

ELLSBERG JUDGE ORDERS HUNT DATA

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Court in Capital Will Send
Testimony, Reportedly on
Los Angeles Break-In

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By MARTIN ARNOLD

LOS ANGELES, May 3 —

The judge in the Pentagon papers trial ordered today that the grand jury testimony E. Howard Hunt Jr. gave yesterday in the Watergate case be turned over to him immediately.

Hunt reportedly testified that he and G. Gordon Liddy, convicted in the burglary at national Democratic headquarters last June, personally took part in the break-in at the office of Daniel Ellsberg's psychiatrist the night of Sept. 3-4, 1971.

In Washington, Federal District Judge John J. Sirica ordered that 37 pages of testimony by Hunt be sent to Federal District Judge William Matthew Byrne Jr., who is presiding at the trial here of Dr. Ellsberg and Anthony J. Russo Jr.

Judge Byrne reiterated today, with some anger, that "the burden is on the Government" to prove that neither the Justice Department nor the White House nor the Watergate conspirators had interfered with the constitutional rights of Dr. Ellsberg and Mr. Russo and

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Ellsberg Judge Demands Data by Hunt

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therefore "tainted" this case.

The two are charged with six counts of theft and one of conspiracy stemming from the disclosure of the secret Pentagon study of the Vietnam war.

In another development, Judge Byrne disclosed that a number of former high-ranking Government officials had refused to be interviewed by the Federal Bureau of Investigation in the court-ordered inquiry into the link between the Watergate affair and the Pentagon papers trial. He declined to give their names to the defense at this time, saying he would if he decided to hold a court hearing on the matter.

But he did turn over to the defense a statement by Earl J. Silbert, the Watergate prosecutor, in which Mr. Silbert declined to make public the name of the person who told him on April 15 that Hunt and Liddy had broken into the psychiatrist's office.

He also turned over an F.B.I. interview, conducted on April 30 in Phoenix, Ariz., with Robert C. Mardian, former Assistant Attorney General, in which Mr. Mardian said that, in his own words, "At no time while I was Assistant Attorney General of the United States did I acquire any knowledge of the alleged burglary by Liddy or Hunt or anyone else."

After Leaving Office

He did say, however, that he did have knowledge acquired after he left public office to become the political coordinator of the Committee for the Re-election of the President. This knowledge, he told the F.B.I. pertained to an "attorney-client" relationship, which, he added, he would be willing to explain in the judge's chambers. At one time Mr. Mardian said that he gave Maurice H. Stans, some legal advice.

Judge Byrne said that "in general let me make it clear again—the burden is on the Government" to show that the defendants' constitutional rights have not been violated "and the Government is going to have to meet that burden."

In cold tones he continued: "There are holes in the investigation. I'm not going to, day after day, make mention of this to the Government, make it clear the burden is on the Government to find out what did occur."

The defense attorneys believe that the judge is adopting a strategy of trying to put pressure on the Government to ask for a dismissal of the case or, if that fails, of being able to dismiss it himself with the onus falling on the Government—for failing to comply with his repeated orders for an investigation into the connection between Watergate and the trial here.

Judge Byrne said, for instance, that the Mardian interview could be developed, if the defense investigated its implication, into proof of possible "taint" of evidence in this case.

He also said that he had received in his chambers an inventory of Hunt's former White House office, and that from the looks of the inventory there would be more information to be turned over to the defendants when the Hunt material arrives.

Time and Pay Records

He mentioned, for example, a "legal-size folder marked time and pay records" and said he would probably turn that over to the defense, presumably because it will show where Hunt and Liddy were each day and how much they were paid for their services.

Judge Byrne told the prosecutor, David R. Nissen, that he did not know what "other investigations were going on in the Federal system or the country system."

"When I order the turnover," he said, "it's up to the Government to determine what effect [the material] has on this and other cases."

The implication was that the Government should perhaps bring in other criminal cases as a result of the information gathered in this investigation.

As an example, the judge said he wanted to know about a voucher found in Hunt's office for payment for three men to spend the night of Sept. 13, 1971, in a Los Angeles hotel.

The inventory list also showed that Hunt had "one tan folder marked 'ELLSBERG'" containing the following material:

"Three typewritten copies, on legal size white paper of a 28 page document reporting a chronology of ELLSBERG from birth, April 7, 1931, through Nov. 12, 1971, insofar as it relates to the Pentagon papers."

Call From Hotel Room

The inventory list says that page 26 of the document shows that Dr. Ellsberg occupied a room in the Bel Air, an expensive hotel here, from Dec. 30, 1970, to Jan. 4, 1971, and that during that period he made a telephone call from his room to Dr. Lewis J. Fielding, the psychiatrist whose office was broken into.

According to the Ellsberg file, Dr. Ellsberg twice saw a Cambridge, Mass., psychiatrist—once on Jan. 29, 1971, and once on Feb. 2, 1971. Dr. Ellsberg had previously denied ever seeing a psychiatrist in Cambridge.

Further, the inventory list shows that during the period of Sept. 1 through Sept. 6, 1971, Hunt billed the White House for work of eight hours a day, but the list does not show where the work took place. It also shows that the former White House counsel, Charles W. Colson, authorized payment to Hunt on Sept. 13, 1971.

While all this was going on in the courtroom, before the jury was called in to hear further testimony, the Los Angeles County district attorney, Joseph P. Busch, announced that he was conducting an investi-

gation into the break-in at the psychiatrist's office.

He said that he had already flown to Washington to discuss the inquiry with Henry E. Petersen, Assistant Attorney General, and that "we will audit the Federal Court to receive immediately all data" released by Judge Byrne.

There were these further developments in the case today:

¶The defense read in open court an article in The Washington Post saying that President Nixon had been consulted before the report of the break-in at Dr. Ellsberg's psychiatrist's was turned over to the judge, and that Attorney General Richard G. Kleindienst made the decision to consult the President had to be consulted, the article said there was a 1-day delay between the time the Justice Department admitted to learning of the break-in until it was finally reported to the judge.

¶Another Post article was read saying that Hunt and Liddy supervised the wiretapping of at least two New York Times reporters in 1971 as part of their investigation of the publication of the Pentagon papers, and that this wiretapping had been authorized by John N. Mitchell, then Attorney General.

¶The defense said that Hunt and Liddy were part of what was called an ex-office "vigilante" team, operating from the White House, that was put together to conduct wiretapping operations that the F.B.I. apparently declined to carry out.

¶Asked about rumors that legal papers were being drawn up to drop the prosecution of Dr. Ellsberg, Mr. Petersen said in Washington that the reports were untrue, "based on information available to the Department of Justice at this time, the case is clean and untainted, he said.

Ex-Rand Head Questioned

Once the jury was called back into court today, the cross-examination of Harry Rowen, former president of the Rand Corporation, was continued by the defense.

Mr. Rowen said that the set of the Pentagon papers that Mr. Ellsberg and Mr. Russo are accused of Xeroxing were not logged into the Rand Corporation's top secret control system until Dec. 31, 1970, long after it arrived at Rand, from where Dr. Ellsberg is accused of stealing it.

This would tend to prove Dr. Ellsberg's contention that the papers had been given special treatment at Rand and that he had been given special access to them.

Mr. Rowen also said that it was unusual to transport top secret documents from Rand's Washington office to its Santa Monica office by the armed forces courier team, but that the Pentagon papers had been transferred by Dr. Ellsberg on a special courier pass. This, too, would tend to prove the defendants' contention that Rand purposely got the papers out of its own system.