

Ronald Reagan Presidential Library Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Meese, Edwin III: Files
Folder Title: Presidential Pardon (2)
Box: OA 9456

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

26 JUN 1981

June 25, 1981

MEMORANDUM FOR ED THOMAS

FROM: HERB ELLINGWOOD ^{HE}

I phoned, this date, Miss Carol Gardner regarding pardon for Mr. Ron Freeman. Mr. Freeman is a state prisoner. I explained to Miss Gardner that the President could not influence the granting of state executive clemency. She wanted the President to call the Governor of Tennessee and urge clemency.

Miss Gardner is the girlfriend of Mr. Freeman. They plan to be married soon. She has written a book with regard to their experiences which is to be published soon.

She did want us to know that she has been very active in Republican affairs on behalf of the President, and she has received much mail from the White House thanking her for those efforts.

✓ F Mandel

LAW OFFICES
BRUCE C. BEREANO

195 DUKE OF GLOUCESTER STREET
ANNAPOLIS, MARYLAND 21401
267-0410 ANNAPOLIS AREA
269-5330 BALTIMORE AREA

2004 37TH STREET, N.W.
WASHINGTON, D. C. 20007
261-1100

18 JUN 1981

June 18, 1981

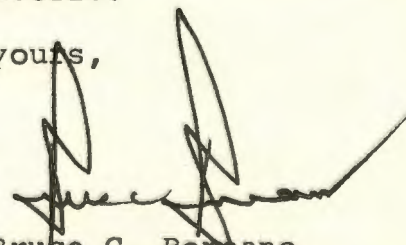
Mr. Edwin Meese, III
Counsellor to the President
White House
Washington, D.C. 20500

Dear Mr. Meese:

At the request of Mr. Mark Siegal, I am enclosing herewith a self-explanatory letter which Arnold M. Weiner, Esquire, and I have delivered today to Fred F. Fielding, Esquire, Counsel to the President, on behalf of our client, former Governor Marvin Mandel.

We most deeply appreciate your interest and attention to this matter, and stand ready to provide any additional information or to be of any further assistance you may desire.

Most respectfully yours,



Bruce C. Bereano

BCB:mra
Enclosure

cc: Arnold M. Weiner, Esquire

MELNICOVE, KAUFMAN & WEINER, P. A.

JOSEPH S. KAUFMAN
ARNOLD M. WEINER
ROBERT E. CAHILL
FRANKLIN GOLDSTEIN
LOUIS B. PRICE
ISAAC M. NEUBERGER
M. ALBERT FIGINSKI
DAVID L. SNYDER
RICHARD V. FALCON
GARY I. STRAUSBERG
GERARD P. MARTIN

36 SOUTH CHARLES STREET
SIXTH FLOOR
BALTIMORE, MARYLAND 21201

(301) 332-8500
(WRITER'S DIRECT DIAL NO.)

BERNARD S. MELNICOVE
(1911-1971)

GLENN E. BUSHEL
IRA C. COOKE
JAMES D. NEILSON
PHYLLIS W. BROWN
STANLEY A. SNYDER
RICHARD RUBIN
ROBERT C. FOWLER
RICHARD C. B. WOODS
JERRY R. O'CONOR
IRA L. ORING

June 17, 1981

332-8525

Fred F. Fielding, Esquire
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Fielding:

We write to you on behalf of our client, former Maryland Governor Marvin Mandel, who presently is confined at the Federal Prison Camp at Eglin Air Force Base, Florida, where he is serving a three-year sentence.

Former Governor Mandel entered Eglin Prison Camp on May 15, 1980, to begin serving his sentence. Considering the credit and computation of good time under Title 18, Section 4161 of the United States Code, Mr. Mandel already has served sixteen (16) months of his sentence, and we understand that, continuing on such a basis, he will be eligible for release sometime in May of 1982.

At Mr. Mandel's request, we would appreciate the opportunity to meet with you at your earliest convenience to discuss whether the President might exercise his Constitutional authority under Article II, Section 2, in order for Mr. Mandel to be released from incarceration earlier than May of 1982.

In Mr. Mandel's case, the only truly applicable reasons for having imposed a prison sentence were the

Fred F. Fielding, Esquire

Page Two

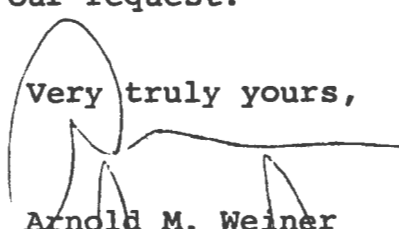
June 17, 1981

punishment and deterrent factors. Mr. Mandel has already been incarcerated for more than a year, and the purposes of confinement have now been fulfilled more than adequately.

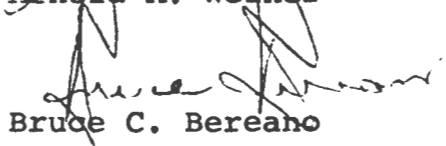
Considering the history and developments of Mr. Mandel's case, together with the recent releases of other persons similarly situated and convicted of analogous offenses, there is equity and merit in assisting Mr. Mandel as well. There is also, we submit, broad based support from community and government leaders, as well as citizens in the State of Maryland and in our County, who agree and support the belief that something should be done to end Mr. Mandel's incarceration.

On behalf of former Governor Mandel, we thank you in advance for the careful and serious consideration we know you will give to our request.

Very truly yours,



Arnold M. Weiner



Bruce C. Bereano

AMW/lsh

cc: Mr. Edwin Meese, III

THE WHITE HOUSE

WASHINGTON

May 4, 1981

Mr. Ira Glasser
Executive Director
American Civil Liberties Union
132 West 43rd Street
New York, New York 10036

Mr. John Shattuck
Director, Washington Office
American Civil Liberties Union
600 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Gentlemen:

The President has asked that I respond to your letter of April 16, 1981, concerning the pardons of W. Mark Felt and Edward S. Miller and the President's views on warrantless searches for national security reasons.

The pardons of Messrs. Felt and Miller, as the President's statement of April 15, 1981 makes clear, were based on a careful review of all relevant circumstances surrounding their convictions. These pardons were proper exercises of the President's authority under article II, section 2 of the Constitution, and the President does not share your fear that the FBI and other intelligence agencies will view the pardons as a "signal that they should feel free to violate [constitutional] rights whenever they believe that the national security is threatened."

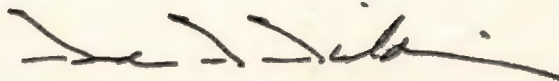
With respect to the more general concerns addressed by your letter, President Reagan fully supports, and is sworn to preserve, protect and defend, the right of Americans to be secure in their homes "against unreasonable searches and seizures," as guaranteed by the fourth amendment. At the same time, the President recognizes his sworn duty to preserve and protect the national security of the United States -- upon which, as is evident, the preservation of all rights guaranteed by the Constitution ultimately rests.

Accordingly, President Reagan believes it would be neither necessary nor prudent to issue any blanket directive that warrantless searches for national security reasons will in all cases be deemed "unreasonable" within the meaning of the fourth amendment. Plainly, warrantless searches in the

intelligence field should be permitted only when interests of national security so require. However, the President does not believe that he can or should, consistent with his first duty to preserve the security of the nation itself, announce a policy -- more rigid than any adopted by Congress, the courts or previous Administrations -- that national security will never be sufficient justification for warrantless searches.

