

'Secrecy' of Pentagon Papers Depends on Where You Look

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LOS ANGELES, Feb. 10—It depends which end of the country you are in.

If you ask the State Department for a look at the four "diplomatic volumes" of the Pentagon Papers, you will be told, as Sen. J. William Fulbright (D-Ark.) was recently, that they are still "top secret-sensitive" and cannot be compromised.

But if you are in Los Angeles, no matter who you are, you can drop in at the U.S. District Court clerk's office and read and take notes on any one of six copies of the volumes.

The question is: were the volumes, which recount early American-North Vietnamese secret contacts through third parties, automatically declassified when the Justice Department introduced them into evidence against Daniel Ellsberg and Anthony J. Russo Jr.?

The State Department says absolutely not — they continue to require "adequate" protection from unauthorized public disclosure.

Attorneys defending Ellsberg and Russo against charges of espionage, conspiracy and theft of government property say that is preposterous, because everything in evidence is "public."

U.S. District Court Judge W. Matt Byrne Jr., who has not had much experience with the vagaries of the security classification system, is not so sure.

He realizes that many pages from the sensitive volumes have been flashed on a

screen before a full courtroom audience as prosecution witnesses can discuss them and that, one floor below, reporters and other members of the public come and go at will to read the volumes.

Nonetheless, Byrne has continued in effect a "protective order" that requires the defense to keep elaborate records and get receipts from anyone who looks at the volumes while helping prepare Ellsberg's and Russo's case.

The judge apparently feels this must be the rule until he gets official notice from the prosecution that the State Department considers the volumes to be officially declassified.

If Byrne is inclined to be patient with the State Department, he might find it interesting to read its recent correspondence with Fulbright, who is chairman of the Senate Foreign Relations Committee.

Fulbright has actually had a copy of the diplomatic volumes since November, 1968, when Ellsberg first approached Fulbright in his effort to bring the Pentagon Papers before Congress and the public.

As other members of Congress would later do, Fulbright refused to release the documents without the official consent of the executive branch, which was not forthcoming.

In June, 1971, The New York Times, The Washington Post and other publications printed articles based on the papers, allegedly provided by Ellsberg, but still did not include the material in the four diplomatic volumes.

(Articles based on the diplomatic volumes appeared in The Washington Post and other newspapers last summer, after columnist Jack Anderson obtained unauthorized access to some sections of them. Still, some passages of the sensitive documents, including the full texts of diplomatic cables, were disclosed for the first time as prosecution evidence in court here in recent weeks.)

Newspaper publication in 1971 led the Defense Department to give Congress restricted access to a com-

plete, unexpurgated copy of the papers.

Fulbright then put his committee staff to work on studies of the documents, and several of the studies have been publicly released during the last 18 months.

But for over a year now, the senator has sought the State Department's agreement to the publication of a staff study entitled "Negotiations: 1964-1968," which is diplomatic volumes. State, based exclusively on the diplomatic volumes, State has refused to agree.

As the Ellsberg-Russo trial approached, Fulbright wrote to Secretary of State William P. Rogers again on Jan. 3. The senator was obviously perplexed that the prosecutors in the case would be making "public disclosures" that the foreign relations committee was not permitted to make.

Marshall Wright, acting assistant secretary of state for congressional relations, wrote back on Jan. 17, asserting that the volumes were still classified "top secret-sensitive" and that "this protection is expected to be considered necessary for the foreseeable future."

Wright sent Fulbright a copy of Judge Byrne's protective order and assured the senator that under its terms, "both the government and the defense are prevented from publicly disclosing the documents in question."

Such "restricted disclosure" as might occur during the prosecution of Ellsberg and Russo, Wright said, "is not considered materially to violate the protection required for the volumes, as would full public disclosure through declassification."

No sooner had Fulbright received Wright's letter than he began reading newspaper stories disclosing new passages from the diplomatic volumes.

(When the demand for the volumes became great in the court clerk's office here, five photocopies were made so that several people could read them at once. A special table for that purpose has been provided in the clerk's office, and the only restriction on access is that reporters may not photocopy any pages.)

Last Monday, Fulbright wrote to Rogers again, complaining that Wright's letter had been "confusing and potentially misleading."

"You may be interested to learn, as I was," Fulbright said, that the diplomatic volumes "are available daily for public inspection in the offices of the clerk of the U.S. District Court in Los Angeles."

"I must conclude," the senator continued, "either that the Department of Justice did not inform the Department of State that the volumes were open to the public, or that by virtue of some obscure reasoning or some undisclosed official action the opening of the volumes to the public by the court is not considered to constitute 'unauthorized public disclosure.'"

Fulbright posed several questions for the State Department to answer:

"Has the court violated the spirit of its own (protective) order? Has the court violated Title 18 of the U.S. Code? Does the court have the authority to declassify the volumes? And, finally, are the volumes now declassified?"

The chairman implored Rogers to come up with "any further reason" why the Foreign Relations Committee staff study of the diplomatic volumes "should not now be released."

As of today, Fulbright had not received an answer.