

Ellsberg Judge Demands Affidavits on Bugging Tie

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LOS ANGELES, April 30 — The judge in the Pentagon papers trial today ordered four figures linked to the Watergate affair to produce affidavits concerning any link between that break-in and the trial here.

Federal District Judge William Matthew Byrne Jr. said that he was not foreclosing the possibility of summoning the four men here to testify, although he denied, for now, a defense request for an immediate hearing.

The affidavit order was directed to John W. Dean 3d, former special counsel to President Nixon; L. Patrick Gray 3d, former acting director of the F.B.I., and G. Gordon Liddy and E. Howard Hunt Jr., conspirators in the Watergate bugging.

Judge Byrne indicated that he also would probably require affidavits and perhaps testimony from John N. Mitchell and Richard G. Kleindienst, former Attorneys General; John D. Ehrlichman, until today the President's chief for domestic affairs; H. R. Haldeman, Mr.

Nixon's former chief of staff, who also resigned today; Charles W. Colson, former Presidential special counsel, and Robert C. Mardian, former Assistant Attorney General.

Today's court session began with the judge announcing from the bench that about a month ago he met with Mr. Ehrlichman and President Nixon, "for approximately one minute or less," at Mr. Ehrlichman's suggestion.

At that time, he said, he was offered a new Government position, but he said he told Mr. Ehrlichman that he could not consider it "until this case is concluded." He did not say what the position was, but his name has been mentioned as a possible director of the Federal Bureau of Investigation.

Then, in response to demands from two defense lawyers, Leonard B. Boudin and Leonard I. Weinglass, Judge Byrne started broadening the scope of his inquiry into the link be-

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tween Watergate and the Pentagon papers. He said he was granting every defense request other than its demands for the full F.B.I. file on the case and for an immediate hearing.

He did say, however, that he wanted to know everything "the Justice Department and the F.B.I. knew about the break-in."

The judge said he also want-

ed the Government to produce for him an inventory list of the contents of Hunt's office safe when Hunt was employed in the White House.

Judge Byrne said to David R. Nissen, the chief prosecutor: "My instructions to you are going to be broadened. They are not limited to the alleged burglary [of the psychiatrist's office]. I want all the information that you might have regarding the Pentagon papers [disclosure] and Mr. Ellsberg and Mr. Russo."

He wanted, he said, "All the official investigations" and the results of "any nonofficial investigation." He went on, "All leads of any other type of investigation that was performed concerning the Pentagon papers and Mr. Ellsberg or Mr. Russo should be immediately turned over to me."

'All Types of Information'

He said that he did not want, at this time, "the entire F.B.I. file," but "I do want to know about all types of information gathered. I want to know what information you have or what else they might have in reference to this case and the defendants."

The judge told Mr. Nissen, "If you have any doubts in your mind, if you wonder whether information is connected to this case, turn it over to me."

"I want the investigation completed and the material turned over to me as rapidly as possible, and I'll decide whether a hearing will be held prior to this matter being submitted to the jury. Maybe there'll be a post-trial hearing."

This would include, he indicated, affidavits also from Earl Silbert, the Watergate prosecutor; Henry E. Petersen, the Assistant Attorney General, and John Martin of the Justice Department, who is in charge of this case.

Mr. Weinglass said that this was not good enough, asserting, "The only way the truth is going to be obtained in this case is if witnesses are called and subjected to cross-examination."

"There are very fundamental" issues here "far beyond taint" of Government evidence," Mr. Weinglass said.

Lacks Trust

Mr. Boudin said: "Very frankly, we don't trust the Government of the United States as represented by the executive branch. The entire atmosphere must be cleaned before we can proceed."

Still, Judge Byrne said that he would not at this time order a hearing or allow the trial to be interrupted.

The defendants had presented an affidavit setting out the details of the break-in at the

office of Dr. Lewis J. Fielding, a Beverly Hills psychiatrist who treated Dr. Ellsberg late in the 1960's until July, 1970, while Dr. Ellsberg was working for the Rand Corporation in Santa Monica.

In the affidavit Dr. Fielding said that he was visited on July 20, 1971, by two F.B.I. agents who said they wanted to discuss Dr. Ellsberg. He said that he consulted his attorney and that on the following day, July 22, his lawyer notified the F.B.I. that the doctor would not discuss his doctor-patient relationship.

He reiterated this to the agency again on July 26, he said. On Saturday, Sept. 4, at about 9 P.M., he said, he was informed by the Beverly Hills police that his office had been broken into.

He said that he drove to his office "and found my papers and records strewn about."

"I observed that the locks on my office doors had been pried open," he said, and that the "locks of my wood cabinet and my steel filing cabinet behind it had been pried open and bent completely out of shape." These cabinets contained the records of Dr. Ellsberg, he said.

Dr. Fielding said that Efrain Martinez, the building cleaning man, said that on the previous night, Sept. 3, at about 11 P.M., two men arrived at the building "wearing uniforms somewhat like those of a postman or a United Parcel delivery man and they were carrying a large suitcase."

Mr. Martinez told the doctor that the two men talked in "an accent which he recognized to be Cuban" and that they told him they were supposed to deliver the suitcase to the doctor. He said he let them in the office.

Mr. Martinez's mother, Maria Juarez Martinez, who was helping him with his janitor duties, also filed an affidavit.

She said the two men put the suitcase "on the floor near a table" in the office, asked her when she was leaving, and then left with her. Later the two apparently returned and rummaged through Dr. Fielding's files.

Mrs. Martinez said that five days before, she discovered two men—"I think they were Americans"—at 9 P.M. in the office "where the burglary later occurred." One of the men told her in Spanish, "I am a doctor," she said.

She concluded her affidavit: "The strange thing is that these two men were taking pictures of the walls of the same office where the two men [5 days later] left the valise."

Dr. Ellsberg and Mr. Russo are accused of six counts of espionage, six counts of theft and one count of conspiracy.