

SF Chronicle
Judge MAY 2 1973
'May Free'
Ellsberg

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Former White House aide John D. Ehrlichman knew of the burglary of Daniel Ellsberg's psychiatric files, it was revealed yesterday by the judge in the Pentagon Papers case.

United States District Judge Matt Byrne was then asked to dismiss all charges against Ellsberg and codefendant Anthony J. Russo.

Byrne released an FBI interview of Ehrlichman conducted last Friday, in which Ehrlichman said he told convicted Watergate bugging conspirators G. Gordon Liddy and E. Howard Hunt Jr. not to commit such burglaries again.

Defense attorney Leonard Boudin made an impassioned plea for dismissal of the indictment against Ellsberg and Russo. He referred to the FBI report as "this dreadful paper" and said it was the "shame of the government of the United States."

Byrne denied the dismissal motion, but said it could be renewed later or "I may renew it myself."

He then ordered the trial to proceed, while the government continues to submit reports on the investigation of the burglary.

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The judge had received the FBI report of the interview of Ehrlichman on Monday. He ruled yesterday that it contained "exculpatory" material — that is, material tending to show the innocence of the defendants.

Byrne ordered the report turned over to the defense and Boudin read from it at length during his argument.

See Back Page

From Page 1

on the motion to dismiss.

The FBI report said Ehrlichman was contacted in his office in the Executive Office of the President to be questioned about any knowledge he might have on the burglary.

FBI agents said he told them he recalled that sometime in 1971 President Nixon had expressed an interest in the problem of unauthorized disclosure of classified information. He said the President asked him to make inquiries independent of the FBI.

Ehrlichman assumed this responsibility along with Emil Krogh, a White House assistant, and David Young of the national security agency, the report said.

"A decision was made by them to conduct some investigation in the Pentagon Papers leak matter 'directly out of the White House' and G. Gordon Liddy and E. Howard Hunt were designated to conduct this investigation," the report said.

LEADS

Ehrlichman knew that Liddy and Hunt had conducted their investigation in the Washington area, the report continued, and during the inquiry were going to the West Coast to follow up on leads.

Ehrlichman assertedly told the FBI agents there was an indication that Ellsberg had "emotional and moral problems." He said Liddy and Hunt were to prepare a "psychiatric profile" of Ellsberg.

"Although Ehrlichman knew that Liddy and Hunt had gone to California in connection with the inquiry," the report went on, "he was not told that these two

More Watergate news on Pages 6-9, 12.

individuals had broken into the office of Ellsberg's psychiatrist until after this event had taken place.

"Such activity was not authorized by him. He did not know about this burglary. He did not agree with this method of investigation.

"When he learned about the burglary he instructed

them not to do this again."

The FBI agents reported that Ehrlichman does not recall who specifically told him about the burglary but remembers a "burglary" was mentioned. He did not know the name of the psychiatrist nor the location and did not know whose idea it was, they said.

RESULTS

The report adds that Ehrlichman does not know if anything was obtained from the psychiatrist's office, and, presumably whether it was used in the prosecution of Ellsberg and Russo. Ehrlichman was interviewed by the FBI the same day Byrne made public a Justice Department memo saying that Liddy and Hunt had burglarized Ellsberg's psychiatrist's office.

In arguing for dismissal of the case, Boudin said he did not know of any parallel to the "misbehavior."

"It comes back to the White House," he said. "We are dealing with the highest authority in the country—the President of the United States and his trusted subordinates, as we heard last night, in which he still has confidence." This was a reference to President Nixon's address Monday night.

CONTEMPT

Boudin said the interview of Ehrlichman revealed a "complete contempt of the civil liberties of a citizen." He said the only remedy called for in the interest of the fair administration of justice was dismissal of the indictment.

Boudin, however, said a hearing also should be held immediately, with Ehrlichman, Liddy, Hunt and former White House counsel John W. Dean III as witnesses. A motion to this extent was made Monday and taken under submission by Judge Byrne.

Russo's defense attorney, Leonard Weinglass, pointed out that Ehrlichman knew that Byrne was trying the case against Ellsberg when he learned of the burglary.

MEETING

"This raises the question of what was in his mind when he talked with your

MAY 2 1973

honor a month ago," Weinglass said. "This is sufficient grounds for an immediate mistrial and dismissal."

Weinglass was referring to Byrne's meeting with Ehrlichman and President Nixon in San Clemente last month in which a future position in government for Byrne was discussed. Byrne announced from the bench Monday that he refused to have any such discussions while the Pentagon Papers case was still pending.

Ellsberg said outside the courtroom that the FBI documents prove the White House tried to "bribe" Judge Byrne by offering to make him FBI director. He told newsmen the White House offered Byrne the FBI directorship in hopes he would reciprocate by hiding evidence that links the Pentagon Papers case with Watergate conspirators.