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The Trial That Failed

Given the shocking revelations of government misconduct, there was no other choice for Judge Matt Byrne. Only by dismissing all charges against Daniel Ellsberg and Anthony Russo could he dispel the ever-thickening corruptive cloud that hung over the Pentagon Papers trial in Los Angeles, and shield the integrity of the judicial process. His rebuke to the sinister influences that played upon this case is the only heartening aspect of a dismal affair that became infected, beyond cure, by the Watergate blight. At least we all are reassured by his action that the courts still stand strong against secret and illegal excesses of government.

Of course the probability of this outcome had been obvious for some time. Early this month we commented that the trial was seriously compromised by two stunning disclosures: that White House operatives had burglarized the office of Ellsberg's psychiatrist, seeking his records, and that just last month the White House approached the trial judge, to discuss the possibility of his appointment as FBI director. But that was before the report of FBI wiretap eavesdropping on Ellsberg, in 1969 and 1970, and the government's humiliating admission that all records of this spying had disappeared. And along came that ultimate shocker, about the CIA having equipped the burglars of the psychiatrist's office, who happen to be two of the convicted Watergate espionage conspirators. Against all this, the Justice Department could make no

credible case for the legitimacy of its prosecution.

So one of the most historic trials in American history had to be aborted, after costing the government perhaps millions of dollars, and the defendants hundreds of thousands. Nor can the latter claim acquittal, on charges of stealing and disseminating that secret Pentagon report on the Vietnam war. Their victory, from the mistrial and dismissal, is that they will not be tried again on those charges, and that the decision, such as it was, went against the government. But unfortunately it also left vital questions hanging in air. An important unresolved matter is the extent of government power to prevent the release of classified information.

In any case, the tremors from Judge Byrne's courtroom will be felt a long while, especially in a White House that's being shaken unceasingly by the Watergate scandal and charges of election finance corruption. And there may be more to come, if California authorities really are intent on prosecuting those who engineered the psychiatric office burglary. Only by an intense effort to uncover every last fact about all its plagues can the Nixon administration begin to compensate for the losses it has suffered. Its showing in the Los Angeles court can only depreciate, once again, the people's confidence in government.

And explaining to them how a trial of such magnitude could be disrupted by devious government actions will, to say the least, not be easy.