ton in 1971—were part of a trend toward repression by the Government. Mitchell accurately enough accused the protesters of "bullying people, shouting down those who disagreed with them," but he also venomously compared them with "Hitler's Brownshirts." He seemed unflustered when the U.S. Supreme Court last June declared some of his wiretapping orders unconstitutional.

Last week Mitchell was shaken by the indictments and looked years older than a few weeks ago. His voice trembled as he protested the grand jury's decision: "I can't imagine a more irresponsible action." Ironically, an often-cited Mitchell statement can only haunt him now. Defending the Nixon Administration, he told civil rights activists in 1969: "Watch what we do instead of listening to what we say."

Whether Nixon feels he has been betrayed by Mitchell in the Watergate affair or whether the two men confided fully in each other about the scandal all along is still their secret. In demanding that everyone who has any complicity in Watergate be prosecuted fully, Nixon may well be hastening the day when Mitchell faces another legal ordeal. As for so many in this disheartening affair, the personal agony for both men is acute.

Richard Nixon pledged that his nominee as Attorney General, Elliot Richardson, and the special prosecutor Richardson has promised to appoint, will make sure that the guilty are punished. "They will get to the bottom of this thing," Nixon vowed. Yet in another sense, prosecutors and the courts got to the bottom of Watergate last January when seven insignificant men were convicted. A more momentous and agonizing question remains: Will anyone now get to the top of it?

UPI

DANIEL ELLSBERG & WIFE, JUROR & ANTHONY J. RUSSO JR.
The circumstances offended the sense of justice.

TRIALS

Pentagon Papers: Case Dismissed

"I HAVE decided to declare a mistrial and grant the motion to dismiss." With these 13 terse words, Judge William Matthew Byrne Jr. ended one of the most extraordinary legal—and in many ways, illegal—proceedings in the history of American justice.

By his ruling, the judge cleared Daniel Ellsberg and Anthony J. Russo Jr., both of whom freely admitted that they had secretly copied and leaked the Pentagon papers, of eight charges of espionage, six of theft and one of conspiracy. But since the case had never reached the jury, the two were not declared innocent by acquittal, nor had they been vindicated by their defense based on the assertion of the people's right to know. Even so, the victory was so signal that as Byrne rose to leave the bench in U.S. district court in Los Angeles, the assemblage in the crowded courtroom rose, applauded and cheered him. Patricia Ellsberg rushed over to her stunned husband and asked plaintively: "Haven't you got a kiss for your girl?" (He had.) Defense Counsel Charles Nessen ostentatiously broke out a big cigar and lit it. The prosecution team filed out in tight-lipped silence. Later, a majority of the jurors said that they would have voted for acquittal if they had been given the chance.

Judge Byrne, 42, a blond and sporty bachelor who once directed President Nixon's Commission on Campus Unrest, came to his decision after 4½ long months of trial. Not until its final weeks were the murky beginnings of the case disclosed. Perhaps as early as 1969, and certainly by early 1970, the FBI knew that Ellsberg, then a consultant with the Rand Corp. "think tank" in Santa Monica, Calif., was copying parts of the Pentagon papers at night on a Xerox machine in an advertising-agency office.

At about the same time, President Nixon became incensed by various news leaks and ordered the FBI to stop them. As the bureau's just-appointed director, William D. Ruckelshaus, now admits, the FBI failed in that mission: it did, however, set up a number of wiretaps without any court authorization. One of them was on the home phone of Morton Halperin, then a consultant for the National Security Council, and on that tap, the FBI heard some conversations by Ellsberg. Fully a year ago, Judge Byrne had demanded an account of all Government eavesdropping on Ellsberg, but Ruckelshaus disclosed the tap on Halperin only last week—and added the incredible news that all the tapes and logs of the overheard conversations had mysteriously disappeared from the files of both the FBI and the Department of Justice.

Valid Changes? All of these sensations—following the disclosures that the CIA had helped the Watergate raiders to break in to the offices of Ellsberg's former psychiatrist—took the trial far from its original purpose. The Government had been determined to prosecute Ellsberg and Russo as criminals. The defense was equally determined to raise the broadest legal and constitutional issues. Was a charge of espionage valid when the defendants had given no information to a foreign power? (Ellsberg had returned the actual papers to the Rand Corp. files.) Could theft be alleged when the culprits had stolen nothing but information? Could conspiracy be proved if, as many lawyers believe, the statute defining it is so loosely drawn as to be unconstitutional?

All these matters weighed heavily on Judge Byrne. Then, three weeks ago, the prospect that the case would end in a dismissal surfaced with Byrne's own disclosure that he had visited John D. Ehrlichman, who had offered him the directorship of the FBI, and that he had met President Nixon at the Western White House. The defense immediately demanded dismissal of the case. The judge refused, saying that he had declined to discuss the FBI offer with Ehrlichman and had done nothing improper.

As disclosure followed disclosure, the courtroom air became filled with defense cries of "taint" and motions for mistrial and dismissal, but Byrne hesitated. He was troubled because there were no very direct precedents to guide him. Indeed there could hardly be any, since both the charges and the revelations of the Government's