

U.S. Claims Media Distort Ellsberg Case

by Santord J. Ungar
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LOS ANGELES, June 10—The Justice Department has accused the "communications media" of cooperating with Daniel Ellsberg and Anthony Russo to distort the meaning of their prosecution in federal court here for disclosure of the top-secret Pentagon papers last year.

In a legal memorandum filed with U.S. District Court Judge W. Matt Byrne Jr., the three special prosecutors assigned to the case complain that Ellsberg, Russo and their attorneys "have been objects of adoration in many articles in nationally circulated publications."

As a result, the government argues, Byrne must take special precautions to limit the issues in the upcoming trial of Ellsberg and Russo.

The prosecution demands, for example, that freedom of the press not be discussed before the jury, that it have the opportunity to strike from the jury any readers of The New York Times, The Washington Post or several national magazines, and that defense lawyers be prohibited from discussing in court "the morality or desirability" of U.S. involvement in Vietnam.

Byrne is scheduled to rule shortly on the prosecution requests, as well as on the remaining defense motions to dismiss the Ellsberg-Russo indictment and the defense requests for a hearing to show that they are being "selectively" prosecuted for acts which are standard operating procedure in the nation's capital.

The judge has already indicated, however, that he personally believes that the First Amendment guarantees of free speech and free press may be at stake in the trial.

During a hearing last Wednesday, Byrne raised questions that the defense lawyers themselves had neglected:

- Are First Amendment rights violated when individuals are prosecuted under the federal espionage act for disclosing documents allegedly affecting the "national defense" without ever having an opportunity to challenge the validity of the security classification stamp on the documents?

- Is there no legal "check on the executive branch" that

permits a review of the way in which information becomes classified?

The crowded defense table—Ellsberg and Russo have seven lawyers between them—watched with delight as Byrne pressed those issues on chief prosecutor David R. Nissen, who insisted that "there is no First Amendment problem here."

That view is emphatically stated in the government memorandum demanding restrictions on the scope of the trial.

Ellsberg and Russo, according to the prosecution memo, "have engaged in an extensive campaign to persuade the public that they and their actions should be viewed with sympathy and favor and that the government's prosecution of them should be loathed."

"In this endeavor," the memo says, they have been assisted "by outpourings from a substantial segment of the communications media which almost uniformly favor the defendants and disparage the government."

As a result, the prosecution contends, the public—including potential jurors—has been given the "false impressions" that the case relates to such issues as:

- "Newspaper publication of the stolen documents in the summer of 1971, freedom of the press, and the public's right to know."

- "The morality, course and conduct of U.S. military in Vietnam."

- "Congress, right to, and demand for, the documents and the Executive's refusal to furnish them."

- "Defendants' motives, purposes and goals."

The prosecutors attached to the memo a 600-page appendix that includes transcripts of broadcast interviews with Ellsberg and Russo, copies of magazine articles by and about them, and newspaper clippings dating back over the past year.

According to the government's reading of the articles and transcripts, Ellsberg and Russo are portrayed as "moral giants who performed acts of conscience at great personal risk and sacrifice" and "courageous patriots whose only motive was to achieve peace."

On the other hand, the prosecutors contend, the government is characterized as "concealing information from the

public," "corrupt and inept in bringing the case" and "conducting abusive, harassing and illegal investigations."

To correct the excesses of the press, says the prosecution, Byrne must tell the jury in advance that the Ellsberg-Russo case has nothing to do with American policy in Vietnam, newspaper publication of the Pentagon papers, the unsuccessful government civil suits against the newspapers or eventual government declassification and publication of most of the contents of the historical study of U.S. involvement in Southeast Asia.

In the memo, the prosecutors demand the right to ask potential jurors whether they or any of their relatives or friends belong to any antiwar organization or the American Civil Liberties Union.

They also seek to query members of the jury panel on whether they believe "that the use of military force to oppose communist conquest is wrong."

In addition, they propose to ask each potential juror whether he or she subscribes to or regularly reads The New York Times, The Washington Post, Saturday Review, Atlantic Monthly, Look magazine, Harpers Ramparts or Esquire.

The Times and the Post were the first two newspapers to publish articles based on the Pentagon papers, and all of the listed magazines published articles concerning the Pentagon papers or the defendants in the case.

As another precaution, the government asks that Byrne forbid the defense lawyers from even mentioning before the jury, without specific approval in advance, such subjects as:

- "Any so-called public right to know."

- "Any opinion, assessment or evaluation of the morality or desirability of United States military involvement in the war in Vietnam, or of the responsibility or guilt of any individuals, groups or nations in connection with such involvement."

- "Leaked disclosures of other government documents by other persons."

- "Allegations of impropriety in the investigation, including issuance of search warrants, subpoenas, questioning of defendants' friends or relatives before the grand jury."

U.S. Cites Prints on 'Papers'

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LOS ANGELES, June 11—The government will rely substantially on fingerprints in its attempt to prove conspiracy, theft and espionage charges against Daniel Ellsberg and Anthony Russo in connection with disclosure of the top-secret Pentagon Papers.

