

NYT 5-6-73

Week in Review

# Telling It to the Judge—At the Wrong Time

**LOS ANGELES**—Probably never before has there been such an intrusion into the judicial process by the executive branch as, it is now apparent, there was in the trial for espionage, theft and conspiracy of Daniel Ellsberg and Anthony J. Russo Jr.

The circumstances became public piecemeal during the week. On Monday morning there was a matter-of-fact announcement by Federal Judge William Matthew Byrne Jr. that on April 5 he met at San Clemente with John Ehrlichman, then President Nixon's top adviser for domestic affairs. Mr. Ehrlichman "suggested to me a possible future assignment in government," the judge said. He also met "for one minute or less" with the President. Mr. Byrne said his "initial reaction was I could not and would not give consideration to any other position until this case is concluded."

On Wednesday, Judge Byrne elaborated. The job involved was the directorship of the Federal Bureau of Investigation. But he also disclosed that he had had a second "brief conversation" in a meeting with Mr. Ehrlichman on April 7 in Santa Monica, and repeated his "initial reaction." He did not offer any explanation of why

he had seen Mr. Ehrlichman a second time.

The intense interest of the White House in the Pentagon Papers case has been manifest from the beginning, when The New York Times first began publishing excerpts from the long, secret study of government policy in the Vietnam war. The Government first tried and failed to suppress publication of the papers. Mr. Ellsberg admitted taking the papers and was indicted for espionage. And last week Judge Byrne turned over to the defense an F.B.I. report including a statement from Mr. Ehrlichman in which he said President Nixon himself had asked for a White House investigation—separate from the F.B.I. investigation—into the case. Thus, the President's involvement was unusual and great when the F.B.I. job was discussed with Judge Byrne during the trial last month.

The defense immediately asked for dismissal of the case. In its motion, still under consideration by the judge, the defense said, in part, "... we would, were we to use blunt language, characterize this as an attempt to offer a bribe to the court." Defense attorney Leonard I. Weinglass added that if the

defense had offered the judge a job during the trial "the entire defense team would be in jail."

The judge denied the dismissal motion, saying he was convinced his impartiality had not been impaired. But he withheld decision on whether he should end the trial on grounds that the Government's case had otherwise been fatally tainted by suppression of evidence and the burglary of Mr. Ellsberg's office.

There were startling disclosures about that burglary on Friday. In a long, detailed excerpt from the grand jury testimony of convicted Watergate plotter E. Howard Hunt, Jr., it was disclosed that the invasion of the doctor's office was conceived and paid for in the White House and outfitted—with a camera and disguises—by the Central Intelligence Agency. Hunt said Egil Krogh Jr. and David Young, two former White House aides, had supervised the operation closely even while he, Hunt, had been warned that nobody at the White House could be involved directly. The break-in was actually made by three other men who, Hunt said, reported to him that they had gone through "every file" in

the office—and found nothing.

In an affidavit, Mr. Krogh admitted that, as Hunt said, Mr. Krogh was Hunt's White House contact in the operation. Mr. Krogh also said that before he became involved in the break-in plot, he had had personal conversation with President Nixon in which he learned of the President's concern over leaks of security information. The conversation had nothing to do with the burglary, Mr. Krogh said. The C. I. A. denied foreknowledge of the plot.

Mr. Ehrlichman has admitted learning of the break-in after it occurred and doing nothing about it except to warn Hunt "not to do it again."

Throughout the week, Judge Byrne kept demanding that the Government speed up the investigation he has ordered into the Watergate-Pentagon Papers trial connection. He reminded the prosecutor time and again that "the burden is on the Government" to prove that neither the White House nor the Justice Department nor the Watergate conspirators had interfered with the constitutional rights of Mr. Ellsberg and Mr. Russo to a fair trial.

—MARTIN ARNOOLD