President Reagan appreciates your interest in these significant issues, and your concern that they be properly resolved. As citizens, we may have good-faith disagreements about where the balance should be struck between vital, but at times conflicting, interests. Nonetheless, maintaining the dialogue is itself important -- and itself one of the most cherished aspects of our civil liberties.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Fred F. Fielding', with a long horizontal flourish extending to the right.

Fred F. Fielding
Counsel to the President

PRESIDENT PARDONS 2 EX-F.B.I. OFFICIALS IN 1970'S BREAK-INS

HAILS THEIR BUREAU RECORDS

Felt and Miller Regard Decision as Vindication of Their Actions —Prosecutor Distressed

By ROBERT PEAR

Special to The New York Times

WASHINGTON, April 15 — President Reagan announced today that he had granted unconditional pardons to two former officials of the Federal Bureau of Investigation who were convicted of conspiring to violate the constitutional rights of Americans. The two men authorized Government agents to break into homes in search of antiwar radicals in the early 1970's.

Mr. Reagan said that W. Mark Felt, who was the second highest official in the

Text of Reagan statement, page A22.

bureau, and Edward S. Miller, who was chief of the intelligence division, had served the bureau and the nation "with great distinction."

"To punish them further — after three years of criminal prosecution proceedings — would not serve the ends of justice," the President said in a statement released this afternoon by the White House.

Idea of White House

Mr. Felt and Mr. Miller had not formally applied for pardons. Justice Department and White House officials said that the pardons had been initiated by the White House. The normal procedure is for a defendant to apply for such clemency. Justice Department rules stipulate that before requesting a pardon a person should wait three to five years from the date of conviction.

The two defendants, who were found guilty last November after a seven-and-a-half week trial in Federal District Court here, were appealing their convictions.

They were found guilty of authorizing bureau agents to break into the homes of friends and relatives of fugitive members of the Weather Underground organization in 1972 and 1973. The bureau was trying to find clues to the whereabouts of Weatherman radicals who had

taken responsibility for bombings at the United States Capitol, the Pentagon and other public buildings.

Signed Before Shooting

Mr. Reagan signed the "full and unconditional" pardons on March 26, four days before he was shot in the chest by a gunman. But Mr. Felt, Mr. Miller and their attorneys said that they had learned only today of the President's action. White House lawyers said there was no particular reason for not having announced the pardons before the shooting.

Mr. Felt, now 67 years old, who was acting associate director at the time of the break-ins, said today that the pardons had "tremendous" symbolic value. "This is going to be the biggest shot in the arm for the intelligence community for a long time," he said.

Mr. Miller, 57 years old, who had served in the bureau for 24 years, said that the pardons were "a very fine thing for the present F.B.I." because they would erase any reluctance that agents might have to "do their job 100 percent."

John W. Nields Jr., the chief prosecutor at the Felt-Miller trial, said that he was deeply distressed and surprised by President Reagan's action. "Nobody spoke to me about it," he said. "I would warrant that whoever is responsible for the pardons did not read the record of the trial and did not know the facts of the case."

Mr. Felt, who had served in the bureau for more than 31 years, said: "I feel very excited and just so pleased that I can hardly contain myself. I am most grateful to the President. I don't know how I'm ever going to be able to thank him. It's just like having a heavy burden lifted off your back. This case has been dragging on for five years." He said that acceptance of the pardons did not constitute an acknowledgment of guilt in any sense.

In his statement, President Reagan, recalling that Jimmy Carter had granted a pardon to thousands of draft evaders of the Vietnam War era, said: "We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our nation." Most pardons are granted after a defendant has served time in prison or paid a fine, but there were no such conditions attached to Mr. Reagan's action today.

Thomas A. Kennelly, a lawyer for Mr. Miller, said at a news conference in his office here that the pardons represented "a complete expungement of any taint of guilt." Further, he said, they "restore both defendants to exactly where they were before the indictment was returned" on April 10, 1978.

Dropped Case Against Director

L. Patrick Gray 3d, Acting Director of the bureau at the time of the break-ins, was indicted with Mr. Felt and Mr. Miller on the same charge. However, the Justice Department formally dropped the case against Mr. Gray last December, saying that the evidence against him was "unconvincing."

Mr. Reagan said the record demonstrated that Mr. Felt and Mr. Miller had "acted not with criminal intent, but in the belief that they had grants of authority reaching to the highest levels of Government."

Mr. Nields, the prosecutor at the trial, took exception to that statement, saying that "the pardons, done in secret, are trivial in comparison with the jury verdict, which was done in a court of law pursuant to established procedures."

Neither Mr. Felt nor Mr. Miller had been sentenced to serve any time in prison. Mr. Felt had been fined \$5,000 and Mr. Miller had been fined \$3,500.

Defense Attorneys' Plans

Mr. Kennelly said that he would move to have Mr. Miller's appeal dismissed. Brian P. Gettings, an attorney for Mr. Felt, said that he and his client had not decided whether to pursue their appeal.

Many law enforcement officials and former bureau agents had written letters to Mr. Reagan and lobbied privately with

aides to encourage support for the pardons. Mr. Kennelly, Mr. Miller's attorney, said that Edwin Meese 3d, counselor to the President, had broached the idea of a pardon in a telephone call to him on Jan. 30.

Thomas P. DeCair, a spokesman for Attorney General William French Smith, quoted Mr. Smith as saying, "I wholeheartedly approve" of the pardons. Mr. DeCair said that there had been consultations between Mr. Smith and White House officials, but he declined to give details.

At their trial, Mr. Felt and Mr. Miller contended that they did not need the approval of the Attorney General or President Nixon for the searches, which were known in the bureau as "black bag jobs" and "surreptitious entries." The defendants acknowledged that no search warrants had been issued, but insisted that the entries were justified on the ground of national security, because the Weather Underground had connections to hostile foreign powers.

Asked today what he would do if confronted with a similar situation again, Mr. Felt said, "Knowing what I know now, I think I would authorize a surreptitious entry where there was foreign involvement." However, he noted that the bureau had clarified its procedures and now required the Attorney General's approval for foreign-intelligence searches directed against American citizens.

Pardoning the F.B.I.'s Past

Although Mark Felt and Edward Miller were found guilty of conspiring to violate the civil rights of innocent Americans, they deserved the executive clemency President Reagan has now extended. The equally deserving jury in their case and the nation, however, deserved better than a gratuitous revision of the record by the President.

Mr. Felt and Mr. Miller were high-ranking F.B.I. officials — indeed, the highest ever convicted of a crime — with many years of loyal and otherwise unblemished national service. Apparently in recognition of this, a Federal judge let them off with light fines last Christmas. Now the President's pardon just about wraps up this tragic episode.

Compassion was also warranted in the light of last month's settlement with the victims of the Bureau's transgressions. The Government agreed to pay \$10,000 damages to each of five persons who had phones tapped, homes burglarized or mail opened during the F.B.I.'s frantic and futile pursuit of the Weather Underground nearly a decade ago.

The victims, it needs to be emphasized, were not themselves suspects but merely friends or acquaintances of the persons pursued. Privacy is beyond financial measure, but the civil and criminal judgments amounted to more recompense — and a greater vindication of freedom — than anyone could have imagined possible during those anxious times.

Yet though the President's mercy was becoming, his explanation in exonerating the defendants was excessive. As he said, they acted in honest belief that they were guarding the home front, even though the law demands that lawful means be used. True also, they responded to official inquiry when they might have let subordinates take the rap.

