

# Nixon Reportedly Issued Ellsberg Break-In Defense

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By SEYMOUR M. HERSH

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WASHINGTON, May 13—President Nixon, in a letter sent two weeks ago to a Federal judge, declared that the White House plumbers unit was operating under a general delegation of his Presidential authority when it broke into the office of Dr. Daniel Ellsberg's former psychiatrist in 1971, highly reliable sources said today.

The letter was sent to Judge Gerhard A. Gesell of United States District Court, who will preside over the trial of six men indicted in the break-in. Judge Gesell placed the letter under seal April 30.

Lawyers interviewed today said the President's letter could prove significant in the pending trials—now set for June 17—because under the criminal statute involved, the burden of proof is upon the prosecutors to prove that the "intent" of the defendants was to commit a crime.

## Defendants Aided

With the submission of Mr. Nixon's letter, some lawyers said, the defendants have greatly improved their chances of successfully arguing that their intent was to follow the President's instructions on a matter of national security.

Other lawyers suggested that the President's letter would have minimal impact on the trial because of the intent of the Watergate prosecutors to focus on what they believe to be the goal of the defendants involved in the burglary—to get politically damaging information about Dr. Ellsberg for later use.

In his previous public statements, Mr. Nixon has not discussed the plumbers in terms of his delegation of Presidential authority. He came close to that kind of an assessment on May 22, 1973, when he noted that

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"because of the emphasis I put on the crucial importance of protecting national security, I can understand how highly motivated individuals could have felt justified in engaging in specific activities that I would have disapproved had they been brought to my attention."

"Consequently, as President," Mr. Nixon added, "I must and do assume responsibility for such actions despite the fact that I, at no time, approved or had knowledge of them."

In the two-page letter, according to some who knew about it, President Nixon said that he had made the full delegation of his Presidential powers in an attempt to stem a series of newspaper leaks that he had perceived to be a threat to national security and foreign relations.

One source, who has had access to the precise wording of the letter, said Mr. Nixon had written, in effect, that it was his intention, which he believed he had conveyed to his subordinates, that the fullest authority under the Constitution and the law should be used, if necessary, to bring a halt to the disclosures.

## No Comment on Contents

Gerald L. Warren, the deputy White House press secretary, confirmed today that a private communication had been sent by the President to Judge Gesell, but refused to comment on its contents.

Last March 7 a Federal grand jury here indicted John D. Ehrlichman and Charles W. Colson, two former high-ranking White House aides, and four other men for their role in the Sept. 3, 1971, break-in at the Beverly Hills, Calif., office of Dr. Lewis F. Fielding.

Dr. Fielding had previously refused to discuss Dr. Ellsberg with agents from the Federal Bureau of Investigation.

Dr. Ellsberg, a former Defense official, has said that he provided the Pentagon papers to the press. The New York Times began publishing the top-secret material—a history of the United States involvement in South Vietnam—on June 13, 1971.

The six defendants were accused under a 19th century Federal civil rights statute of

conspiring to "oppress, threaten and intimidate" Dr. Fielding by secretly entering his office "without legal process, probable cause, search warrant or other lawful authority," thus denying Dr. Fielding his Fourth Amendment rights that protect citizens against unreasonable searches and seizures.

## "Bona Fide Investigation"

In a series of pretrial motions filed with Judge Gesell, the defendants have contended that they carried out the break-in—as one brief argued—in the belief that it "was a bona fide Government investigation that was not clearly illegal or improper in September, 1971, because of its national security purpose."

Judge Gesell has agreed to hear arguments next week on the constitutional questions raised by the Fielding burglary.

The President's letter was sent in response to an order issued last month by Judge Gesell, who told the special Watergate prosecutor's office to submit any evidence of Presidential involvement in or knowledge of the break-in to the court.

The Time's sources said that the prosecutor's office had apparently relayed the request to the White House. Mr. Nixon's letter to the court, the sources said, was accompanied by a series of White House prepared transcripts of Oval Office conversations apparently meant to buttress the assertions made in the President's letter.

## Nixon's Aug. 22 Comment

In a news conference last Aug. 22, the President, in referring to the Fielding break-in, cited recent Supreme Court decisions that, he said, "indicate inherent power in the Presidency to protect the national security in cases like this." A similar argument had been made by Mr. Ehrlichman and his attorney, John J. Wilson, during the televised Watergate hearings last summer.

However, the President also depicted the break-in as "illegal, unauthorized, as far as I was concerned, and completely deplorable" during his Aug. 22 news conference. At the time, the White House was known to be discouraging any indictments in the Fielding break-in case on the ground that such prosecution would jeopardize national security.

The edited White House transcripts released two weeks ago show that Mr. Nixon was distressed upon first being told on March 17, 1973, of the break-in. "What in the world? what in the name of God?" he exclaimed.

The transcript for that day also shows that he later discussed with John W. Dean 3d, then his White House counsel, using "National Security" to justify the break-in case of

Justice Department queries. During another conversation about the break-in on March 21, the date Mr. Nixon talked extensively about alleged "hush money" payments, Mr. Dean depicted the break-ins as "this conspiracy to burglarize the Ellsberg doctor's office."

## Intention Termed Issue

Lawyers said today that the questions and contradictions about what Mr. Nixon knew or believed in 1973 were not central to the defendants' case. At issue, they said, is the simple question of what the defendants intended to accomplish by going inside Dr. Fielding's office.

"If their intent was not to act unlawfully," one constitutional lawyer said, "the Government's got real problems with this case."

In a bench conference with attorneys made public last week, Judge Gesell indicated that he believed the President has the right to direct an investigation in disregard of the Fourth Amendment in the field of foreign affairs. "My assumption at this point [is that] he does," the judge said.

During that conference, David I. Shapiro, attorney for Mr. Colson, hinted at the defendants' approach to the constitutional issue by suggesting that "perhaps the evidence may very well show that there was a direction or a general authority given [by President Nixon] to do everything that was necessary in order to accomplish a certain end."

Lawyers interviewed by The Times divided on the key constitutional issue in question—does the President of the United States have the right to conduct unreasonable searches within the meaning of the Fourth Amendment in the area of foreign intelligence or the conduct of foreign affairs?

"There'll be a good fight," one lawyer said, in reference to next week's hearing.

President Nixon initially set up the plumbers, or special investigations unit, in July, 1971, under the direction of Egil Krogh Jr. and David R. Young Jr., with Mr. Ehrlichman named the over-all supervisor of the group. The Fielding break-in team was headed by E. Howard Hunt Jr. and G. Gordon Liddy, both of whom participated in the June 17, 1972, burglary at the offices of the Democratic National Committee at the Watergate complex here.