

# Ellsberg Judge Confirms 2 Talks With Ehrlichman

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LOS ANGELES, May 2—The judge in the Pentagon papers trial confirmed today that twice during this trial he met directly with Jhon D. Ehrlichman to discuss the possibility of becoming director of the Federal Bureau of Investigation.

The defense said it would use this latest disclosure to move again for an "immediate dismissal" of the charges against Daniel Ellsberg and Anthony J. Russo Jr.

In another development, United States District Court Judge William Matthew Byrne Jr. also turned over to the defense more F.B.I. reports of interviews with former high officials of the Nixon Administration.

One of them was a second interview—conducted yesterday—with Mr. Ehrlichman in which he reportedly said that he had nothing to do with the special White House investigation of this case for more than a year, but that the inquiry was conducted by two of his aides.

In another interviews, H. R. Haldeman is reported to have told the F.B.I. that he knew nothing about the White House

investigation of this case. Bruce Kehrli, a staff secretary to the President, also denied to the F.B.I. that he knew anything about the investigation.

Mr. Ehrlichman, however, reportedly told the F.B.I. yesterday that on his orders David Young, a member of the National Security Council staff, and Egil Krogh, of the White House staff, headed the inquiry that led to the break-in at the office of Dr. Ellsberg's psychiatrist by G. Gordon Liddy and E. Howard Hunt Jr., two convicted Watergate conspirators.

Mr. Young resigned today, and Mr. Krogh took a leave from the position he has held during the second Nixon Administration as Under Secretary of Transportation.

Mr. Ehrlichman reportedly told the F.B.I. that he had assumed the results of the investigation — "a project to get a psychiatric profile of Ellsberg" — were still in the White House offices of Mr. Young and Mr. Krogh, that he himself had not

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been involved in the investigation for more than a year, and that he had collected a newspaper clipping file on the case that was turned over to "the President's files" and is now apparently in the "archives."

The President's former top adviser for domestic affairs reportedly admitted in the F.B.I. interview that he had seen previous bureau investigative reports on Dr. Ellsberg's wife, Patricia, and on Neil Sheehan, The New York Times reporter who first disclosed the Pentagon papers on June 13, 1971, in The Times.

There were several other developments:

¶ Judge Byrne castigated the Government for the slowness with which it is conducting the investigation that he has ordered into the Watergate-Pentagon papers link.

