

# Ellsberg Break-In Letter

## Nixon Wrote Judge Citing Motivation

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A letter by President Nixon to the judge in the Ellsberg break-in conspiracy case declares that White House operatives acted under a broad delegation of presidential authority when they burglarized a Beverly Hills psychiatrist's office on Sept. 3, 1971, informed sources said yesterday.

But the President's written explanation, the sources said, falls short of satisfying U.S. District Court Judge Gerhard A. Gesell's request for substantive evidence that the defendants acted specifically on national security instructions from Mr. Nixon.

Instead, the letter reflects Mr. Nixon's often repeated public assertions that his subordinates could have misinterpreted a general directive to protect national security as a go-ahead signal to carry out an illegal operation, according to sources familiar with the document.

The existence of the two-page letter, which was first disclosed yesterday by The New York Times, was confirmed by Gesell's office and the Watergate special prosecutor's office, both of which refused to discuss its contents.

The White House refused to comment on the letter, or even to confirm its existence.

However, it was learned that copies were sent two weeks ago to the attorneys for the six conspiracy defendants: former presidential adviser John D. Ehrlichman, former White House special counsel Charles Colson, Watergate conspirator G. Gordon Liddy, and three Cuban-Americans accused of carrying out the burglary, Bernard L. Barker, Eugenio Martinez and Felipe De Diego.

The genesis of Mr. Nixon's letter was a closed-door conference on April 19 among Gesell, prosecuting attorneys and defense lawyers.

At that meeting, according to a transcript made public last week, Gesell asked the prosecutor for any information indicating that Mr. Nixon did or did not "authorize this (Ellsberg) search or have

See PROSECUTORS, A4, Col. 1

### PROSECUTOR, From A1

knowledge of the search before it was undertaken—or in any way directly or indirectly approved the search."

The basis of his request, Gesell said, was to determine "whether we have fuzzy [presidential] instructions or general instructions or impressionistic instructions..."

The answer, he said, would determine "whether or not the defense is available to the defendants that they were acting in accordance with a presidential directive to conduct the search..."

The defendants are scheduled to go on trial June 17 in connection with the burglary of the office of Dr. Lewis F. Fielding, once a psychiatrist for Pentagon papers defendant Daniel Ellsberg.

Gesell's request was conveyed to the White House by the special prosecutor's office and within 10 days the judge had received and put under seal the President's reply.

A source familiar with the reply said the thrust of the President's statement was that Mr. Nixon had given his subordinates the full weight of executive power to put an end to news leaks of highly classified documents such as the Pentagon papers—but that the authority was to be used within the framework of the Constitution and statutory law.

"The letter is completely in keeping with what the President has publicly said all along," a source said.

In a televised press conference May 22, 1973, Mr. Nixon accepted full responsibility for the break-in, but disavowed prior knowledge or approval.

He said that "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."

Mr. Nixon's news conference disclaimer of prior knowledge appears to be supported by the edited White House transcripts of taped presidential conversations, which were released on April 30.

In a March 17, 1973, taped conversation with former White House counsel John W. Dean III, Mr. Nixon is depicted as learning for the first time about what Dean termed "the other potential problem" of Ehrlichman's, namely the Ellsberg break-in.

When told of the details of the burglary, Mr. Nixon is quoted in the transcript as saying, "What in the world—what in the name of God was Ehrlichman having something (unintelligible) in the Ellsberg (unintelligible)?"

When Dean explained the burglary was connected to the Pentagon papers case, Mr. Nixon said, "This is the first I ever heard of this. I, I (unintelligible) care about Ellsberg was not our problem."

However, later in the same conversation, the President seemed to respond enthusiastically to Dean's suggestion that the burglary might be explained on a national security basis.

"National security. We had to get information for national security grounds," the President is quoted as saying.

"I think we could get by on that," Dean responded.

The defense attorneys in the case have adopted the position that the break-in was carried out because members of the White House "plumbers" unit believed they were legitimately protecting national security. Ehrlichman has expanded on that theme, claiming that the burglary fell within Mr. Nixon's legal authority to protect the public interest.

Some of those attorneys reportedly interpret Gesell's April 19 request as the basis of an inclination to throw out the charges if there is strong evidence Mr. Nixon personally backed the operation.

However, the special prosecutors are known to have interpreted Gesell's remarks as meaning that the defense lawyers should either offer proof of a presidential directive or back away from the national security defense.

The judge will hear arguments on the constitutional questions of the case in a hearing scheduled for Monday.

In any case, the special prosecutor's office is known to be prepared to argue on Monday that even if a presidential directive were proven, criminal intent could still be proven on the basis of the Fourth Amendment—which protects citizens against unreasonable search and seizure.