

Ellsberg Attorneys to Ask Higher Court for Dismissal

Los Angeles

Defense attorneys in the Pentagon papers trial said yesterday that they will go to a federal appeals court to ask that the charges against Daniel Ellsberg and Anthony Russo be dismissed immediately on grounds that the White House tried to compromise the judge.

The attorneys said yesterday they were working on a petition for a writ of mandamus to be filed with the 9th U.S. Court of Appeal for the Ninth Circuit in San Francisco. They said they would ask the court to order U.S. District Court Judge Matt Byrne to dismiss the charges of espionage, conspiracy and theft against Ellsberg and Russo.

The lawyers had said they would file the writ today. But a spokesman for the defense team later said more time may be needed to fix the exact wording of the document since they were considering other grounds for the motion in addition to the judge's reported meetings with White House officials.

The appeal to the higher court comes after Byrne refused on Friday to dismiss the case. The dismissal mot-

ion 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 FBI director.

MOTION

Byrne still is considering the possibility of dismissal of the case because of a link between the controversial Watergate incident in Washington and a burglary at the office of Ellsberg's psychiatrist. He has taken a motion to that effect under submission 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 yesterday that they will contend in their appeal that the court was "compromised" by two meetings with former presidential adviser John D. Ehrlichman last month.

ADMISSION

Byrne has announced in court all details of the meeting, attempting to set the record straight. He said that at Ehrlichman's request he visited President Nixon's San Clemente home 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 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.

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