

Ellsberg Judge Seeks Affidavits Of Several Watergate Figures

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LOS ANGELES, April 30—The judge in the Pentagon Papers trial said today he would order affidavits from several principals in the Watergate case regarding their possible involvement in the Pentagon Papers prosecution.

U.S. District Court Judge W. Matt Byrne Jr. stopped short of granting a defense request that those individuals be subpoenaed to testify at a special hearing. But he did not rule out that possibility.

Byrne acted in response to defense demands growing out of the revelation on Friday that two convicted Watergate co-conspirators, E. Howard Hunt Jr. and G. Gordon Liddy allegedly had been involved in a burglary Sept. 3, 1971, at the office of a Beverly Hills psychiatrist who had been treating Daniel Ellsberg, one of the two co-defendants.

This was one of several developments today that seemed to further interconnect names in the Watergate case with individuals and incidents in the Pentagon Papers case.

These developments were:

Judge Byrne acknowledged that he had met with President Nixon and his former former chief domestic aide, John D. Ehrlichman, to discuss the possibility of a high administration post for Byrne.

Byrne said from the bench this morning that he had received a telephone call from

Ehrlichman about a month ago.

He said he met with Ehrlichman, apparently at San Clemente, and Ehrlichman "suggested to me a possible future assignment." Byrne said he was then introduced to the President and spent about a minute with him.

Byrne added that he told Ehrlichman he would refuse to discuss or consider a government post until the Pentagon Papers trial was completed. He did not say what job was discussed, but speculation is that it was director of the Federal Bureau of Investigation or as head of an independent Watergate investigation. Byrne's name has been mentioned as a possible successor to L. Patrick Gray III, who resigned Friday.

Defense attorney Leonard I. Weinglass, addressing the bench, implied that Byrne may have violated the judicial canons of ethics by meeting with Ehrlichman during the course of the trial.

"Did he (Ehrlichman) know the government would be submitting this information (about the burglary) involving this case?" Weinglass asked. "What was in Mr. Ehrlichman's mind at the time he contacted the court?"

Byrne made no response.

• In connection with the links to the Watergate group, Byrne ordered a sweeping probe by Pentagon Papers prosecutor David Nissen into any investigations, other than

former FBI inquiries, that might have been conducted with regard to the Pentagon papers. In doing so, he went beyond the issue of the burglary at the psychiatrist's office.

"I want all of the information you might have regarding any investigation regarding the Pentagon Papers, Mr. Ellsberg, Mr. (Anthony) Russo from either an official investigative agency or any non-official investigate agency formed by the government," said Byrne. Russo is Ellsberg's co-defendant.

Byrne said his order included anything else, besides the burglary, that Hunt and Liddy may have done in connection with the case. It was reported today in the Los Angeles Times that materials allegedly taken from Hunt's safe in his White House office on orders of presidential counsel John W. Dean III included six brown envelopes containing classified material relating to the Pentagon Papers case. Byrne said he wanted that material.

The judge also agreed with the defense lawyers that affidavits should be taken from Dean, Hunt, Liddy and Gray regarding their alleged involvement in the Pentagon Papers probe.

Byrne tentatively refused, however, defense demands that those four men, along with eight others, including former Attorney General John N. Mitchell, Attorney General Richard G. Kleindienst, Ehrlichman, White House Counsel Charles Colson and former presidential aide H. R. (Bob) Haldeman, be summoned for an in-court hearing. Byrne said

he would withhold judgment on hearings pending return of Nissen's investigation.

Defense attorney Leonard Boudin, insisting on a hearing, expressed grave doubts that the prosecution would comply fully and honestly with Byrne's probe order.

"Very frankly," said Boudin, "we don't trust the government of the United States as represented by the executive branch."

Boudin speculated that the entire prosecution of the Pentagon Papers case might have been a product of "a basic political espionage operation by a man who held another role—the Attorney General of the United States [Mitchell]. If the Attorney General might have been wearing two hats, perhaps it was not directed at Dr. Ellsberg at all, but at the Democratic Party."

Affidavits filed by the defense shed new light on the burglary of the office of the psychiatrist, Lewis J. Fielding. Maria Juarez Martinez, a cleaning woman in the building, testified that she saw two men who had Cuban or Puerto Rican accents enter Fielding's office on the evening of Sept. 3, drop off a black valise, and leave. The next day, Mrs. Martinez's son, a porter, discovered that the office had been broken into.

Fielding said in his affidavit that six weeks before the burglary he was visited by an FBI agent seeking information about Ellsberg. He refused to cooperate. On the day after the burglary, Fielding realized, he found his file cabinets pried open and material relating to Ellsberg "thoroughly runnaged through."