the law should be used if necessary to bring a halt to newspaper leaks in 1971."

Yesterday's discussion led to some sharp, but polite, exchanges between Shapiro and Gesell.

Gesell accused the attorney "of trying to overcome the court" with issues "that aren't before this courtroom."

Later, he noted that federal courts have "repeatedly said that ends don't justify the means."

"If they busted in there," the judge asked, "didn't they know that what they were doing was wrong?"

"Instead of doing something wrong," Shapiro responded, "the defendants



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**WILLIAM MERRILL**  
Associate prosecutor

thought that they were doing something right."

Before adjourning the session, Gesell expressed a general concern about "the wisdom of creating a precedent in allowing men without express authorization from the President to bust into a private citizen's home."

Gesell expressed annoyance with one of the perjury charges brought against Ehrlichman by the special prosecutor's office. The issue arose over a statement Ehrlichman made last spring to an FBI agent who inquired about the Pentagon Papers case.

The judge noted that there was no transcript of the interview, and that the FBI agents usually prepared summaries of interviews "a day or two" after such interviews. He also said that the FBI "plays cat and mouse all the way" with possible defendants during interrogations and broadly hinted that the perjury charge would not stand up.

Gesell has set June 17 as the tentative date of trial.

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