But the President went on to say that according to the record, "they acted not with criminal intent but in the belief that they had grants of authority reaching to the highest levels of Government." And that flatly contradicts a jury's finding. Judge William Bryant specifically instructed the jury to acquit if it thought the defendants believed, even mistakenly, that they acted with such higher authority.

Final forgiveness for this Government abuse has yet to be earned by the Government itself. The Reagan Administration needs to support the campaign by William Webster, the F.B.I. Director, for a legislative charter that would spell out the powers of his police agents and restraints upon them.

Meanwhile, the courageous prosecution of this case stands as a potent deterrent to officials who may be tempted, even by patriotic zeal, to break the law. Overzealous officers should never again be so sure that all their actions are politically and legally immune.

President Pardons 2 Ex-FBI Officials Guilty in Break-Ins

By Lou Cannon
and Laura A. Kiernan
Washington Post Staff Writers

President Reagan yesterday pardoned two former top FBI officials convicted of authorizing illegal break-ins, saying that they had served the bureau and the nation "with great distinction."

In a five-paragraph statement issued at the White House, Reagan granted full and unconditional pardons to W. Mark Felt and Edward S. Miller, convicted Nov. 6 of authorizing the break-ins during the Nixon administration's search for radical opponents of the Vietnam war.

"I certainly owe the Gipper one," Miller said at a news conference in the crowded downtown office of his lawyer, Thomas A. Kennelly.

The pardons were engineered by Reagan's White House counselor and closest aide, Edwin Meese III, who called Kennelly on Jan. 30 — 10 days after Reagan took office — and invited lawyers for the two former bureau employees, who had not even applied for a formal pardon, to submit memos to the White House outlining the reasons that they should not be punished.

A close friend of the president said that Reagan initiated the action, believing that the agents had not knowingly done anything wrong.

"The president wanted to do it, and he did it," the source said.

Reagan once told an aide that he thought the agents were being penalized unfairly because they believed they were acting according to law. In the pardon statement, the president compared the plight of the two convicted men to that of the draft evaders pardoned by President Carter.

"Four years ago thousands of draft evaders and others who violated the Selective Service laws were unconditionally pardoned by my predecessor," Reagan said. "America was generous to those who refused to serve their country in the Vietnam war. We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threat-

Felt and Miller were convicted of violating the rights of friends and relatives of the Weather Underground, a radical and sometimes violent organization opposed to the Vietnam war. U.S. District Court Judge William B. Bryant spared both men prison sentences, but fined Felt \$5,000 and Miller \$3,500.

The fines had been stayed pending appeal of their sentences; now they will not have to be paid.

Miller called the president's action "a very fine thing for the FBI," saying

it would quell any reluctance by bureau employees to do their jobs fully.

Agents had supported both men — a defense organization of current and former agents had raised more than \$1.5 million to aid Felt, Miller and 140 other agents involved in the investigations.

Felt and Miller were fined four days after charges were dropped against L. Patrick Gray III, acting director of the FBI at the time of the illegal break-ins. This action increased sympathy for Felt and Miller on the grounds that subordinates were being charged for crimes for which their superior was not.

Some of the bitterness toward the Carter Justice Department for proceeding against Felt and Miller surfaced again when Brian P. Gettings, Felt's attorney, said he did not think "any Department of Justice would be idiotic enough to do what these people did to Felt and Miller."

In pardoning Felt and Miller, Reagan said that to punish them further after three years of criminal proceedings "would not serve the ends of justice."

"Their convictions... grew out of the good-faith belief that their actions were necessary to preserve the security interests of our country," Reagan said. "The record demonstrates that they acted not with criminal intent, but in the belief that they had grants

of authority reaching to the highest levels of government.

"America was at war in 1972, and... Felt and Miller followed procedures they believed essential to keep the director of the FBI, the attorney general and the president of the United States advised of the activities of hostile foreign powers and their collaborators in this country. They have never denied their actions, but, in fact, came forward to acknowledge them publicly in order to relieve their subordinate agents from criminal actions."

The pardons were dated March 26 and apparently their issuance was delayed by the March 30 assassination attempt on the president. Meese asked that the pardons be announced yesterday in time for an address he was making to law enforcement officials on the West Coast.

Both Felt and Miller were clearly elated.

"I'm so pleased I can hardly contain myself," Felt said. "I don't know how I'm ever going to thank him."

The D.C. Court of Appeals recently indefinitely suspended Felt from practicing law. A District bar official said yesterday that he expected that the court would vacate its order.

Speaking for both pardoned men, attorney Kennelly gave this view of the pardon: "We thank God and we thank President Reagan that these two good men have been vindicated at last."

4-16-81

Reagan Pardons 2 Ex-FBI Aides

Felt, Miller Authorized Break-Ins

Clemency Initiated By the White House

By Jeremiah O'Leary
Washington Star Staff Writer

President Reagan yesterday granted "full and unconditional pardons" to two former FBI officials who were convicted last November of authorizing illegal break-ins during the investigations of radicals nearly 10 years ago.

W. Mark Felt, former acting associate director, and Edward S. Miller, former chief of the domestic intelligence division, had been ordered to pay fines of \$5,000 and \$3,500, respectively, but were given no jail sentences by District Court Judge William B. Bryant. Both cases were under appeal.

After a 7½-week trial in U.S. District Court here, Felt and Miller had been found guilty of authorizing bureau agents to break into the homes of friends and relatives of fugitive members of the Weather Underground organization in 1972 and 1973. The bureau was trying to find clues to the whereabouts of Weatherman radicals who had taken responsibility for bombings at the Capitol, the Pentagon and other public buildings.

The prosecution of the two officials had aroused resentment among FBI agents, who staged an unprecedented demonstration of support at District Court at the outset of the trial. The charges of approving illegal break-ins against former Director L. Patrick Gray III were dismissed by Judge Bryant last December when prosecutors told the court that the evidence against him was unconvincing.

In his statement yesterday, Reagan said Felt and Miller had served the nation and the FBI with "great distinction" and that to punish them further after three years of criminal prosecution would not serve the ends of justice.

Their convictions grew out of their good faith belief that their actions were necessary to preserve the security interests of our country, Reagan said. The record demonstrates that they acted not with criminal intent but in the belief that they had grants of authority reaching to the highest levels of government.

Reagan said America was at war in 1972 and that Felt and Miller had acted to keep the president, the attorney general and the FBI director advised of the activities of hostile foreign powers and their collaborators in this country. He said the two ex-FBI officials had never denied their actions but acknowledged them publicly to relieve their subordinate agents from prosecution.

Four years ago, Reagan said, thousands of draft evaders and others who violated the Selective Service laws were unconditionally pardoned by my predecessor. America was generous to those who refused to serve their country in the Vietnam War. We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our nation.

Felt, 67, said yesterday that the pardons had "tremendous" symbolic value. "This is going to be the biggest shot in the arm for the intelligence community for a long time," he said.

Miller, who was chief of the bureau's intelligence division at the time of the break-ins, said the pardons were "a very fine thing for the present FBI" because they would erase any reluctance that agents might have to "do their job 100 percent."

Felt served in the bureau for more than 31 years. Miller, 57, had a 24-year career in the bureau.

John W. Nields Jr., the chief prosecutor at the Felt-Miller trial, said he was distressed and surprised by Reagan's action. "Nobody spoke to me about it," he said. "I would warrant that whoever is responsible for the pardons did not read the record of the trial and did not know the facts of the case."

