

F.B.I. Tap Picked Up Calls Ellsberg Made in 1969-'70

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LOS ANGELES, May 10—One year after the trial judge ordered that all information on wiretaps be handed over to the court, the Government disclosed today at the Pentagon papers trial that telephone calls of Dr. Daniel Ellsberg were picked up by F.B.I. wiretaps in late 1969 and early in 1970.

And, it was disclosed, the records of the wiretaps and the transcripts of them disappeared

Text of trial documents appears on Page 19.

from the Federal Bureau of Investigation sometime between July and October, 1971.

The disclosure goes to the heart of "taint" of evidence and testimony in this trial, and United States District Court Judge William Matthew Byrne Jr. immediately suspended the court proceedings and asked

Continued From Page 1, Col. 7

most crucial period of the indictment, from the time of copying to the time of leaving Rand."

Dr. Ellsberg copied the Pentagon papers in October, 1969, and left the Rand Corporation in May, 1970.

The disclosure of the surveillance came in a memorandum filed with the judge by William D. Ruckelshaus, acting director of the F.B.I.

The burden is now on the Government to prove that the taped telephone conversations were not used to "taint" this case. If the Government cannot meet that burden, then as a matter of law the case against Dr. Ellsberg and Anthony J. Russo Jr. will be dismissed.

Mr. Ruckelshaus, in his memorandum, dated yesterday and made public today, said that on May 4 he "initiated an investigation to interview pres-

ent and retired F.B.I. personnel for the purpose of determining, if possible, whether there had been any such taps."

He said that "last night"—Tuesday night—he received a "preliminary report" in which a former F.B.I. employe recalled that "in late 1969 and early 1970 Mr. Ellsberg had been overheard talking from an electronic surveillance of Dr. Morton Halperin's residence."

"It is this employe's recollection that the surveillance was of Dr. Halperin, and that Mr. Ellsberg was then a guest of Dr. Halperin," Mr. Ruckelshaus said.

Dr. Ellsberg said that it was conceivable that he talked about the Pentagon papers at that time on Dr. Halperin's telephone.

Dr. Halperin has been defense consultant and a defense witness in this case. At the time of the taps on his telephone, he was either a staff member of the National Security Council or a consultant to the council. He lived in Bethesda, Md.

Dr. Halperin left his position in the Defense Department in 1969 and became a member of the staff of the National Security Council. He left that post on Sept. 19, 1969, but remained a consultant until the following May.

While in the Defense Department, he was in over-all charge of the panel that produced the Pentagon papers and a basic contention of the defense has been that the set of the papers copied by Dr. Ellsberg were, in fact, the private papers of three former Government officials, including Dr. Halperin.

The judge had set today for arguing motions to dismiss this case and for arguing defense motions for a verdict of acquittal, but he halted the proceedings before the arguments could start.

He asked, instead, that the Government supply him promptly with the answers to a long list of questions, and added, "I may still want to hear the arguments, and I may not."

Continued on Page 19, Column 7

"It's impossible to proceed with the legal ramifications until the factual picture is clear," he said. "I need those answers for a factual picture. I want to know what occurred."

He then turned to David R. Nissen, the chief prosecutor, and said, "Tell Mr. [Henry] Petersen that I want the information now. Do they [the Justice Department] understand that I want that now—not at the completion of some investigation."

Mr. Petersen is the Assistant Attorney General.

"If there are not logs and records [of the wiretaps], I want to know why not," the judge said. "If there were, and they are gone, I want to know why and where."

He then told Leonard I. Weinglass, a defense attorney, that if he had any legal precedents for dismissing on this issue he should produce them as soon as possible.

Two Orders Issued

On May 2, 1972, the judge ordered the prosecutor to produce all wiretap conversations involving the defendants in this case and their lawyers and their consultants, and he reiterated that order on July 7, 1972.

In July and again in December, 1972, the Government turned over to him transcripts of wiretaps of members of the defense team, but the judge said that they did not pertain to this case, and their contents were not disclosed. The Government has insisted since that no other wiretaps were outstanding.

The judge's order included all electronic surveillance of Dr. Ellsberg, going back to Sep. 30, 1970, and all similar surveillance of Dr. Halperin, going back to Nov. 28, 1971, when he became a consultant to the defense.

This morning, however, the judge and Mr. Nissen agreed that the surveillance information on Dr. Ellsberg was to go back even further than that.

Today's court session started with a great air of expectancy, with some defense attorneys believing that before evening Dr. Ellsberg and Mr. Russo would be freed of all charges.

By 8 o'clock this morning, a long line of spectators had gathered in the corridor outside the courtroom, and within seconds after the doors had been opened, every seat was taken.

The jury had been sent home until Monday, and so the judge allowed the overflow of news correspondents to sit in the 18 seats in the jury box.

The crowd inside was hushed when Judge Byrne walked into the court. He looked grim as he mounted the bench and announced Mr. Ruckelshaus's memorandum.

Obscured in today's wiretapping development was a turnover to the defense of a report on an F.B.I. interview with Charles W. Colson, former special counsel to President Nixon, which was dated May 8, 1973.

In it, Mr. Colson related that in early July, 1971, there were "kind of panic sessions" in the White House over the disclosure of the Pentagon papers in The New York Times on June 13, 1971.