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NIXON IS SAID TO HAVE RESISTED DISCLOSURES IN ELLSBERG CASE; ISSUES NEW WATERGATE DENIAL

2 ATTEMPTS CITED

President Reportedly Reversed Stand on Advice of Aide

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Special to The New York Times
WASHINGTON, May 7

President Nixon, invoking national security, sought on at least two occasions within the last two weeks to prevent the release to the court of details of the burglary at the office of Daniel Ellsberg's psychiatrist, sources close to the Watergate case said today.

In one case, the President was said to have reversed himself after receiving a contrary recommendation from Henry E. Petersen, an Assistant Attorney General who was placed in sole charge of the Watergate investigation in late March.

In the second case, the information was reportedly provided to the Federal Court in Los Angeles, where Dr. Ellsberg is on trial, at the insistence of Secretary of Defense Elliot L. Richardson, who was nominated last week to be Attorney General.

Called "Irresponsible"

High White House officials characterized as "irresponsible" the reports that the President had at first opposed the release of the details of the break-in.

The reports of the two Presidential attempts at delaying were provided by some of the

principals, lawyers and Justice Department officials.

These sources said that the first Presidential attempt to postpone release of the operation came after the Justice Department received a memo on April 16 or 17 from Earl J. Silbert, the chief prosecutor in the case.

This memo, the sources said, related that two members of the team that later broke into the Watergate offices of the Democrats last June 17—E. Howard Hunt Jr. and G. Gordon Liddy—had, acting under White House orders, attempted to burglarize the Beverly Hills office of Dr. Ellsberg's psychiatrist in early September, 1971. That information was eventually transmitted to California on April 25, the sources said.

Told By Ehrlichman

The second attempted delay, the sources said, came last Monday after Egil Krogh Jr., a former Presidential aide, was told by John D. Ehrlichman, the President's assistant for domestic affairs, that "the President doesn't want any more of this to surface for national security reasons."

The White House issued guidelines last Thursday to Mr. Krogh, who has said that he authorized the California break-in, telling him that he was free to testify regarding steps taken about Dr. Ellsberg. However, it was reported that the guidelines advised Mr. Krogh that he was not authorized to discuss the details of specific leaks or any information about specific national security concerns.

In an affidavit released today by the Los Angeles court, Mr. Krogh told of receiving a report from the Federal Bureau of Investigation indicating that the Pentagon papers had been in the possession of the Soviet Embassy in Washington prior to their publication in June, 1971, in The New York Times. The papers are a secret Pentagon study of the Vietnam war.

The affidavit also referred to

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a Times article concerning the United States position in the strategic arms limitation talks.

It was this kind of information, White House sources indicated, that was considered too vital to national security by President Nixon to be transmitted to the judge in the Ellsberg case.

Mr. Krogh refused today to comment on the report. One White House source formerly associated with Mr. Ehrlichman, who resigned last week, asked, however, "What's the big deal? There's no crime here."

"Even if it was a cover-up," the source added, "it was a cover-up of the Ellsberg burglary and it was covered up for national security reasons."

The Hunt-Liddy break-in of the psychiatrist's office was said to have been disclosed to Mr. Silbert and his colleagues by John W. Dean 3d, the White House Counsel who resigned — or was dismissed — last week, during an unannounced meeting with the prosecutors on April 15. Mr. Dean is known to have met with the prosecutors on April 6.

Within a day or two of the April 15 meeting, sources said, Mr. Silbert, fully aware of the implications of Mr. Dean's statement for the Ellsberg trial forwarded his memo to Mr. Petersen, who was subsequently reportedly told by President Nixon not to release it.

"The President personally put the lid on it," said one informed source.

Required to report

The immediate Justice Department issue of what to do was dictated by what is known as the Brady rule, the source said, which holds that prosecutors are required to report all exculpatory information to the defense in a criminal trial.

Friends of Mr. Petersen said that he had pondered about the Presidential order for a few days and finally decided that "he just couldn't live with him-

self" if he withheld the information about Hunt and Liddy. So they said he took the problems to Attorney General Richard G. Kelindienst, who — after hours of debate — agreed that the matter should be taken directly to Mr. Nixon.

Mr. Nixon agreed that the information should be forwarded, the sources said, and on April 26 David Nissen, the Government prosecutor in the Ellsberg case, submitted the Silbert memo to Federal Judge William Matthew Byrne Jr. The next day, the judge released the information—which told of the burglary—and ordered an immediate Government inquiry. Judge Byrne's decision to release the memo is said to have angered many officials in the Justice Department and White House.

That same Friday afternoon, reliable sources said, Mr. Ehrlichman and H. R. Haldeman, the White House chief of staff who also resigned last week, were met in their offices by F.B.I. agents on their return from a trip to Mississippi with the President.