Felt and Miller had not formally applied for pardons. Justice Department and White House officials said the pardons had been initiated by the White House. The normal procedure is for a defendant to apply for such clemency. Felt said that acceptance of the pardons did not constitute an acknowledgment of guilt in any sense.

Reagan signed the pardons March 26, four days before he was shot in the chest by a gunman. But Felt, Miller and their attorneys said they had learned of the president's action only yesterday.

Thomas A. Kennelly, a lawyer for Miller, said at a news conference in his office here that the pardons represented "a complete expungement of any taint of guilt." Further, he said, they "restore both defendants to exactly where they were before the indictment was returned" on April 10, 1978.

Kennelly said that he would move to have Miller's appeal dismissed. Brian P. Gettings, a lawyer for Felt, said that he and his client had not decided whether to pursue their appeal.

Closing the Book

The White House has just revealed that on March 26, four days before he was shot, President Reagan signed a full and unconditional pardon for former FBI officials W. Mark Felt and Edward S. Miller. The Carter Justice Department got the two indicted three years ago for authorizing warrantless searches in 1972 and 1973 of premises they thought might contain information on the whereabouts of the Weathermen. The officials were finally convicted last November. Their trial was one of the last ugly scenes in a 15-year-long civil war over the proper role and standing of law enforcement in this country. The President did well to close the book.

The Weathermen, to recall a bit of ancient history, were those charming children of the upper middle class who went underground, fought for liberation from capitalist America and boasted that they had set a bomb to the U.S. Capitol in 1971. In pursuit of their goals they developed a number of contacts with unfriendly foreign powers.

Mr. Felt and Mr. Miller thought that the kids were coming to pose something for a national security problem for the country. They therefore thought that the law and the relevant regulations, which were somewhat fuzzy at the time, permitted them to authorize break-ins in order to gather intelligence on the Weathermen from the homes of friends and relatives with whom the fugitives might have been in contact.

A New York City jury thought that the officials' authority was not good enough, and therefore convicted them of the crime of conspiring to violate the civil rights of Americans. Thus the U.S. government succeeded in making an exercise in vindictiveness out of what should have been treated as the most difficult and ambiguous of policy problems.

In a liberal society it's certainly important that the government be strictly limited in its right to break into private homes. It is also very important that a liberal society maintain its ability to protect itself from basic subversion; otherwise, to state the obvious, the freedom of all those private homes goes down the tubes pretty quickly. On the one hand, the effort at self-protection can come to pose a threat to liberties; on the other, the privacy of a liberal society can for its

part make the job of self-protection especially difficult.

So there will always have to be rules forcing the government to show cause for its intrusions, and there will always be justifiable exceptions to the rules. This kind of balancing act works when there is a rough consensus among us on what constitutes a clear and immediate danger. Messrs. Felt and Miller, along with the other officials and agents involved in these break-ins, had the bad luck to be working during years when the anti-Vietnam war protests had just about shattered this consensus.

At the height of the antiwar protests, government tried to use its power against parts of the antiwar movement; in the years following, when Watergate and the collapse of Saigon had done their work, the tables got turned and the federal government was persuaded to use its power to get the cops. New and tighter regulations were drawn up to govern national security searches. The FBI began pushing for an even more comprehensive congressional charter laying out its rights and duties. The FBI court prosecutions were begun.

But new rules, admirably drawn though they may be, can't ever really settle our security dilemma. Someone is always in the end going to have to be trusted with the discretion to authorize intelligence gathering in this country; the next time that trust suffers a major collapse you can be sure we will hear protests against the system once again. And the court prosecutions were something worse: They insisted on finding individual criminals to skewer instead of facing the hard policy choices at stake. In the process, these cases managed to do true harm to our federal law enforcement capacities.

President Reagan's message was not vindictive in tone. "America was generous to those who refused to serve their country in the Vietnam war," he recalled referring to those pardons of 1977: "we can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our nation." That sounds just about right. It is high time he stopped picking away at the politics of the decade past and went on to cope with the formidable intelligence and law enforcement problems that are upon us.

Attorney General Backs FBI Pardons but Ex-Prosecutor Disagrees

AS 4 POST
4-17-81

By George Lardner Jr.
Washington Post Staff Writer

Attorney General William French Smith voiced his approval yesterday of the pardons President Reagan granted to two former FBI officials, but the chief prosecutor who handled the case charged that the move "strikes at the heart" of constitutional government.

Smith said he would not even have put the high-ranking ex-FBI men, W. Mark Felt and Edward S. Miller, on trial. They were convicted last Nov. 6 of conspiracy for authorizing illegal searches — "black bag jobs" — at the homes of friends and relatives of radical Weather Underground fugitives in the early 1970s.

Speaking on NBC-TV's "Today" show, the attorney general said he had been consulted about the pardons and agreed with them even though they did not go through customary Justice Department review. Smith said the decision to put the men on trial was "a very close call" to begin with.

who had been chief of the domestic intelligence division, were found guilty after an eight-week trial.

The prosecutors contended that the surreptitious searches were illegal — and that Felt and Miller knew they were illegal — because they were carried out without warrants and were directed at innocent citizens.

Chief U.S. District Court Judge William B. Bryant had instructed the jurors that they could acquit Felt and Miller if the jurors felt the two men "reasonably and in good faith" believed the FBI still had specific authority from the president or the attorney general to conduct surreptitious entries.

At the White House yesterday, acting press secretary Larry Speakes caused a stir when he declared under persistent questioning that Reagan granted the pardons because he felt the jury had been wrong.

Speakes said the president "clearly felt

president's actions as a comment on the jury or on the conviction.

"The president was not passing judgment on the rightness or wrongness of a jury," Speakes told a reporter. "He was simply making a personal decision that an act of clemency was the proper action."

The action was receiving other interpretations outside the White House. In San Francisco, 34-year-old attorney Fran Schreiber said she felt "betrayed by the government."

While still a law student at New York University eight years ago, Schreiber was living in an apartment that FBI agents broke into and searched twice. She said the government was interested in her files because she had helped in the criminal defense of numerous Weather Underground members.

Staff writer Lou Cannon and special correspondent Carol Pogash contributed to this article.

"Had I been attorney general at that time, I would not have initiated those prosecutions," Smith said.

The lawyer who served as special prosecutor in the case, John W. Nields, disagreed sharply. He also protested against the secrecy with which the pardons were prepared.

He said the trial was held, despite stiff resistance from certain quarters of the Carter administration, to establish "the central proposition of democracy: that the government is second to the people and its powers are limited by the Constitution.

"The jury and the court collectively affirmed this proposition," Nields, now in private practice, said in a telephone interview. But "the executive branch pardoning the executive branch for violating the rights of the people strikes at the heart of this proposition."

Felt, once the FBI's No. 2 man, and Miller,

... that the decision of the jury and the decision of the court was not correct."

Speakes did not spell out the extent to which Reagan might have studied the trial record, but he said White House counselor Fred Fielding and presidential counselor Edwin Meese III "studied the excerpts from the record extensively."

Prosecutor Nields pointed out that those excerpts had been ones supplied by defense lawyers and were undoubtedly selective.

"They never talked to anybody from the prosecution side," he said of the White House. "Which is completely contrary to normal procedure for pardons." In normal cases, he said, "the prosecution and the judge are invariably consulted."