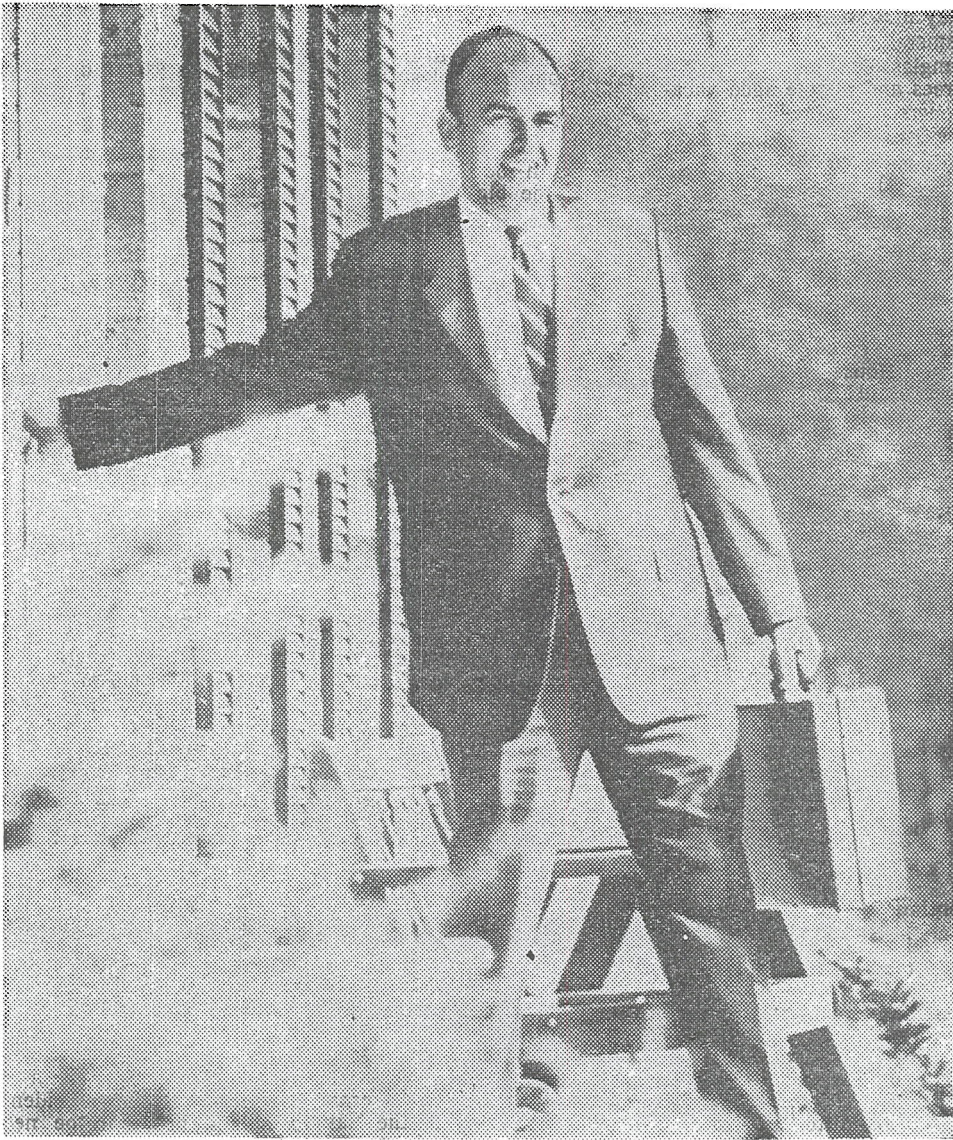
¶ The judge also asked the defense to submit by tomorrow legal precedents and citations for both a mistrial and a dismissal—to be added to the motion the defense filed yesterday for a dismissal.

Undoubtedly a key disclosure today was the one made by the judge of his meetings with Mr. Ehrlichman. Before the jury was summoned in to hear more testimony, he said that he had met with Mr. Ehrlichman, first, on April 5 in San Clemente, Calif., and then again two days later in Santa Monica.

Account by Judge

The judge said he had reiterated at the second meeting what he had said at the first





**John D. Ehrlichman leaving his home in Great Falls, Va., yesterday morning**

Associated Press



meeting, "that I would not consider nor I would not in any way discuss the position of director of the F.B.I. while this case was pending." He did not say that the job was either directly offered to him or directly declined by him.

The judge also said, in answer to a question from Leonard I. Weinglass, a defense counsel, that on April Fool's Day he attended a dinner party at the home of Paul Ziffrin, a Democratic National Committeeman from California, at which Henry A. Kissinger, a Nixon aide, was also a guest, along with "about 100 people." He did not discuss the case nor a possible Federal job with Mr. Kissinger, the judge said.

Outside of court, Mr. Weinglass raised the question of a "second meeting with Mr. Ehrlichman, who evidently knew that he was to be involved in this case."

"We now have apparently a meeting by an official of the White House, an adviser to the President who evidently knew that his name was about to be implicated in this case, meeting with the presiding judge of this trial, offering him a very high-level Government position, and then following the meeting up with a second meeting," Mr. Weinglass said.

#### Weinglass Reaction

"The judge evidently said he discouraged any discussion the first time," Mr. Weinglass said. "But the judge then physically went to a second meeting." On Monday the judge said that he met with Mr. Ehrlichman once about "another assignment" in the Government and that they were in contact a second time. He did not at that time mention the F.B.I. and he left it vague as to whether the second occasion was a meeting

or a telephone conversation.

During that first meeting he was introduced to the President, he said on Monday.

"Even if he [the judge] was all the time refusing to talk to them until the trial was over, that's (the meetings) enough of a taint of this case to end the trial," Mr. Weinglass said, adding that if a member of the defense staff had made similar gestures to the judge "we would all in jail."

"If this case cannot be dismissed with these facts now, then I don't know what the law books mean when they talk about the possibility of a taint of the trial, of a compromise of a judge, of undermining the public's confidence that the judge that is trying a case did not have contact with either side," he went on, "There's never been a case where the extent of the contact and the deliberateness of the contact from the White House has risen to the level we now have in this trial."

