

Key Hearing Today

Vow in Ellsberg Case

Los Angeles

Justice department officials swore yesterday that none of the evidence in the pentagon papers trial came from the burglary of Daniel Ellsberg's psychiatrist's office.

On the eve of a hearing in which all charges may be dismissed against Ellsberg and Anthony J. Russo Jr., four Justice Department officials said in affidavits turned over to the judge that they knew nothing about the burglary until it was disclosed during investigation last month of the Watergate affair.

The defense received from the court the sworn statements of prosecutor David Nissen; Henry E. Petersen, assistant attorney general; Kevin T. Maroney, deputy assistant attorney general and John L. Martin, an attorney in the Justice Department assigned to oversee the Pentagon papers case.

All four said the first they

learned of the burglary was on April 16, when Watergate prosecutor Earl Silbert sent a memo to Petersen stating he had received information that such a break-in had occurred in September, 1971.

In his affidavit, Nissen wrote that he was familiar with all witnesses, evidence exhibits used in the government case against Ellsberg and "none was derived in any manner, directly or indirectly, from a break-in in the office of defendant Ellsberg's psychiatrist or from any illegally impermissible conduct by any government employee or agent."

The trial was in recess yesterday and the jury had been excused until Monday while both the defense and the prosecution prepared all motions to dismiss the conspiracy-espionage-theft indictment.

U. S. District Court Judge Matt Byrne said he "hoped" to make a ruling by the end of the day after telling lawyers he wanted all dismissal

motions by this morning.

The defense attorneys were asking for dropping of the charges on various grounds, including:

- Taint of prosecution evidence in the trial as the result of the burglary of the office of Ellsberg's psychiatrist carried out by Special White House squad investigating the leak of the Pentagon papers.

- Government miscon-

duct in its resistance and slowness in turning over to the court results of its investigation into the burglary.

- Selective prosecution of Ellsberg and Russo by the Justice Department.

Judge Byrne said he also wanted to hear arguments on a motion for a judgment of outright acquittal on grounds the prosecution had not proved its case against the defendants.

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