

STATEMENT OF DEFENDANT ON THE OFFENSE AND HIS ROLE

In describing the offense to which I have pleaded guilty, and the nature of my role in it, I am hampered by the fact that my present evaluation is totally antagonistic to the understanding I had at the time. I feel unable to set forth what happened without continuing on to discuss how my present contrary appraisal developed. And the process of reappraisal has been so extensive and so agonizing that my present evaluation is very firmly fixed, which makes recounting my feelings at the time of the offense all the more difficult. I have been aided by a review of the files in the Executive Office Building on December 13 and 14, 1973.

This case involves the work of the Special Investigation Unit established within the White House to deal with the problem of unauthorized disclosure of classified information.

My role began on July 15 or 16, 1971, in San Clemente. At that time, John Ehrlichman informed me that the President wanted me to perform an urgent assignment in response to the unauthorized disclosure of the Pentagon Papers. The entire resources of the executive branch were to be brought to bear on this task, and I was to make certain that the relevant departments and agencies treated the matter as one of highest priority.

Because Dr. Daniel Ellsberg had been identified as responsible for the leak of the Pentagon Papers, he was to be

a vital part of the inquiry. Specifically, his motivations, his possible collaborators, and his potential for further disclosures were to be determined, to the greatest extent possible. In that connection, Mr. Ehrlichman instructed me that the President had directed that I read his book, Six Crises, and particularly the chapter on Alger Hiss, in preparation for this assignment. The message that I drew from this chapter was the President's concern that we proceed with respect to the Pentagon Papers and Dr. Ellsberg with a zeal comparable to that he exercised as a Congressman in investigating Alger Hiss. Mr. Ehrlichman instructed me that David Young of Dr. Kissinger's staff would be working with me on this assignment and that we should form a small unit for the purpose. Mr. Young was to devote full time to the unit. My participation was to be part time, for I was to continue my ongoing responsibilities, particularly solidification of the Vietnam drug program and creation of a Cabinet Committee to fight international narcotics traffic. As it happened, these latter assignments occupied most of my time in August. Finally, Mr. Ehrlichman instructed me that the activities of the unit were to be impressed with the highest classification and kept secret even within the White House staff. To handle our assignment, Mr. Young and I received some of the most sensitive security clearances.

Mr. Young and I arranged for space in the Executive Office Building, and elaborate special security systems were

installed. Mr. E. Howard Hunt was assigned to the unit on the basis of his extensive prior experience with the Central Intelligence Agency. Mr. G. Gordon Liddy, with whom I had worked on matters of narcotics law enforcement and gun control while he was at the Treasury Department, came to the unit because of his prior experience with the Federal Bureau of Investigation.

A damage assessment prepared by the CIA prior to establishment of the unit reported grounds to suspect that a full set of the Pentagon Papers had reached the Soviet Embassy. I was early informed that similar intelligence had been furnished by the FBI. Yet The New York Times had received only a partial set. This development reinforced suspicion that Dr. Ellsberg or one of his collaborators, if any, may have had some sort of foreign involvement.

On July 24, I was summoned to the President's office with Mr. Ehrlichman. This meeting followed by one day the appearance in The New York Times of the fallback position of the United States in the SALT talks at Helsinki. The President appeared deeply troubled by this unauthorized disclosure and directed me to expand the work of the unit to cover it. He described the matter of unauthorized disclosures as intolerable, directed the extensive administration of polygraph tests, and made clear that the protection of national security information must outweigh any individual reluctance to be polygraphed. He discussed the creation of a new security classification which would condition access to national security information upon advance

agreement to submit to polygraphing. He was deeply concerned that any further disclosure of such information could only undermine the SALT and Vietnam peace negotiations. His intense determination was evident. He instructed that further leaks would not be allowed and made me feel personally responsible for carrying out this instruction.

The work of the unit went forward with regard to the SALT leak, the Pentagon Papers, Dr. Ellsberg, and some other unauthorized disclosures. Polygraphing was immediately begun (although on a far more limited scale than originally envisaged). Dr. Ellsberg's extensive knowledge of classified national security information in addition to the Pentagon Papers was ascertained. The intensity of the national security concern expressed by the President fired up and overshadowed every aspect of the unit's work.

