

Gray Resigns; Ruckelshaus Heads FBI;  
Hunt, Liddy Linked to Ellsberg Case

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## Papers: Conspirators Said to Burglarize Ellsberg Analyst, Trial Told

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LOS ANGELES, April 27 — Watergate conspirators G. Gordon Liddy and E. Howard Hunt allegedly burglarized the office of Daniel Ellsberg's psychiatrist in order to obtain files concerning Ellsberg, according to information submitted to Justice Department investigators.

The information came to light in federal court here this morning, where Ellsberg and Anthony J. Russo Jr. are on trial on charges of conspiracy, espionage and theft of government prop-

erty in connection with disclosure of the top-secret Pentagon Papers.

U.S. District Court Judge W. Matt Byrne Jr., stunned by the revelation in the final stages of the trial, ordered a comprehensive Justice Department investigation "forthwith."

Once he has the results, Byrne said, he will determine whether "the legal or constitutional rights of the defendants" may have been violated and whether any of the prosecution evidence in the case may have been tainted.

Legal observers here sug-

gested that if this is so, or if the products of the alleged burglary contributed in any way to the government's case, the charges against Ellsberg and Russo could be dismissed or a mistrial declared. Meantime, Byrne allowed prosecutors to continue presenting rebuttal witnesses in the trial.

In Washington, the Justice Department stressed that it is not yet certain whether any burglary actually occurred and that it has made a preliminary determination that Ellsberg's and

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diately after the revelation this morning, Ellsberg placed a phone call to a psychiatrist he had consulted, in order to inquire about the alleged burglary.

The Justice Department said today that the Silbert-to-Petersen memo had been transmitted to Nissen by telecopier on Thursday, 10 days after it was written.

Department spokesman Horace Webb attributed the delay to the time necessary for Petersen to examine the information (submitted to Silbert) and decide what to do.

The memo was part of a several-page, in-camera or secret, filing that Nissen gave the court early Thursday afternoon, accompanied by a notice to the defense that he had submitted information "which the court may wish to examine in connection with the trial of this case."

In a development that was then regarded as mysterious, Byrne summoned lawyers for both sides to court later Thursday and told them he could not accept the document as a private filing, because it was not pursuant to any court order.

Byrne gave the prosecutor overnight to consult his superiors in Washington and to decide whether they would voluntarily turn the material accompanying the secret filing over to the defense. As court convened this morning, Nissen said, "They do not wish to do so."

The judge immediately ordered that the document be provided to Ellsberg and

fense would have confidence that Byrne will receive full information on the alleged burglary from the Justice Department.

He pointed out that on at least two occasions, the chief prosecutor in the Pentagon Papers trial, David R. Nissen, had withheld evidence in apparent violation of court orders.

Details of the alleged burglary were not immediately available today.

The only information on the public record was a memorandum dated April 16, 1973, from Earl J. Silbert, principal assistant to the U.S. attorney for the District of Columbia and chief Watergate investigator, to Assistant Attorney General Henry E. Petersen, head of the Justice Department's criminal division and the man who has been reporting directly to President Nixon on the renewed Watergate probe.

Labeled "Daniel Ellsberg Prosecution," it reads:

"This is to inform you that on Sunday, April 15, 1973, I received information that at a date unspecified, Gordon Liddy and Howard Hunt burglarized the offices of a psychiatrist of Daniel Ellsberg to obtain the psychiatrist's files relating to Ellsberg. The source of the information did not know whether the files had any material information or whether any of the information or even the fact of the burglary had been communicated to anyone associated with the prosecution."

Defense sources said that during a court recess imme-

Russo anyway, but he agreed to Nissen's request that other parts of Thursday's secret filing—apparently dealing with internal communications at the Justice Department—be eliminated.