Gave Data to F.B.I.

Those sources said that Mr. Ehrlichman subsequently told the agents that he had been responsible for ordering a secret White House investigation into the psychological and moral background of Mr. Ellsberg shortly after publication of the Pentagon papers. They said Mr. Ehrlichman told how that operation, which he said was headed by Mr. Krogh and David R. Young Jr., a former member of the National Security Council, soon employed Hunt and Liddy to begin a series of covert operations.

A summary of Mr. Ehrlich-

man's statement to the F.B.I. also was forwarded by the Justice Department to Judge Byrne, who released it to the defense last Tuesday. In it, Mr. Ehrlichman was quoted as saying that he had learned of the burglary attempt by Hunt and Liddy after it took place and told them "not to do this again."

Before the public release of the F.B.I. interview, Mr. Krogh—who was named Under Secretary of Transportation late last year—was reportedly told of it. Mr. Krogh, who is 34 years old, then is said to have decided to tell everything he knew, presumably including specific details about the high-level involvement of Central Intelligence Agency officials in the operations against Mr. Ellsberg.

Cushman's Role

The New York Times reported today that Gen. Robert E. Cushman Jr., the Marine Corps commandant who was deputy director of Central Intelligence in mid-1971, authorized the use of C.I.A. material and research for the burglary attempt. General Cushman allegedly did so at the request of Mr. Ehrlichman.

One reliable source, explaining the White House decision not to use the F.B.I. in the Ellsberg investigation, said that Mr. Ehrlichman became convinced in mid-1971 that the agency was refusing to make the Pentagon papers a primary case because of the close relationship between the late J. Edgar Hoover, the F.B.I. director, and Louis Marx, a New York toy manufacturer whose daughter, Patricia, was dating Mr. Ellsberg at the time. They later married.

It was Mr. Ehrlichman who was reported to have relayed Mr. Nixon's alleged view to Mr. Krogh that further details about the Ellsberg break-in should not be revealed for national security reasons.

"The President was very hard about it," one source said in recalling Mr. Ehrlichman's message to Mr. Krogh. "He [Ehrlichman] said repeatedly and emphatically that he [President Nixon] doesn't want any more of this to surface."

Richardson Is Told

A few days later, sources said, Mr. Krogh decided to discuss the matter with Mr. Richardson and, over lunch, told him all he knew about the initial operation and the President's insistence that further details not be revealed. Mr. Richardson, the Secretary of Defense, had been placed in charge of the over-all Watergate investigation by the President with his appointment as Attorney General.

Mr. Richardson reportedly disagreed with the President's position on national security in connection with the Hunt-Liddy operations.

As recalled by one source with knowledge of the conversation, Mr. Richardson told Mr. Krogh: "I'm not going to participate in a cover-up because it will destroy my role in the Watergate investigation. I'm

not going to follow through on the President's orders."

"The truth has got to come out," the source quoted Mr. Richardson as telling Mr. Krogh.

Mr. Richardson refused to comment when asked today about the luncheon meeting with Mr. Krogh.

Mr. Krogh, apparently fortified by this meeting, decided to draft the affidavit that was mailed to California Friday and made public today.

This was done after the receipt Thursday of White House guidelines drafted by Leonard Garment, Mr. Nixon's newly named counsel, calling on him not to disclose national security information.

Those guidelines described by the White House as being designed to minimize the use of executive privilege among Presidential aides testifying in the Watergate scandal, included the following second point:

"Witnesses are restricted from testifying as to matters relating to national security not by executive privilege, but by laws prohibiting the disclosure of classified information (for example, some of the incidents which gave rise to concern over leaks). The applicability of such laws should therefore be deter-

mined by each witness and his own counsel."

Mr. Krogh, after his meeting with Mr. Richardson, apparently concluded that executive privilege had been waived so that he was free to disclose all details—including those of an intelligence nature—of the operation against Dr. Ellsberg.

He told this on Thursday to Douglas Parker, a lawyer in Mr. Garment's White House office, who sent the following message later that day to other officials aboard the President's plane, which was then airborne on the way to the Presidential retreat in Key Biscayne, Fla.

"Parker was advised by Krogh this morning that he understood executive privilege had been waived so that he was authorized to disclose all details of leaks prior to Ellsberg's psychiatrist's incident. At approximately 1:30 today, Parker advised Krogh's lawyer, William M. Treadwell, that Krogh was not authorized to discuss the details of specific leaks, but to refer to national security concerns in general terms, and testify freely as to steps taken in connection with Ellsberg."

A copy of the memo was provided to The New York Times today by White House officials.