It was in this context that the Fielding incident, the break-in into the offices of Dr. Ellsberg's psychiatrist, took place. Doubtless, this explains why John Dean has reported that I told him that instructions for the break-in had come directly from the Oval office. In fact, the July 24 meeting was the only direct contact I had with the President on the work of the unit. I have just listened to a tape of that meeting, and Dr. Ellsberg's name did not appear to be mentioned. I had been led to believe by the White House Statement of May 22, 1973, that the President had given me instructions regarding Dr. Ellsberg in the July 24, 1971, meeting. It must be that

those instructions were relayed to me by Mr. Ehrlichman. In any event, I received no specific instruction or authority whatsoever regarding the break-in from the President, directly or indirectly.

As I stated in the affidavit I filed before Judge Byrne, Mr. Ehrlichman gave the unit authority to engage in covert activity to obtain information on Dr. Ellsberg. The precise nature of that authorization and the extent to which it specifically covered the break-in are matters that will be the subject of testimony in the prosecution pending in California and that may be involved in a prosecution in the District of Columbia. So are the origination of the idea of a break-in and the manner of its formulation. I have expressed the desire, to which the Special Prosecutor has acceded, to defer any testimony until after sentencing. I would simply say that I considered that a break-in was within the authority of the unit and that I did not act to foreclose one from occurring despite the opportunity to do so. Indeed, I was under the clear impression that such operations were by no means extraordinary by the CIA abroad and, until 1966, by the FBI in this country -- an impression confirmed by former officers of both agencies on the unit's staff.

The break-in came about because the unit felt it could leave no stone unturned in the investigation of Dr. Ellsberg. The aims of the operation were many:

a) to ascertain if Dr. Ellsberg acted alone or with collaborators;

b) to ascertain if Dr. Ellsberg in fact had any involvement with the Soviets or other foreign power;

c) to ascertain if Dr. Ellsberg had any characteristics that would cause him to make further disclosures;

d) to ascertain if prosecution of Dr. Ellsberg would induce him to make further disclosures that he otherwise would not.

The potential uses of the above information were also multiple. Primary, of course, was preventing further disclosures by Dr. Ellsberg and putting an end to whatever machinery for disclosure might have been developed. It was also thought, particularly by E. Howard Hunt, that the sought information could be useful in causing Dr. Ellsberg himself to declare his true intentions. Finally, there is the point that has been most stressed in the current investigative process -- the potential use of the information in discrediting Dr. Ellsberg as an anti-war spokesman.

My best recollection is that I focused on the prevention of further leaks by Dr. Ellsberg and the termination of any machinery he may have established for such disclosures. That was the use most central to the assignment of the unit as I understood it. But my precise focus is fundamentally not important to my guilt or innocence, because at the time of the operation I did not consider it necessary to assign relative weightings to the potential uses of the sought information. All of them were dictated by the national security interest as I then understood it.

To my knowledge, the break-in netted nothing. When I saw the photographs that had been taken of the damage done, I immediately felt that a mistake had been made. The visibility of physical damage was somehow disturbing beyond the theoretical impression of covert activity. I recommended to Mr. Ehrlichman that no further actions of that sort be undertaken. He concurred and stated that he considered the operation to have been in excess of his authorization.

My participation in the work of the unit progressively diminished, and for all intents and purposes ended in November, 1971. I was recalled to the unit for a few days in December, 1971, in connection with the India-Pakistan conflict leak. In that period, I was asked to authorize a wire tap in connection with a highly sensitive aspect of that leak. I declined and was thereupon removed from the unit the same day. I learned in reviewing the unit's files on December 13, 1973, that the tap was effected after my removal along with another one in the same investigation. These are the only instances of wire-tapping by the unit of which I am aware, and I first learned of them on December 13.

In August, 1972, I was deposed at the Department of Justice in connection with the grand jury investigation of the Watergate break-in. I had been repeatedly instructed by Mr. Ehrlichman that the President considered the work of the unit a matter of the highest national security and that I was under no circumstances to discuss it. I was specifically advised by John Dean that the Fielding incident was not relevant to and

would not be touched upon in the deposition. The Assistant United States Attorney who conducted the deposition himself advised me that he was not interested in pursuing national security matters.

In the course of the deposition, I was asked questions relating to travel by Messrs. Hunt and Liddy. I answered the questions by interpreting them as excluding national security and thus the travel of Liddy and Hunt to California for the Fielding incident. This interpretation was highly strained, reflecting a desperate effort on my part to avoid any possible disclosure of the work of the unit in accordance with the instructions of the President that had been relayed to me by Mr. Ehrlichman.

