

Pentagon Papers Trial Judge Dismisses Ellsberg Charges

LOS ANGELES (AP) — The judge in the Pentagon papers trial Friday dismissed all charges against Daniel Ellsberg and Anthony Russo because of what he said was misconduct by the government.

U.S. District Court Judge Matt Byrne dismissed the espionage, theft and conspiracy charges in the wake of disclosures that the office of Ellsberg's psychiatrist had been broken into with the knowledge of White House staff member and that Ellsberg had been overheard by federal wiretaps.

In addition to throwing out the charges, Byrne declared a mistrial and said he believed the defendants should not be prosecuted again on the charges.

"The conduct of the government has placed this case in such posture it precludes the fair and dispassionate consideration of issues by the jury," Byrne said.

Ellsberg and Russo first came to trial in July 1972 in connection with the copying of the secret study of U.S. involvement in the Vietnam war. A mistrial was declared in De-

cember, however, and the second trial began in January.

Cheering broke out in the courtroom after the judge read his prepared decision. Ellsberg arose and hugged his wife Patricia and there were shrieks of happiness from the group of young legal aides who had assisted the defense nearly from the time of Ellsberg's indictment in 1971.

"As the record makes clear, I have attempted to require the government and allow the defendants to develop all information available on the issues disclosed here," Byrne said.

But he said the government had moved too slowly and "there remained more questions than there are answers."

The judge said he was dismissing the case not solely because of the wiretap disclosure but on "the information that has been presented in the last several days."

Byrne said earlier he was considering possible dismissal on grounds raised as result of two government revelations — that the psychiatrist's office

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had been burglarized by Watergate conspirators and that Ellsberg had been overheard on wiretaps never disclosed to the court before.

Before Byrne retired to his chambers to consider his decision, he heard defense attorneys accuse the government of raising the last-minute wiretap issue to divert attention from the judge's investigation of Watergate and White House links to the case.

Byrne said he believed the government had made an "extraordinary series of disclosures" about official White House involvement in the investigation of a case and a man — Ellsberg — already in the process of litigation.

Since Byrne began a probe of White House-Watergate involvement in the trial April 26, testimony and affidavits disclosed in court said Watergate conspirators G. Gordon Liddy and E. Howard Hunt engineered a break-in at the office of Ellsberg's psychiatrist in September 1971.

The two-week investigation by Byrne spread to a second front Thursday when the FBI

revealed Ellsberg was overheard on a wiretap up to two years before he released the Pentagon papers. The hitherto secret wiretaps were at the home of Ellsberg's friend Morton Halperin, a one-time White House official.

Byrne expressed shock that the White House would form a special unit to investigate Ellsberg and the Pentagon papers. He said these actions had prejudiced the rights of both defendants.

He said he believed that the Central Intelligence Agency, by aiding the conspirators in providing disguises for the break-in, "apparently acted beyond its statutory authority."

Byrne expressed dismay that government officials were

aware "of the activities of this special unit" and that neither the court, nor the defendants, nor apparently the prosecution, was notified.

Of the wiretaps, he said he was most dismayed that the FBI reported its records on eavesdropping of Ellsberg had been lost.

"There is no way the defendants nor the court nor the government itself can ever assess the effect that those wiretaps may have had," he said.

Although the government had offered to investigate further, the judge said it was too late.

Ellsberg's chief attorney, Leonard Boudin, said he was pleased with the decision.