After reading the Silbert-to-Petersen memo aloud from the bench to a capacity courtroom audience, Byrne rattled off his instructions to the prosecution:

"I want to know all the facts that were obtained by Mr. Silbert and by anyone else regarding the alleged burglary. I also want to know the source of the information to Mr. Silbert and all the facts surrounding the occurrence of the burglary as to time, place and . . . whose office it was and what material, if any, is known to have been taken."

Byrne continued, "I also want the government to supply me with all facts regarding the status of the alleged perpetrators of the alleged burglary—that is, whether at the time of the alleged incident they were employees of the government and, if they were not, who they were employees of at that time."

The judge said that he wanted the prosecutors' search for information to be comparable to earlier inquiries with government agencies about electronic surveillance in connection with the case.

"The government knows better than I what agencies or individuals might have such information," added Byrne, himself a former U.S. attorney here.

"It may well be, Mr. Nissen, that as I have an opportunity to reflect upon this to some greater length, I will have additional information that I will desire, but this will be a starting point," the judge said.

He said he was particularly concerned with determining whether the psychiatrist's files were used "in the preparation of the prosecution of the case, from the decision to prosecute, to presentment of indictments and through the trial of the case thus far."

Byrne warned that "I do not desire to have the government wait until they complete a somewhat large-scale investigation and then give me the information . . . what information you have, I would like it turned over as soon as you have it, and time is of the essence."

The judge said that as reports of the investigation

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Russo's rights have not been prejudiced.

Defense attorneys for Ellsberg and Russo took the matter gravely, however, suggesting serious infringements of constitutional rights and the confidential doctor-patient relationship and contending that there may be substantial links between Republican political espionage and the Pentagon Papers prosecution.

Ellsberg insisted that he was not surprised.

"The message of the Watergate, as I read it, is the same as the message of the Pentagon Papers: that in the eyes of the people who work for the President, all law stops at the White House fence, and they are all beyond the law," he said.

The name of the psychiatrist and the city where he practices were not revealed in court, and Ellsberg declined to provide that information to reporters.

"I believe very strongly that there are areas of individual privacy . . . and this is one of them," he said.

It was learned later, however, that the doctor in question is a male psychiatrist practicing in Los Angeles who Ellsberg consulted when he was working for the Rand Corp. in Santa Monica in the late 1960s.

Ellsberg complained that his dentist and "everybody related to me one way or another" had been contacted by the FBI during the Pentagon Papers investigation.

Russo, for his part, said that he did not feel the de-



Associated Press

Pentagon Papers defendant Daniel Ellsberg calls alleged burglary "political espionage" in appearance outside Los Angeles federal courthouse with his wife Pat.

come to him here, he will consider making them available to the Ellsberg-Russo defense and the public.

Hunt pleaded guilty to and Liddy was convicted of charges of conspiracy, burglary and illegal wiretapping and eavesdropping in connection with the break-in and bugging of the Democratic National Committee's Watergate headquarters.

Liddy, who was sentenced to a minimum of six years and eight months in jail, and Hunt, who has not yet received his final sentence, are being held for the time being in the D.C. Jail.

After a brief recess, Byrne then permitted the prosecution to continue its

rebuttal case with witnesses from the Rand Corp., where Ellsberg and Russo once worked as defense researchers.

No sooner had assistant prosecutor Warren P. Reese resumed questioning of Richard Best, Rand's corporate security officer, than he ran into trouble again for not providing full information on Best's prior statements to the defense.

Nissen took today's developments nonchalantly and waited two hours, until the court's luncheon recess, to call Washington and request the investigation ordered by Byrne.

Talking freely with reporters for almost the first time since the Pentagon Pa-

pers trial began in January, the prosecutor said "it would strain my credulity" to believe that any government evidence was derived from the alleged burglary.

"I don't see how (the alleged burglary) could have any legal bearing on the case," Nissen said, adding that it is "hard to know" how long the inquiry would take.

"There will be a lot of time spent looking for answers to the judge's questions," the prosecutor said, implying that the case would go to the jury before the incident is fully disclosed.