

Ellsberg to Seek Review Of FBI Offer to Byrne

LOS ANGELES, May 6 (AP)—Defense attorneys in the Pentagon papers trial said today that they will go to a federal appeals court to ask that the charges against Daniel Ellsberg and Anthony J. Russo, Jr. be dismissed immediately on grounds that the White House tried to compromise the judge.

The attorneys said they were working on a petition for a writ of mandamus to be filed Monday with the Ninth U.S. Circuit Court of Appeals in San Francisco. They said they would ask the court to order U.S. District Court Judge W. Matt Byrne Jr. to dismiss the charges of espionage, conspiracy and theft against Ellsberg and Russo.

The appeal to the higher court comes after Byrne refused on Friday to dismiss the case. The dismissal motion was based on the defense's contention that Byrne had

been prejudiced during the trial by a White House offer to consider Byrne for the post of director of the Federal Bureau of Investigation.

Byrne is still considering the possibility of dismissing the case because of a link between the Watergate incident in Washington and a burglary at the office of Ellsberg's psychiatrist. He has taken a motion to that effect under consideration for further consideration and said he would not make that decision until he has received all facts in his probe of the matter.

He is seeking to find out whether the Justice Department used "tainted evidence" illegally obtained through the burglary.

The attorneys said today that they will contend in their appeal that the judge was "compromised" by two meetings with former presidential adviser John D. Ehrlichman last month.

Byrne has announced in court all details of the meetings, attempting to set the record straight. He said that at Ehrlichman's request he visited the Western White House on April 5 and was approached about becoming FBI director. Byrne said he refused to consider the position while the Pentagon papers trial was going on. He said he had no discussion about the trial with Ehrlichman or with President Nixon, whom he met briefly.

Later, Byrne revealed that he was contacted again by Ehrlichman and met again with the presidential adviser on April 7 at an unspecified location in Santa Monica. He said that he continued to refuse to discuss the possibilities of his taking over the FBI job and said there was no talk about the Pentagon papers trial.

Defense attorneys argued that although Byrne assured them there was no discussion of the trial, it was still improper for him to have had contact with White House officials during a case involving charges of violation of government rules.