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Letters to the Editor

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A Nation in 'Clear and Terrible Danger'

To the Editor:

The testimony given on July 24 and 25 by Mr. Ehrlichman and by his counsel, Mr. Wilson, suggesting that legislation on national security matters made legal the burglary of the offices of Daniel Ellsberg's psychiatrist is by far the most frightening, and enlightening, thing to come out of the Watergate hearings.

Some years ago, I suggested that the Nixon Administration might reasonably be considered a kind of peculiarly American, and peculiarly modern, form of fascist institution. (The Nation, May 4 and June 8, 1970). I wrote then in the heat of a violent political debate in which I was personally involved. To prove my case, I cautioned against looking for literal parallels between Nazis (for example) and Nixon and his aides, and I used tentative and novel definitions of "fascist" that some may have considered strained and that I myself would never have used in my scholarly writings on the history of National Socialism in Germany.

After listening to this current testimony, I begin to fear that yesterday's groping polemic may have already become today's commonplace.

In March 1933, the German Reichstag, under considerable pressure, passed a piece of legislation known as the Enabling Act—more precisely, the Law for the Relief of the Distress of People and State. This act allowed Hitler to rule by decree, subject to certain checking provisions that were never observed, on all matters pertaining to the welfare of the German people in a crisis situation.

For many years Nazi decrees carried as a preamble a reference to the Enabling Act. In this manner, the Weimar Constitution was "legally" rendered inoperative, although it was never formally abrogated. German courts today, in trying Nazi criminals, have

ruled that acts committed in violation of the Weimar Constitution were criminal, despite the apparent authority of the Enabling Act. Unfortunately, it took the deaths of millions to make this legal ruling possible.

It now appears, if we are to believe Mr. Ehrlichman and his counsel, that Congress, in granting the President certain specific powers in the name of national security, has in fact and unknown to itself passed an American "enabling act." Mr. Ehrlichman even suggested that in an extreme situation Presidential agents might have had the right to hold a gun to the head of Dr. Fielding in order to obtain his records on Daniel Ellsberg. Mr. Ehrlichman's counsel suggested, as he strained to find legal precedents for his novel views, that in certain cases homicide might be justified by the same doctrine.

Apparently, the extent to which the President's agents may violate constitutional rights is determined only by the President's definition of national security—that is, if he should bother to make the effort to control his agents at all. Why, after all, should we lose sleep over a little matter like burglary?

If the views of Mr. Wilson and Mr. Ehrlichman are not shared by the President, he ought to denounce them immediately, with an appropriate expression of horror and disgust.

If, as I suspect, Mr. Nixon shares these views, then it is about time for those who once protested against the use of words like "Nazi" and "fascist" to describe the Nixon regime to admit that they were wrong (at least in spirit) and that a clear and terrible danger confronts this nation.

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New York, July 25, 1973

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