

Pentagon papers Charges Are Dismissed;  
 Judge Byrne Frees Ellsberg and Russo;  
 Assails 'Improper Government Conduct' (8 col)

**NEW TRIAL BARRED**

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**But Decision Does Not Solve Constitutional Issues in Case**

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 Special to The New York Times

LOS ANGELES, May 11—Citing what he called "improper Government conduct shielded so long from public view" the judge in the Pentagon papers trial dismissed today all charges against Dr. Daniel Ellsberg and Anthony J. Russo Jr.

And he made it clear in his ruling that the two men would not be tried again on charges

Text of wiretap memorandum is printed on Page 14.

of stealing and copying the Pentagon papers by saying that he was dismissing the charges "with prejudice."

"The conduct of the Government has placed this case in such a posture it precludes the fair and dispassionate consideration of issues by the jury," he said.

David R. Nissen, the chief prosecutor, said, "It appears that the posture is such that no appeal will be possible."

**Defendants Not Vindicated**

But the decision by United States District Court Judge William Matthew Byrne Jr. did not vindicate the defendants; it chastised the Government. Nor did it resolve the important constitutional issues that the case had raised.

The end of the trial, on its 89th day, was dramatic. The courtroom was jammed; the jury box was filled with news reporters; defense workers in the Ellsberg-Russo cause, mostly young people, sat in chairs lining the courtroom wall.

Dr. Ellsberg and Mr. Russo, surrounded by their lawyers, stared intently as Judge Byrne quickly read his ruling.

The Government's action in this case, he said, "offended a sense of justice," and so "I have decided to declare a mistrial and grant the motion for dismissal." The time was 2:07 P.M.

The courtroom erupted in

loud cheering and clapping. The judge, barely hiding a smile,

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quickly strode out the door behind his bench.

Tension had been building for two days, since the sudden disclosure by the Government yesterday that telephone conversations of Dr. Ellsberg were picked up by wiretapping in late 1969 and early 1970, and that all records and logs of those conversations had disappeared from the Federal Bureau of Investigation.

When this morning the Government was still unable to produce either the records or a legal authorization for the taps, it was evident that the case had ended.

The jury was not present when the judge read his decision. It had been sent home until Monday morning.

Before rendering his decision, the judge offered the defendants the opportunity to go to the jury for a verdict. He said that he would withhold his ruling on their motion to dismiss if they wanted. He indicated that if they did decide to go to the jury, he would probably dismiss some of the counts—six for espionage, six for theft and one for conspiracy.

He said that he believed enough of the case was left to litigate before the jury, if the defendants so desired. They did not, and then he read his ruling.

"A judgment of acquittal goes to all the facts," he said, but he added that if he ruled on that defense motion, "it would not dispose of all the issues." That, he said, "can only be done by going to the jury."

He did say, however, that his ruling was based not only on the wiretap disclosures, "or based solely on the break-in" of the office of Dr. Ellsberg's psychiatrist on Sept. 3, 1971, by agents in the employ of the White House.

But Judge Byrne said that "on

**'Impeach Nixon' Banner Costs College \$1-Million**

PASADENA, Calif., May 11 (UPI)—The California Institute of Technology is going to lose \$1-million, an oil man says, because students hung an "impeach Nixon" banner on the school library.

"That picture is going to cost \$1-million," Ross McCollum said yesterday after seeing a picture of the banner in a newspaper.

Mr. McCollum had planned to give Cal Tech the \$1-million.

In an open letter to the students, Mr. McCollum said, "I would be just a damn fool to contribute my money to the kind of institution that can't control its students. There are other places I can put my money."

April 26 the Government made an extraordinary disclosure—that of the break-in—and that was followed by disclosures that the break-in was done by a "special unit" reporting to the White House.

He said that the special unit "apparently operated with the approval of the F.B.I. and that the C.I.A. also became involved in the prosecution of this case at the request of the White House."

**Ellsberg May Sue Nixon**

Dr. Ellsberg and Mr. Russo were jubilant, and members of their families were in tears as the long ordeal, which started with Dr. Ellsberg's arrest on June 25, 1971, ended.

Dr. Ellsberg said that he would file a civil action against former and present high ranking officials of the Government, even perhaps against President Nixon.

"I am convinced by the rec-

ord of the last couple of weeks, particularly the last couple of days," that the trial should not go on, the judge said.

"Governmental agencies have taken an unprecedented series of actions against these defendants," he said. He cited the special White House "plumbers" unit, which "apparently operated with the approval of the F.B.I."

"We may have been given only a glimpse of what this special unit did," the judge said. "The latest series of actions compound a record already predated by instances which threatened the defendants' rights to a fair trial."

"It was of greatest significance," he said, that the wiretap occurred during the period of conspiracy.

"Continued Government investigation is no solution," he added, "because delays tend to compromise the defendants' rights."

**Would Do It Again**

Dr. Ellsberg was asked if he was disappointed that the case had not gone to the jury, and he replied, "I think that an American jury would have come to a judgment that is good for this country."

"Tony and I think we know we did something right," he added.

He was asked if he would disclose the Pentagon papers again, and he answered, "I would do it tomorrow, if I could do it."

Leonard B. Boudin, a defense attorney, said:

"I think that the court's ruling was appropriate, necessary, eloquent justified and dispositive. The judgment was made not on the narrow issue of wiretapping, but on the totality of Government misconduct."

Dr. Ellsberg then added that "the trial isn't over until that bombing is over in Cambodia."

"Don't we have the right not

to be tried under Nazi law," he asked. "This Administration has been very straight about where it is. It is up to us to tell them what it means to be an American."

"If facts prove to be what they appear to be, the President has lead a conspiracy, not only against Tony and me, but against the American public."