Mr. Weinglass said that when the judge asked today for legal precedents for a mistrial or a dismissal, "he is asking us if it ever happened before in the history of America, that the judge has met with a representative of the White House, who is implicated in the trial."

#### 'Never Happened Before'

"My answer to the judge is that we have no [legal] authorities; it's never happened before. There are no cases. This is the first one," the defense attorney said.

He was asking, he said, for an immediate dismissal, and then for a hearing "if the government received evidence by breaking" into the office of Dr. Ellsberg's doctor.

In Washington, the White

House was asked to comment on the propriety of the offer to Judge Byrne. Ronald L. Ziegler, the White House press secretary, said he could not comment on matters before the court, a stand he has taken previously.

Meanwhile, the investigation into that incident and other Government operations in investigating this case was moving much too slowly, the judge said in court.

Before the turnover of the new Ehrlichman material today, David R. Nissen, the chief prosecutor, turned over as part of the court-ordered investigation a copy of an article in the Los Angeles Times in which Dr. Ellsberg refused to name his psychiatrist.

Leonard B. Boudin, a defense attorney, told the judge that this turnover "was a parody of an investigation."

Judge Byrne then said, "Mr. Nissen, as to the investigation material that the Government now has in its possession; what was told to Liddy and Hunt; if there was an investigation

they were to perform, I want that material."

The judge said that he had "received nothing of the fruit of the investigation" conducted by Liddy and Hunt, nor did he receive the results of any "other improper acts performed" by the Government.

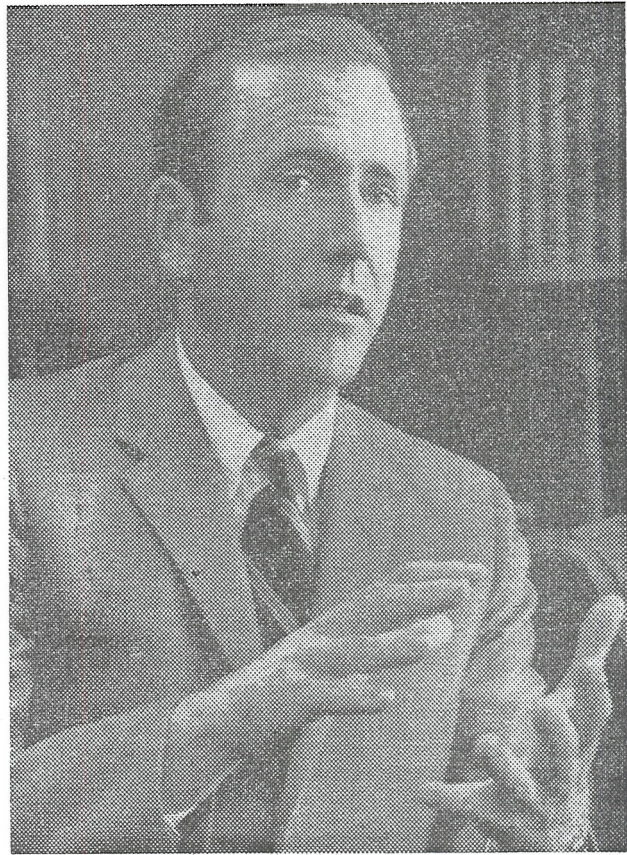
Judge Byrne said he was still waiting, for instance, for the inventory of Hunt's safe at the white house.

Mr. Nissen said that what the judge was ordering was "not a matter of snapping fingers" and getting the investigation completed.

"It's a matter of time," the judge retorted. "If at the time the evidence in this case is completed—I'm left with no facts, I'm going to have to decide what steps have to be taken. I don't want to have to wait until all the evidence is in."

After this exchange, Harry Rowen, former president of the Rand Corporation, continued his testimony as a Government rebuttal witness before the jury.

Dr. Ellsberg and Mrs. Russel are charged with six counts of espionage, six counts of theft and one count of conspiracy.



Associated Press

Judge William Matthew Byrne Jr., who is presiding over the Pentagon papers trial in Los Angeles.