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Pentagon Papers Issue at an End

JUDGE MATTHEW BYRNE, whose conduct of the long and frequently interrupted Pentagon Papers trial earned him the esteem of lawyers and laymen alike, has capped his performance by dismissing all charges against the defendants, Daniel Ellsberg and Anthony Russo.

He did so, he announced, because repeated disclosures of government misconduct had placed the case in "a posture that . . . precludes the fair and dispassionate consideration of issues by the jury."

That misconduct was in large part revealed through the court's insistence upon the production of evidence that the government, wilfully or inadvertently, had withheld. It ranged far and wide, touched the Watergate mess, involved wiretapping, implicated both the FBI and CIA, included the burglary of a psychiatrist's office, and, as the court observed, "other bizarre events" some of which had their origin at the White House.

THERE WAS ALSO THE INCIDENT which he reported in open court, namely, his invitation to the San Clemente White House while the trial was in progress, and the offer of a job as head of the FBI.

The charges brought against the defendants were theft, espionage and conspiracy. The defense contended with considerable justice that no theft was involved inasmuch as nothing was stolen, that the documents involved were no longer government property but had been handed over to its former employees, and the disclosure of their contents could in no way imperil national security. The Federal courts had previously disposed of the national security issue in dissolving an injunction which the government had sought against newspapers that published excerpts from those documents.

Conspiracy and espionage appeared at best to be vague and unprovable charges.

When Judge Byrne announced his decision, adding that the defendants ought never to be brought to trial again, the courtroom applauded. Well it might. The outcome carries assurance to the public that the judiciary still has the authority and the will to protect the individual against oppressive acts by the government.

The White House interest in a verdict of guilty in this case was unmistakably disclosed by the very excesses which brought about the dismissal of all charges. Coming within 24 hours of the indictment of the Attorney General who brought the case, the outcome was undoubtedly one of the heaviest in the current series of heavy blows.