

los angeles

# Ellsberg Trial Shakeup

THE judge was already angry. "Mountains" of government evidence kept shrinking into molehills by the time the prosecution presented it — and last week a halt was ordered to the whole procedure.

His face visibly flushed, U.S. District Court Judge William Matthew (Matt) Byrne Jr. sent the jury home ten days ago, because the Government had again withheld evidence from the court and the defendants, Daniel Ellsberg and Anthony Russo.

It was the second time in the 79 days of the Pentagon Papers trial in Los Angeles that the jury had been sent home over essentially the same issue — the Government withholding material that it had a constitutional mandate to make available to the defense.

## Persistent Requests

The material turned up as a result of persistent defense requests for reports made in a massive investigation of the Rand Corp.'s security practices in 1971.

Rand, a Southern California research and analysis firm which does much of its consulting work for the Gov-

## *A pair of cases suddenly was intertwined*

ernment, was in custody of the papers when defendants Ellsberg and Russo allegedly Xeroxed and distributed portions of them to the New York Times, Washington Post and Los Angeles Times.

Attorneys for Ellsberg and Russo had contended repeatedly that various government agencies conducting the investigation had taken statements from Rand employees who were testifying in the current trial.

Sure enough. Justice Department Attorney Warren Reese furnished Byrne with some material which he said was "discovered" in Los Angeles a week ago last Wednesday, and said three other reports were found in Washington and were being flown to the trial.

## 'Not Deliberate'

Reese insisted that there had been no "deliberate or conscious effort" on the part of the prosecutors to suppress the material. There was "literally a mountain of documents," said Reese. But Judge Byrne snapped back: "The mountain of documents is a mountain made by the Government — and

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you're going to have to make it available for scrutiny.

"The burden on the Government in sifting through the evidence, evaluating it and turning it over cannot be weighed with the rights of the defendants," Byrne observed. "Obviously, the rights of the defendants are superior and have to prevail."

Meantime, the judge said, he was "concerned" about whether there might be "other material" that had not been turned over to the court. His concern was quickly justified.

#### 'Files Burglarized'

In a tense courtroom session prior to resumption of the trial, Judge Byrne announced that he had been informed that two convicted conspirators in the Watergate bugging case — G. Gordon Liddy and E. Howard Hunt Jr. — had burglarized



AP Wirephoto

JUDGE BYRNE

the office of Daniel Ellsberg's psychiatrist in Beverly Hills.

It was a rare occurrence for testimony in one major court case to suddenly intrude itself upon another. But this was not the first time that two seemingly unrelated cases — Watergate and the Pentagon Papers — had suddenly become intertwined.

Two Cuban exiles who were involved in Watergate had said that last May they and seven other exiles were recruited to attack Dr. Ellsberg on the steps of the Capitol, where the body of J. Edgar Hoover, the late F.B.I. director was lying in state. Bernard Barker, who led the Watergate raiding party, reportedly recruited the Cubans in Miami, flew them to Washington and assigned them to assault Ellsberg, who was addressing an anti-war rally at the time. "Our mission was to

hit him — to call him a traitor, punch him in the nose and run," said one of the exiles.

#### Whose Direction

Judge Byrne immediately ordered a thorough investigation to determine if the psychiatric office burglary may have tainted evidence in the Pentagon Papers trial. Further, he demanded to know "at whose direction" Liddy, Hunt or anyone else became involved in the alleged burglary.

As for the source of the information, Byrne disclosed only that the incident was revealed in an April 16 memorandum from Earl Silbert, chief prosecutor in the Watergate case, to Assistant Attorney General Henry Petersen, now in charge of the Watergate investigation.

However, Newsweek reported last week that the original source of the report of the Ellsberg psychiatrist break-in was presidential counsel John Dean III, whose name has been linked to the alleged cover-up of Watergate affair by White House staff members.

"I wish I could say as a citizen that I am surprised," said Ellsberg — who added that his two dentists, his wife and "everybody who has been related to me in one way or another" has been bothered by government investigators.

#### Complete Halt

By midweek, the trial had ground to a complete halt. Ellsberg's chief attorney requested that 11 present and former government officials be ordered to tell what they know about links between Watergate conspirators and the Pentagon Papers case.

The witnesses whom attorney Leonard Boudin wanted to call included former Attorney General John Mitchell, just-resigned Attorney General Richard Kleindienst, resigned White House aide John Ehrlichman, former acting FBI Director L. Patrick Gray and convicted Watergate conspirators E. Howard Hunt and G. Gordon Liddy.

Russo's chief attorney, Leonard Weinglass, also asked that Ehrlichman be questioned about his intentions when he personally contacted Judge Byrne on April 5. Byrne disclosed that Ehrlichman had summoned him to the Western White House in San Clemente where he was introduced to President Nixon — who offered him the directorship of the FBI. He refused to consider the offer, Byrne said, until the trial's end.