Subsequently, in April 1973, when Judge Byrne requested persons having knowledge of the Fielding incident to file affidavits with him, I determined that a disclosure of my role was imperative. Because I was still operating under the instructions of the President that the work of the unit was not to be revealed under any circumstances, I sought the advice of Attorney General-designate Elliot Richardson and requested Mr. Ehrlichman to seek the President's permission for me to explain my involvement in the incident. Mr. Ehrlichman informed me on May 2 that the President had authorized me to make a statement, and I submitted an affidavit setting forth details of my role in the Fielding incident on May 4. In describing the travel to California by Messrs. Liddy and Hunt, that affidavit was inconsistent,

and intentionally so, with the answers I had given in my deposition (except for the strained interpretation I have described).

I was indicted for false declarations on the basis of those answers in October of this year. In moving to dismiss the indictment, my counsel argued, with my approval, that the rule of Barr v. Matteo (providing official immunity from suit) extended to criminal prosecutions, and that the authority and discretion possessed by an official in my position embraced false statements to protect classified national security information from unauthorized disclosure.

The Court rejected that argument as fundamentally incompatible with the very existence of our society. That ruling, and the questions asked by the judge in the course of the argument, spurred my reappraisal of my whole conception of the Fielding incident.

While I early concluded that the operation had been a mistake, it is only recently that I have come to regard it as unlawful. I see now that the key is the effect that the term "national security" had on my judgment. The very words served to block critical analysis. It seemed at least presumptuous if not unpatriotic to inquire into just what the significance of national security was.

When the issue was the proper response to a demonstration, for example, it was natural for me to question whether the proposed course was not excessive. The relative rankings of the rights of demonstrators and the protection of law and order

could be debated, and the range of possible accommodations explored, without the subjects of patriotism and loyalty even rising to the level of consciousness. But to suggest that national security was being improperly invoked was to invite a confrontation with patriotism and loyalty and so appeared to be beyond the scope and in contravention of the faithful performance of the duties of my office.

Yet what is national security? I mentioned that all of the potential uses of the information sought in the Fielding incident were consistent with my then concept of national security. The discrediting of Dr. Ellsberg, which today strikes me as repulsive and an inconceivable national security goal, at the time would have appeared a means of blocking the possibility that he would become such a popular figure that others possessed of classified information would be encouraged to emulate him. More broadly, it would serve to diminish any influence he might have in mobilizing opposition to the course of ending the Vietnam war that had been set by the President. And that course was the very definition of national security. Freedom of the President to pursue his planned course was the ultimate national security objective.

The fact that I do not recall this use as my personal motivating force provides scant comfort. I can recollect that I would have accepted the rationalization I have just described. The invocation of national security stopped me from asking the question, "Is this the right thing to do."

My experience in the months since my resignation from Government, during which I have been under intense investigation and multiple indictments, has also affected my view. I have throughout this most difficult period been free, first because I had not yet been indicted and later on recognizance. And I perceive this freedom as the very essence of our society and our system.

This freedom for me is not a privilege but a right protected by our Constitution. It is one of a host of rights that I as an American citizen am fortunate to share with Dr. Ellsberg and Dr. Fielding. These rights of the individual cannot be sacrificed to the mere assertion of national security.

National security is obviously a fundamental goal and a proper concern of any country. It is also a concept that is subject to a wide range of definitions, a factor that makes all the more essential a painstaking approach to the definition of national security in any given instance.

But however national security is defined, I now see that none of the potential uses of the sought information could justify the invasion of the rights of the individuals that the break-in necessitated. The understanding I have come to is that these rights are the definition of our nation. To invade them unlawfully in the name of national security is to work a destructive force upon the nation, not to take a protective measure. I have been recalling the U. S. personnel in Vietnam with whom I served in the military and with whom I visited

during my trips there as a civilian official. I believe they would agree with my present understanding that the Fielding incident cannot be justified by even the most honestly held belief that it might contribute to the expeditious ending of the war by protecting the ongoing negotiations. I believe they would conclude that they were fighting on behalf of a country which prized the rights of Dr. Fielding and not one which so easily disregarded them.

I see now that the sincerity of my motivation was not a justification but indeed a contributing cause of the incident. I hope that the young men and women who are fortunate enough to have an opportunity to serve in Government can benefit from this experience and learn that sincerity can often be as blinding as it is worthy. I hope they will recognize that the banner of national security can turn perceived patriotism into actual disservice. When contemplating a course of action, I hope they will never fail to ask, "Is this right?"

By:

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