High administration officials were displeased with other aspects of Speakes' remarks. The acting press secretary amended them later to say he had been mistaken in describing the

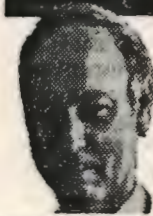
FRIDAY, APRIL 17, 1981

"JERRY FORD WAS A PIKER. REAGAN GIVES
SPECIAL CITATIONS WITH HIS PARDONS"



4-17-81

FBI Pardons Handled Deftly By President



President Reagan's pardon of two former FBI officials, convicted of conspiring to violate the constitutional rights of American citizens in authorizing illegal break-ins during the Vietnam war, is not likely to create any great public furor. The manner in which Reagan couched his action should assure that.

The president, in pardoning W. Mark Felt and Edward S. Miller of clearing FBI agents to break into the homes of relatives and friends of radical anti-war Weatherman fugitives, was deft in justifying the step. He offered it as a sort of balancing out of the pardon or "amnesty" granted thousands of draft evaders four years ago by then President Jimmy Carter.

"America was generous to those who refused to serve their country in the Vietnam war," Reagan said. "We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our nation."

That is a sentiment that probably would be echoed by a majority of Americans who want to put the whole divisive experience of the Vietnam war behind them and behind their country, with as few lasting scars as possible. At the same time, however, a valid distinction can be drawn between the offense of draft evasion by individual young citizens, many of whom took issue with the Vietnam war on moral grounds, and high public officials infringing on the rights of citizens when legal procedures existed to achieve the searches.

In any event, the Felt and Miller presidential pardons are certain to provide a considerable morale boost not only to the FBI but to all other governmental investigative and intelligence agencies. Many of their agents doubtless have felt hamstrung by the experience of ranking officials being convicted who, as Felt and Miller contended in court, were acting on justifiable broad grounds of national security.

Indeed, both Felt and Miller in welcoming their pardons seemed to interpret them as some kind of blan-

ket vindication of their actions. Felt, the No. 2 man in the FBI at the time of the break-ins, said the pardons would be of "tremendous" symbolic value and "the biggest shot in the arm for the intelligence community for a long time." And Miller, former head of the FBI's intelligence division, said the pardons were "a very fine thing for the present FBI" because they would remove any reluctance among agents to "do their job 100 percent."

But according to Fred Fielding, the counsel to President Reagan who along with Edwin Meese, the presidential counselor, prepared the pardons for Reagan, there was no intent on the president's part to suggest an unshackling of the FBI. "If the president had wanted to do that," Fielding says, "there are other ways. He did hope it would improve the morale of these groups."

Since the Felt and Miller offenses in 1972 and 1973, the attorney general's specific approval is now required for any FBI searches against American citizens bearing on national security or foreign intelligence. But the intelligence community has been known to end-run such requirements in the past. It would not be surprising if agents took the Felt and Miller pardons as an unspoken green light for future investigative corner-cutting.

Reagan, according to Fielding, had been thinking even before his election in November of pardoning Felt and Miller, and theirs were his first presidential pardons. The customary procedure has been for persons convicted to apply through a regular Justice Department procedure, but Reagan did not wait for any appeal for clemency from the two men. That presidential initiative in itself may be taken by some in the intelligence community as a wink to go back to its more free-wheeling habits of the Vietnam war era.

The power of presidential pardon is an absolute one spelled out in the Constitution as a carryover from English law, and most presidents have used it sparingly. Only former President Gerald Ford's pardon of Richard Nixon has aroused much public indignation in recent times, and even then there was little challenge voiced to the wisdom of such power residing in the president.

In this instance, the matter likely will be of interest principally to intelligence-gatherers, civil libertarians and their lawyers. But it is important that the Felt and Miller pardons be seen by everyone as actions forgiving those two individuals, not what they were convicted of doing, and not as any signal or even hint that what they did is going to be tolerated in the Reagan administration.

Original

Pursuant to the grant of authority in Article II, Section 2 of the Constitution of the United States, I have granted full and unconditional pardons to W. Mark Felt and Edward S. Miller.

During their long careers, Mark Felt and Edward Miller served the Federal Bureau of Investigation and our Nation with great distinction. To punish them further -- after three years of criminal prosecution proceedings -- would not serve the ends of justice.

Their convictions in the U. S. District Court, on appeal at the time I signed the pardons, grew out of their good faith belief that their actions were necessary to preserve the security interests of our country. The record demonstrates that they acted not with criminal intent, but in the belief that they had grants of authority reaching to the highest levels of government.

America was at war in 1972, and Messrs. Felt and Miller followed procedures they believed essential to keep the Director of the FBI, the Attorney General, and the President of the United States advised of the activities of hostile foreign powers and their collaborators in this country. They have never denied their actions, but, in fact, came forward to acknowledge them publicly in order to relieve their subordinate agents from criminal actions.

Four years ago thousands of draft evaders and others who violated the Selective Service laws were unconditionally pardoned by my predecessor. America was generous to those who

Page 2

refused to serve their country in the Vietnam War. We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our Nation.

THE WHITE HOUSE
WASHINGTON

April 14, 1981

Ed:

I've made a couple of more
factual corrections on the
statement. I think you ought
to check in tomorrow morning
prior to your speech in case
we've caught a couple of more
mistakes.

Ken Khachigian

2-12-81
4-14-81

Pursuant to the grant of authority in Article II, Section 2 of the Constitution of the United States, I have granted full and unconditional pardons to W. Mark Felt and Edward S. Miller.

During their long careers, Mark Felt and Edward Miller served the Federal Bureau of Investigation and our Nation with great distinction. To punish them further -- after ~~two and a half~~ ^{three} years of criminal prosecution proceedings -- would not serve the ends of justice.

Their convictions in the U. S. District Court, on appeal at the time I signed the pardons, grew out of their good faith belief that their actions were necessary to preserve the security interests of our country. The record demonstrates that they acted not with criminal intent, but in the ~~belief~~ belief that they had grants of authority reaching to the highest levels of government.

America was at war in 1972, and Messrs. Felt and Miller followed procedures they believed essential to keep the Director of the FBI, the Attorney General, and the President of the United States advised of the activities of hostile foreign powers and their collaborators in this country. They have never denied their actions, but, in fact, came forward to acknowledge them publicly in order to relieve their subordinate agents from criminal actions.

Four years ago thousands of draft evaders and other ~~of~~ ^{who} violated the Selective Service laws were unconditionally pardoned by my predecessor. America was generous to those who

refused to serve their country in the Vietnam War. We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was threatening our Nation.

14-00000
4-14-81

Pursuant to the grant of authority in Article II, Section 2 of the Constitution of the United States, I have granted full and unconditional pardons to W. Mark Felt and Edward S. Miller. ^{Felt}
~~Messrs. Felt and Miller~~ ^{During their long careers, marks + Edward Miller} served the Federal Bureau of Investigation and ^{our} ~~their~~ Nation with great distinction. To punish them further -- after two and a half years of criminal prosecution proceedings -- would not serve the ends of justice.

Their convictions in the U.S. District Court, on appeal at the time I signed the pardons, grew out of their good ^{belief} ~~faith~~ ^{That their} actions to preserve the security interests of our ^{is were necessary} country. The record demonstrates that they acted not with criminal intent, but in the clear belief that they had grants of authority reaching to the highest levels of government.

America was at war in 1972, and Messrs. Felt and Miller followed procedures they believed essential to keep the Director of the FBI, the Attorney General, and the President of the United States advised of the activities of hostile foreign powers and their collaborators in this country. They have never denied their actions, but, in fact, came forward to acknowledge them publicly in order to relieve their subordinate agents from criminal actions.

