

U.S. Told to Defend Ellsberg

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LOS ANGELES, May 3— U.S. District Court Judge W. Matt Byrne Jr. angrily served notice on the government today that it will have to prove to him in did not taint the case against the Pentagon Papers trial co-defendants, Daniel Ellsberg and Anthony Russo, through secret investigations, wire-taps and burglary.

Judge Byrne demanded the full transcript of E. Howard Hunt's testimony

before a Washington, D.C., grand jury, complete records of wiretapping allegedly authorized by the Justice Department, and further questioning of Earl Silbert, Justice Department prosecutor investigating the Watergate scandal.

Three times in proceedings this morning, Byrne firmly said, "The burden is on the government and the government is going to meet that burden."

Later, in Washington, D.C., Chief U.S. District

Court Judge John Sirica ordered that 37 pages of Hunt's testimony before a grand jury investigating the Watergate scandal be forwarded to Los Angeles in response to Byrne's request. Hunt, one of the convicted Watergate conspirators, reportedly confirmed allegations that he and G. Gordon Liddy, working as a White House-hired team, burglarized the offices of the psychiatrist of Ellsberg.

In addition, the government turned over to Byrne a statement by Robert C. Mar-

dian, a former assistant attorney general, who said he had had "no prior knowledge" of the burglary. Mardian refused to elaborate, claiming an attorney-client privilege, but said he would be prepared to expand his statement in a closed hearing, presumably before the judge.

Part of Byrne's ire clearly was based on the speed with which the government has been unfolding details of what now appears to be a massive secret investigation into the Pentagon Papers

Probe

leak. Most of the information made available to him has come from the defense, and much of that from newspaper reports.

Again today, it was the defense attorneys who informed the court that Hunt testified before a grand jury Wednesday and reportedly acknowledged his and Liddy's role in the burglary of the Beverly Hills office of Ellsberg's psychiatrist.

The defense also read in court a story in the Wash-

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ington Post alleging that Hunt and Liddy supervised the tapping of the phones of two New York Times newsmen.

They also read excerpts from a second Washington Post story indicating that President Nixon had a direct hand in determining release of the information about the burglary last Friday. It was that disclosure, read in court by Judge Byrne, that triggered the tangled chain of revelations all this week at the Pentagon Papers trial.

Reacting to the defense reports, Byrne ordered prosecutor David Nissen to immediately provide a transcript of the Hunt testimony.

It was a few hours later that Judge Sirica released the Hunt transcript.

Byrne also demanded full disclosure of Justice Department involvement in secret wiretaps of newsmen and any others connected with the Pentagon Papers case.

"If there's an authorization in the Justice Department of a tap pertinent to anybody in this case I want those authorizations," Byrne said. "I want to know if there is a tap."

The Washington Post in Thursday's editions quoted sources as saying that the taps of newsmen were authorized by then-Attorney General John N. Mitchell and supervised by Mardian, who later became political coordinator of the Committee for the Re-election of the President.

Byrne also expressed unhappiness with a memo submitted by Earl J. Silbert, the assistant U.S. attorney investigating Watergate.

In the memo to his boss, Assistant U.S. Attorney General Henry E. Petersen, Silbert refused to name the source who first told him April 15 about the Hunt-Liddy burglary.

"The information I previously conveyed to you was received by me as part of a confidential communication

during the investigation in the Watergate affair. To date I have not been relieved of my commitment not to divulge the source."

Silbert added that his source had been interviewed by the FBI. But defense attorney Charles Nesson called Silbert's stand "an extraordinary statement."

Byrne characterized Silbert's response as "negative" and told Nissen, "I want Silbert contacted."

"The burden, the obligation is on them [the government]. The government cannot meet that obligation in the negative," Byrne added. Noting that there are "holes in the investigation," he said, "I am not going to day after day make new orders. I've made it clear before, and again, today: the burden is on the government."

In the afternoon session, Judge Byrne released documents showing that former White House counsel Charles Colson authorized payments of plane fare, per Diem, meals and hotels for Hunt during the period July 6, 1971, through Feb. 5, 1972.

It was during this period that Hunt and Liddy were allegedly at work on the secret Ellsberg investigation, compiling a psychiatric dossier for the White House.

The information was contained in an inventory of materials taken from Hunt's White House safe last year after the Watergate break-in, and turned over to Byrne today.

The inventory included a work voucher showing that Hunt worked eight hours on Sept. 3, 1971, the day of the burglary of the psychiatrist, Lewis Fielding, in Beverly Hills.

The inventory also included these items specifically regarding Ellsberg:

- A tan folder marked "Ellsberg" containing three typewritten copies of a 28-page chronology of Ellsberg from birth through Nov. 12, 1971, "Insofar as it relates to the Pentagon Papers."

- The inventory, provid-

ed by the FBI, states that page 26 of the document discloses that Ellsberg phoned his psychiatrist, Dr. Fielding, from a room he occupied at the Bel Air Hotel in Beverly Hills between Dec. 30, 1970, and Jan. 4, 1971. Page 27 of the document mentions that on Jan. 29 and Feb. 2, 1971, Ellsberg saw a Cambridge, Mass., psychiatrist.

The partial inventory was turned over to the defense, along with the Silbert and Mardian memos. The Mardian statement was made to FBI agents in Phoenix, where Mardian lives, on Monday. In it Mardian said, "At no time while I was assistant attorney general of the United States did I acquire any knowledge of any alleged burglary by G. Gordon Liddy or E. Howard Hunt or anyone else."

"I have not had any prior knowledge in any capacity. If I were to answer the question any more fully I might violate laws pertaining to the attorney-client privilege. I would be willing to explain my answers voluntarily and more fully in an *in camera* proceeding."

During today's trial, defense attorney Nesson noted there were indications that "certain people," including Egil Krogh and David Young, former White House aides implicated in the secret Ellsberg probe, had not yet been interviewed by the FBI in compliance with Byrne's orders that a full investigation be conducted.

At another point, Byrne said "there were attempted interviews turned down by people on constitutional grounds," but he did not identify the people.

In another development, Los Angeles County district attorney Joseph Busch announced today an investigation into the burglary of the psychiatrist's office.

"If we can prove that a crime was committed, we'll prosecute the case," said Busch, adding that the Justice Department had assured cooperation.