

Nixon ^{was part} Notified Before Ellsberg

MAY 3 1973

By Sanford J. Ungar

Washington Post Staff Writer

President Nixon was personally consulted before a federal court in Los Angeles was told last week that Watergate conspirators E. Howard Hunt Jr. and G. Gordon Liddy allegedly burglarized the office of Daniel Ellsberg's psychiatrist.

Justice Department sources said yesterday that they were so startled when federal investigators obtained information about the burglary on April 15 that they brought it to the attention of the President before transmitting the information to U.S. District Court Judge W. Matt Byrne Jr., who is presiding over the trial of Ellsberg and Anthony J. Russo Jr.

Once Mr. Nixon heard about it, the sources said, he "endorsed without hesitation" the decision to send to the West Coast a confidential memo on the subject from Earl J. Silbert, chief Watergate prosecutor, to As-

sistant Attorney General Henry E. Petersen, chief of the Justice Department's Criminal Division.

That decision was made by Petersen and Attorney General Richard G. Kleindienst, despite a check of the Justice Department's files which reportedly showed that the burglary was not used to contribute to the prosecution of Ellsberg and Russo.

The two men are charged with espionage, conspiracy and theft of government property in connection with the disclosure of the Pentagon Papers.

The fact that the President was consulted—and that it apparently took several days to reach him—explain the 10-day delay between the time that Silbert and Petersen learned about the burglary and their knowledge was transmitted to Byrne.

It is also taken as an indication of Mr. Nixon's previously undocumented intense

personal interest in the Pentagon Papers trial.

According to the Justice Department sources, the President sees the case as a major part of his battle to stem leaks of "national security information" from the federal bureaucracy.

It was revealed in Los Angeles Tuesday that in 1971—when the documents were published by newspapers—President Nixon asked his chief domestic affairs adviser, John D. Ehrlichman, to make "inquiries independent of concurrent FBI investigation" of the Pentagon Papers case.

According to a summary of an FBI interview with Ehrlichman conducted last Friday in Washington, the presidential aide chartered Hunt and Liddy to prepare a "psychiatric profile" of Ellsberg including "his habits, mental attitudes, motives, etc."

That inquiry apparently led to the burglary of Los Angeles psychiatrist Lewis

Fielding's office. In Ehrlichman's words, as reported in the FBI summary, after he learned of the break-in, he told Hunt and Liddy "not to do it again."

Byrne is currently weighing a motion by attorneys for Ellsberg and Russo to have Hunt, Liddy, Ehrlichman and others brought to Los Angeles for a special hearing on whether prosecution evidence in the case was "tainted" by the burglary.

But the situation has been further complicated by the revelation that the judge met at length in California on two occasions last month with Ehrlichman—and once briefly with the President—to discuss the possible appointment of Byrne to the directorship of the Federal Bureau of Investigation.

Justice Department officials insisted yesterday that they cannot conceive of any way in which the burglary, or documents obtained during the break-in, could have

Trial Got Burglary Data

played a role in the decision to prosecute Ellsberg and Russo or in the development of evidence against them.

They asserted that they were completely unaware of the burglary until Silbert obtained information about it during an interview on April 15 with a person who has not been publicly identified.

But there was an additional wrinkle which left some uncertainty on that issue:

The criminal case against Ellsberg and Russo, like the 1971 civil suits against newspapers which published the Pentagon Papers, was developed in the Justice Department's Internal Security Division.

Several people who worked in that division in 1971 and 1972 have since left the Justice Department.

In late March of this year, the Internal Security Division was abolished and its functions incorporated into a special section of the

Criminal Division. Only then did Peterson inherit direct supervision over the case.

Justice Department officials readily concede that they still may not know all there is to learn about the burglary and other aspects of the Ehrlichman-Hunt-Liddy investigation of the Pentagon Papers case.

"We just don't know what's yet to come," said one source, explaining that new information turns up each day as leads are pursued in compliance with Judge Byrne's order last Friday in Los Angeles that a complete investigation be mounted.

"We get the stuff just a day before Matt Byrne," he added.

Department officials acknowledge that the turn of events in Los Angeles may lead to a mistrial or dismissal of the charges in the Pentagon Papers case, which has been almost two years in preparation and

trial by federal prosecutors and defense attorneys.

But there was no indication that the government would itself move to dismiss the indictment.

Quite apart from the case's apparent importance to the President—a degree of interest rarely shown by any chief executive in a specific federal criminal case—some officials at Justice regard Byrne's order as a convenient new means of learning about possible Watergate-related criminal conduct.

It is a time-limited means, however, since there is a jury of ten women and two men sitting in the case which cannot be left on the hook indefinitely.

The decision to consult the President before informing Byrne about the burglary of the office of Ellsberg's psychiatrist was apparently based on the Justice Department's view that it was a bizarre and inexplicable development.

It came after a prelimi-

nary determination that the burglary played no part in the prosecution.

But it was Kleindienst's and Petersen's view that the court had to be told, because of the possibility that Ellsberg's constitutional rights and his confidential relationship with his doctor had been violated.

It was not clear exactly when Mr. Nixon was consulted, but the contact was made directly by Kleindienst after he had disqualified himself from participation in the Watergate case but before his resignation as Attorney General on Monday.

It could also not be determined whether the President had been consulted again before the FBI summary of the Ehrlichman interview and other documents were submitted to Byrne by David R. Nissen, chief prosecutor in the Pentagon Papers trial.