Four years ago thousands of draft evaders and others who violated the Selective Service laws were unconditionally pardoned by my predecessor. America was generous to those who

refused to serve their country in the Vietnam War. We can be no less generous to two men who acted on high principle to bring an end to the terrorism that was ~~beginning to~~ threaten^{ing} our Nation.

In the last few years, foreign adversaries have been given mixed signals about America's intentions. Our intelligence community was unquestionably weakened through a series of proceedings that simply went too far. The actions I have taken with regard to Messrs. Felt and Miller are not only right for them individually, but, and this I believe deeply, are right for the long-term interests of the United States.

We need your active participation in a joint effort to move the reality of the world closer to the ideals of human freedom and dignity.

As friends, you can depend on the United States to be in the forefront of the search for world peace. You can depend on the United States to remain steadfast in its commitment to human freedom and liberty. And you can also depend on the United States to be sensitive to your own concerns and aspirations, to welcome your advice, to do its utmost to resolve international differences in a spirit of cooperation.

The problems of the world will not be easily resolved. Yet the well-being of each and every one of us—indeed our mutual survival—depends on their resolution. As President of the United States I can assure you that we intend to do our part. I ask you to join us in a common effort based on mutual trust and mutual respect.

Thank you.

NOTE: The President's remarks were videotaped by the United States Information Agency for broadcast to 26 nations on January 20.

Presidential Proclamation of Pardon

Proclamation 4483. January 21, 1977

GRANTING PARDON FOR VIOLATIONS OF
THE SELECTIVE SERVICE ACT, AUGUST 4, 1964 TO MARCH 28, 1973

*By the President of the United States
of America*

A Proclamation

Acting pursuant to the grant of authority in Article II, Section 2, of the Consti-

tution of the United States, I, Jimmy Carter, President of the United States, do hereby grant a full, complete and unconditional pardon to: (1) all persons who may have committed any offense between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act or any rule or regulation promulgated thereunder; and (2) all persons heretofore convicted, irrespective of the date of conviction, of any offense committed between August 4, 1964 and March 28, 1973 in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, restoring to them full political, civil and other rights.

This pardon does not apply to the following who are specifically excluded therefrom:

(1) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, involving force or violence; and

(2) All persons convicted of or who may have committed any offense in violation of the Military Selective Service Act, or any rule or regulation promulgated thereunder, in connection with duties or responsibilities arising out of employment as agents, officers or employees of the Military Selective Service system.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of January, in the year of our Lord nineteen hundred and seventy-seven, and of the Independence of the United States of America the two hundred and first.

JIMMY CARTER

[Filed with the Office of the Federal Register,
1:04 p.m., January 21, 1977]

Jan. 21

Administration of Jimmy Carter, 1977

Executive Order Relating to Proclamation of Pardon

Executive Order 11967. January 21, 1977

RELATING TO VIOLATIONS OF THE SELECTIVE SERVICE ACT, AUGUST 4, 1964 TO MARCH 28, 1973

The following actions shall be taken to facilitate Presidential Proclamation of Pardon of January 21, 1977:

1. The Attorney General shall cause to be dismissed with prejudice to the government all pending indictments for violations of the Military Selective Service Act alleged to have occurred between August 4, 1964 and March 28, 1973 with the exception of the following:

(a) Those cases alleging acts of force or violence deemed to be so serious by the Attorney General as to warrant continued prosecution; and

(b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

2. The Attorney General shall terminate all investigations now pending and shall not initiate further investigations alleging violations of the Military Selective Service Act between August 4, 1964 and March 28, 1973, with the exception of the following:

(a) Those cases involving allegations of force or violence deemed to be so serious by the Attorney General as to warrant continued investigation, or possible prosecution; and

(b) Those cases alleging acts in violation of the Military Selective Service Act by agents, employees or officers of the Selective Service System arising out of such employment.

3. Any person who is or may be precluded from reentering the United States

under 8 U.S.C. 1182(a)(22) or under any other law, by reason of having committed or apparently committed any violation of the Military Selective Service Act shall be permitted as any other alien to reenter the United States.

The Attorney General is directed to exercise his discretion under 8 U.S.C. 1182(d)(5) or other applicable law to permit the reentry of such persons under the same terms and conditions as any other alien.

This shall not include anyone who falls into the exceptions of paragraphs 1(a) and (b) and 2(a) and (b) above.

4. Any individual offered conditional clemency or granted a pardon or other clemency under Executive Order 11803 or Presidential Proclamation 4313, dated September 16, 1974, shall receive the full measure of relief afforded by this program if they are otherwise qualified under the terms of this Executive Order.

JIMMY CARTER

The White House,
January 21, 1977.

[Filed with the Office of the Federal Register,
1:05 p.m., January 21, 1977]

The Energy Shortage

Statement Announcing Initiatives To Deal With the Shortage. January 21, 1977

As many Americans know from direct personal experience, this Nation is confronted by near-critical shortages in natural gas supplies. This has been one of the coldest winters in our history. Electric utilities are experiencing record demand. Great stress has been placed on supplies of alternative fuels for heating.

Plants have been forced to close down in a number of States currently affecting over 200,000 workers. An equal number

of children have been kept out of schools because of nat As a former Governor the extent of the pro governments which are ing to deal with the more concerned about in human suffering th severe winter weather

In order to deal with prompt and coordin Schlesinger, as my pe tive, Senator Adlai Ste sentative John Dingell the respective Senate committees having juril ral gas, Chairman Ric the members of the Fe mission, and consumer White have today me tives of the Nation's to obtain a current me age and to identify th to deal with the situ gency basis.

The industry indic work cooperatively wi in dealing with the cris the Government will u of its authority to resp minimize the adverse ation. I have instruct to work with congr develop emergency le augment our legal n equitably our availab tect property and sa and safety of our peop

Some affirmative been undertaken to situation. The Federal has extended emerger more intrastate natur interstate system. The ment has agreed to m ral gas available on a The Federal Energy

MEMORANDUM

This memorandum recommends that President-elect Reagan, as soon as practicable after his Inauguration, grant a pardon to Mr. W. Mark Felt and Mr. Edward A. Miller, the two former high FBI officials recently convicted of violating the civil rights of friends and relatives of Weatherman fugitives. The background of and reasons for this recommendation follow.

Mr. Felt and Mr. Miller were indicted in April of 1978 along with former FBI Director L. Patrick Gray, III. The assumption here is that the President-elect would never have authorized this prosecution to begin with and will not want the Justice Department under his Administration to continue efforts to support the convictions. According to new accounts, the present Justice Department may have decided to dismiss the pending indictment of severed co-defendant, Gray prior to January 20, 1981. However, no such consideration will be shown to Messrs. Felt and Miller who are scheduled to be sentenced in the federal district court in Washington, D.C. on December 15, 1980. The legal battle, absent some action by the government to terminate it, will continue for many months, if not years. The defendants must and will notice an appeal of their convictions on or before December 26, 1980, removing jurisdiction over the case from the United States District Court to the Court of Appeals. Although the notice of appeal is to be filed prior to January 20, 1981, any briefs or arguments by the Justice Department in support of the conviction would, of course, not be filed until after that date.

The public trial record in the case reveals that for approximately thirty years the FBI, on the authority of Director Hoover, conducted surreptitious entries, that is, searches of private premises without a warrant for the purpose of photographing documents in matters relating to the national security and public safety. These searches were thought permissible because they were for the purpose of gathering intelligence information and not for the purpose of gathering evidence to be used in law enforcement. Although each entry was undertaken on the advance authority of the Director or the Associate Director (Clyde Tolson),

Presidents, Attorneys General and other officials in the Department of Justice were aware of this practice by the FBI. Indeed, it was widely known among Justice Department attorneys dealing with internal security matters. Attorney General Brownell testified that Hoover authorized the searches on authority delegated to the office of the FBI Director by the office of the President.

The targets of the searches under Director Hoover included, among others, Nazi and Soviet spies, Communist Party members and the Ku Klux Klan. In 1966, apparently because of a growing distrust between Director Hoover, and the Johnson Administration's Justice Department and a third agency involved in intelligence gathering for whom the FBI undertook surreptitious entries, Hoover announced that no further surreptitious entries would be authorized. Upon becoming Attorney General, John Mitchell was advised by Hoover that the FBI had engaged in the intelligence gathering technique of surreptitious entry in the past but no longer utilized the technique. Thereafter, President Nixon attempted to direct Hoover to resume the practice in national security cases and in other important matters. He testified that it was his understanding that the Presidential authority to conduct surreptitious entries to gather intelligence in matters relating to the national security had been delegated to the Director of the FBI and thus had been vested in that office for years. President Nixon testified that he did nothing to withdraw that authority and his only concern was Hoover's reluctance to use it.

After Hoover died, L. Patrick Gray, III was nominated Director of the FBI and assumed the position of Acting Director in May, 1972. Shortly thereafter, he began to study use of discarded intelligence gathering techniques, including surreptitious entry. In September of 1972, he approved the use of surreptitious entry in a matter involving suspected acts of Arab Terrorism by the Black September group (Al Fatah) operating in conjunction with other terrorist groups within the United States. (Al Fatah was known to have been collaborating with Black Panthers and the Weatherman.) Based on remarks made by Gray at this time, conversations with Gray, the fact that Gray had been appointed by President Nixon who was known to have been dissatisfied with Hoover's reluctance to use surreptitious entry, Messrs. Felt and Miller came to believe that Hoover's

1966 termination of the use of surreptitious entry had been lifted, at least in matters where the National Security or potential acts of terrorism by foreign influenced groups were concerned. Thirteen entries were accordingly authorized by Mr. Felt who occupied the same position in the chain of FBI command that Mr. Tolson had occupied under Hoover. It had been Tolson who had approved most of the entries in the past.

Of the thirteen entries authorized by Mr. Felt and Mr. Miller, six were directed against friends, associates and relatives of members of the radical Weather Underground. The purpose of the entries was to gather information concerning the clandestine communications system of the underground and to locate its key leaders, many of whom were fugitives, in order to stop future terrorist acts. The FBI was in possession of intelligence from its own sources and from other agencies to the effect that the Weather Underground had received training in guerrilla warfare and explosives from Cuban Intelligence (the DGI) and Soviet Intelligence (KGB). The Weather Underground had already undertaken numerous terrorist acts, that is, bombings, involving loss of life, injury and extensive property damage to public institutions, at the behest of the Viet Cong in order to create the impression of widespread outrage and frustration among American youth at the slow pace of the Paris Peace Talks and it was believed that these acts would continue. It was the view of Hanoi that the more impatient the American public appeared along with a break-down of order within the United States itself, the more favorable the terms of any settlement would be to the communists. For some reason still unexplained, the government chose to prosecute Messrs. Felt and Miller and Gray on a conspiracy charge which involved only the six Weather Underground entries.

The prosecution commenced in April of 1978. The jury verdict was returned in November of 1980. The intervening two and one-half years were spent attempting to "sanitize" national security information from the many documents related to the case. This was done through an elaborate process of redacting or censoring the documents, using stipulations in lieu of documents, and, in some instances creating phony documents which would supposedly have the same purport as the originals but which would not cause a security breach. The process was lengthy and tedious, but it was the only way defense counsel were permitted to obtain the evidence felt necessary to put on a defense. Experienced hands

in the Department of Justice observed that the evidence was so laden with national security material that, had it even involved espionage by a Soviet spy, the case would have been dropped.

The pressure of the drawn out procedures, of course, has taken its toll on the defendants. In 1976, both Mr. Felt and Mr. Miller, long retired as FBI officials, had come forward to publicly acknowledge their respective roles in approving the entries. They did this to end what they then viewed as harrassment of FBI agents who had actually conducted the entries but were unsure of exactly who had authorized them. The veracity of what Mr. Felt and Mr. Miller said at that time has never been challenged or disproven.

In the meantime, while the lives of present and former FBI officials have been made miserable by civil lawsuits, grand jury inquiries and criminal prosecution, members of the radical Weather Underground, avowed communists pledged to the destruction of our society, have surfaced to be greeted with plea bargains to greatly reduced charges or to no charges at all. Past and present Special Agents of the FBI did not abandon their colleagues caught up in the recently fashionable flagellation of the intelligence and law enforcement community, and demonstrated that they believe Mr. Felt and Mr. Miller were made scapegoats in order to publicly chastise the FBI. Most have recognized that had they been in Mr. Felt and Mr. Miller's chair at the time of the events in question, they would have reacted and conducted themselves in much the same manner as did Mr. Felt and Mr. Miller.

On appeal, the key issues of relevance to this discussion will be:

1. A novel trial protective order: The defendants and witnesses were prohibited from saying certain things during the trial for national security reasons. It is Mr. Felt's contention that there is one particular matter he could not explain for this reason, which had he been able to talk freely, would have been convincing to the jury in understanding and accepting why he acted as he did. This was most important

because the jury's verdict hinged on its perception of Mr. Felt's state of mind at the time he acted.

2. Vagueness: During the period charged in the indictment, there were no guidelines, court decisions, or statutes relating to national security surreptitious entries for intelligence purposes. It now appears that such operations are legal and Constitutional if the particular entry is approved in advance by either the President or the Attorney General. Mr. Felt did not seek the specific approval of either of these officials because such had never been thought necessary in the past and, at the time he acted, there was nothing to suggest such personal approval was required. The lack of a known and clear standard made the prosecution particularly unfair when a standard announced four years after the conduct complained of was applied retroactively to these defendants.

3. Selective Prosecution: Despite the fact that Mr. Felt and Mr. Miller were but minor actors in the history of the FBI's use of surreptitious entry, and despite the fact that their efforts were designed to regularize, document and restrict the use of the technique strictly to national security matters, they are the only persons ever to be prosecuted for using the technique. The Justice Department, under President Ford, declined prosecution of an identical case against Richard Helms of the CIA and, under President Carter, declined prosecution of Helms and others for the use of a similar technique, mail openings.

4. Undue restrictions imposed on the scope of the President's power to conduct warrantless foreign intelligence searches: The trial judge's instruction limited the scope of warrantless counter-intelligence searches where the activities of foreign power are involved strictly to premises where the owner or occupier of said premises has a significant foreign connection. The judge's charge, in pertinent part, was:

The individuals whose home or apartment or premise is to be searched must have a significant connection with a foreign power, its agents or agencies. This means that you must find that Jennifer Dohrn (or Judith Clark, or Susan Roth) Francies Schreiber, Mr. and Mrs. Benjamin

Cohen, Mortimer Bookchin and Leonard Machtinger all had a significant connection with a foreign power, its agent or agencies. By "significant connection" I mean acting in collaboration with or as an agent for, a foreign country....

This charge limits the scope of a warrantless counter-intelligence search to an absurd extent. We believe Mr. Felt need only have shown that there was reasonable cause to believe there was information on the target premises that would be of value in a pre-defined foreign counter-intelligence investigation. Indeed, the charge is flatly contrary to Supreme Court decisions in analagous situations. As recently as 1978, the Court noted emphatically that the critical element of a "reasonable" search within the meaning of the Fourth Amendment is that there be cause to believe that the material or "things" to be searched for are located on the premises to which entry is sought. The culpability or non-culpability of the owner or occupier of the premises is of no consequence. Cf. Zurcher v. The Stanford Daily, 436 U.S. 547 (1978).

The only authority that tends to support the charge is President Carter's 1978 Executive Order No. 12036 which states that the owner of the premises to be searched in a warrantless counter-intelligence search must have a significant connection with a foreign power. However, the Carter Administration has retreated from this position. The Administration's proposed National Intelligence Act, S.2284, 96th Cong., 1st Sess. (1980) provides that warrantless physical searches within the United States be governed by present provisions of the Foreign Intelligence Surveillance Act of 1978. Section 1805 of that law permits National Security warrantless electronic surveillance of innocent third parties. This section only requires that the order be detailed where premises to be bugged or tapped belongs to an innocent third party.

A group of Republican Senators led by Senator Laxalt have proposed S.2929, 96th Cong., 2nd Sess. (1980) that contains no restriction on warrantless foreign counter-intelligence searches. This bill provides only that warrantless searches should not be used against American citizens unless necessary. There is no requirement that the U.S. citizen has to be an agent of a foreign power. While this

charge may conform to President Carter's 1978 Order, it suggests a standard not required by the Constitution nor by established case law precedent. It is also apparent that his charge conflicts sharply with the 1980 Carter Administration proposal and equally with a bill introduced by supporters of the President-elect.

The foregoing account sets forth the background and present posture of the convictions and makes out a compelling case, on the merits, why they should be nullified. The specific appellate points noted in some detail are just those on which it is believed the new administration simply could not and would not be able to bring itself to support and advance the position taken by the present Administration. An immediate pardon, as opposed to first testing the ordinary appellate process is preferred for several reasons.

First, the sooner the personal ordeal for these gentlemen is ended, the better. Second, despite the numerous errors to be asserted on appeal, including others not discussed herein, reversal by the presently constituted super-liberal Court of Appeals for the District of Columbia is very uncertain. Even if a new Justice Department confessed error or was unable to advance or support positions taken by the present Department it is possible that a panel of appellate judges of a like mind with the trial judge could simply ignore the new Department and affirm any way. A pardon in the face of such affirmance would certainly be more difficult to defend.

Third, there are major political and practical considerations. The matter is now current and topical. It will be all but forgotten by the time the appellate process is completed. There is ample and ironic precedent for prompt pardons to be found in President Carter's act of granting amnesty to draft dodgers and deserters promptly after his Inauguration. The contrasts between the respective classes of beneficiaries of executive clemency will not be overlooked. Nor will it be overlooked that the Weathermen were not merely college students who took the right to protest a bit too far. The Weather Underground was composed of

hard-core communist revolutionaries dedicated to acts of terrorism operating under the influence of foreign hostile intelligence agencies with a demonstrated ability to execute sophisticated bombing schemes. As such, they were, in 1972, a clear and present threat to human life and none of the hundreds of FBI agents involved in the investigation believed that the investigative methods used were extreme, inappropriate or illegal given the nature of the threat and that the overall goal was not arrest and prosecution but rather to stop bombings before they occurred.

Finally, this presents an opportunity that may never occur again for the new President to send a clear signal to the intelligence and law enforcement communities that they will not be the "whipping boys" of his Administration. The pardons will demonstrate beyond any mere words support for the intelligence and law enforcement communities instead of the brutalization they have undergone during the past four years. The citizens who voted for Mr. Reagan will applaud this act to a man. So will most of those who voted for Mr. Carter. Only the die-hard far left, convincingly rejected at the polls, will be anguished.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

26 March 1981

MEMORANDUM FOR THE PRESIDENT

FROM: EDWIN MEESE III

SUBJ: Pardons of FBI Agents Felt and Miller

As you requested, we have investigated the case of the two FBI agents who were convicted of violating the civil rights of friends and relatives of Weathermen fugitives. It is my belief, as I believe it is yours, that these men were attempting to do their duty and were acting in good faith at the time that the incidents involved occurred.

The prosecutions and convictions have worked a great hardship on the two men, and the whole incident is certainly at odds with the type of treatment that was accorded hostile lawbreakers, including draft dodgers, deserters, and others, during the Vietnam War.

Accordingly, it is my strong recommendation that you approve the attached Executive Grants of Clemency which would pardon the agents. I have discussed this matter with Bill Webster, Director of the FBI, and he privately concurs in this recommendation, although officially the FBI must take no position. I am also advising the Attorney General about this matter.

Once the pardons have been signed, we will work out the appropriate public information release with Jim Brady for the White House and with the Justice Department.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

26 March 1981

MEMORANDUM FOR THE PRESIDENT

FROM: EDWIN MEESE III *RM*

SUBJ: Pardons of FBI Agents Felt and Miller

As you requested, we have investigated the case of the two FBI agents who were convicted of violating the civil rights of friends and relatives of Weathermen fugitives. It is my belief, as I believe it is yours, that these men were attempting to do their duty and were acting in good faith at the time that the incidents involved occurred.

The prosecutions and convictions have worked a great hardship on the two men, and the whole incident is certainly at odds with the type of treatment that was accorded hostile lawbreakers, including draft dodgers, deserters, and others, during the Vietnam War.

Accordingly, it is my strong recommendation that you approve the attached Executive Grants of Clemency which would pardon the agents. I have discussed this matter with Bill Webster, Director of the FBI, and he privately concurs in this recommendation, although officially the FBI must take no position. I am also advising the Attorney General about this matter.

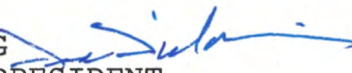
Once the pardons have been signed, we will work out the appropriate public information release with Jim Brady for the White House and with the Justice Department.

THE WHITE HOUSE

WASHINGTON

March 25, 1981

MEMORANDUM FOR EDWIN MEESE III
COUNSELLOR TO THE PRESIDENT

FROM: FRED F. FIELDING 
COUNSEL TO THE PRESIDENT

SUBJECT: Presidential Pardons

Pursuant to our conversation, attached hereto, for the signature of the President, are individual warrants granting full and unconditional pardons to W. Mark Felt and Edward S. Miller. The Department of Justice Seal has been affixed to each warrant. Punishment imposed upon Messrs. Felt and Miller was a fine in each case. Since the fines have not been paid, the pardon will also remit such penalties. As you know, each conviction is currently pending appeal.

For your information, and that of the President, a precedent for the President's action in these cases is the action taken by President Truman in 1952 in pardoning two CIA agents convicted of contempt of court for refusing to answer questions by virtue of an order issued to them by their superiors. The Truman pardon was granted before the agents commenced service of prison sentences imposed upon them.

After the President has signed these warrants, and they are dated, please return to me for further handling, as there are certain procedural requirements that must be observed.

This is also a reminder that you and I are going to discuss this matter with the Attorney General tomorrow, prior to the execution of the warrants. I will await word from you in this regard.

Attachment