Revealing some of its evidence in the case for the first time, the Justice Department says in a trial memorandum filed in federal court here that it found incriminating fingerprints on a copy of the papers at the Rand Corp. in Santa Monica.

In addition to Ellsberg's and Russo's, the government says it found the prints of Lynda Sinay, a former girlfriend of Russo; Vu Van Thai, the former South Vietnamese ambassador to the United States; and Ellsberg's teenage son Robert.

The fingerprints are central to the prosecution case, because at the time the papers were duplicated by Ellsberg in 1969, he was the only one of those people authorized to have access to them under government security regulations.

In the indictment, among other things, Ellsberg is charged with "conveying" the documents to persons not entitled to receive them and Russo with "receiving" and "retaining" them without authority.

Mrs. Sinay, a Los Angeles advertising woman, has told a grand jury here that she provided Ellsberg and Russo with a Xerox machine at her office for duplication of the history of American involvement in Southeast Asia.

Thai, now a United Nations aide in Africa, had a falling out with the Saigon govern-

ment after he retired as ambassador to Washington in the mid-1960s and has often been described by Ellsberg as one of his chief sources of information and ideas about Vietnamese politics.

The government's trial memorandum also introduces another name into the case for the first time—Kimberly Rosenberg, who is described as a former girlfriend of Ellsberg.

According to the prosecution, she too was present while Ellsberg and Russo reproduced the Pentagon Papers for eventual disclosure.

There is speculation here that she, Mrs. Sinay and perhaps Thai may be called as prosecution witnesses in the case.

The prosecution's trial memorandum also sets out a series of contentions. It says it can prove during the upcoming trial of Ellsberg and Russo that:

- Although Ellsberg, as an officially designated courier, brought 10 volumes of the Pentagon Papers from Rand's Washington office to California on March 3, 1969, and another eight on August 28, 1969, these were never officially checked in at Rand's office here until May 20, 1970.

- Ellsberg checked out two other top secret documents from Rand in 1969; one a study of the 1954 Geneva Conference which he kept for about six weeks, the other a part of a report from Gen. Earle G. Wheeler, then chairman of the Joint Chiefs of Staff, to President Johnson, which Ellsberg kept for two weeks.

- Ellsberg, despite having signed a pledge to respect secret documents while at Rand, told Mrs. Sinay that he was planning to take some copies



DANIEL ELLSBERG
... his fingerprints

with him when he left the research institute, partially because Chairman J. W. Fulbright (D-Ark.), of the Senate Foreign Relations Committee, wanted to see them.

- The photocopying of the documents was actually done by Russo, Ellsberg and his son; that "Top Secret" markings were cut off the copies by Mrs. Sinay and Ellsberg's daughter Mary, and that Mrs. Sinay was paid for the use of her Xerox machine.

The defense admits the truth of many of those facts, but says that when other factors are taken into consideration, no laws were actually violated by Ellsberg and Russo.

In another memorandum filed with the court, the prosecution has asked U.S. District Court Judge W. Matt Byrne to revoke an earlier order requiring the government to reveal whether any electronic surveillance had been conducted on the defense lawyers in the Ellsberg-Russo case of their employees.

The Justice Department has already filed a disclaimer, as required by the judge, asserting that there was no wiretapping on the defendants themselves in connection with this case.

But the prosecutors say it would be unreasonably burdensome to be required to search for any surveillance of the seven defense lawyers and their large staffs, insofar as it goes beyond this case.

Besides, the government argues in the memorandum, if the prosecutors are personally "unaware" of any such surveillance—as they claim to be—then it would be "irrelevant" and any search for it "idle and wasteful." This resistance by the government to Byrne's order has prompted speculation here that the Justice Department may be aware of surveillance on two defense lawyers, Charles Goodell and Leonard Boudin, but is reluctant to reveal it.

It has been widely reported that Goodell, while he was a Republican U.S. senator from New York, was closely watched by Army intelligence agents.

Boudin's daughter Kathy, once a member of the Weatherman faction of Students for a Democratic Society, has long been sought by the FBI in connection with the 1970 explosion of a "bomb factory" in a townhouse in the Greenwich Village section of New York.

Princess Hurts Ankle

Reuter

TOKYO, June 11 — Japan's Crown Princess Michiko sprained her left ankle while playing tennis with her husband Crown Prince Akihito at the Togu Palace here, a palace spokesman said today.

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Ellsberg Says He's Victim of Dual Standard

By Sanford J. Ungar
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LOS ANGELES, June 12—The Defense Department conducted more than 2,000 investigations of security violations in the Washington area between 1967 and 1971, it was revealed in federal court here today.

But none of those investigations resulted in criminal prosecutions or even a recommendation to file criminal charges, according to a document filed by attorneys for Daniel Ellsberg and Anthony Russo.

Rather, the document explained, there were 2,372 "administrative penalties" as a result of the investigations.

The statistics are contained in a letter dated Feb. 22, 1972 from D. O. Cooke, deputy assistant secretary of defense for administration, to Rep. William S. Moorhead (D-Pa.), chairman of the House Subcommittee on Foreign Operations and Government Information.

It was not immediately clear how the lawyers for Ellsberg and Russo had obtained the letter, which was filed as new ammunition in their effort to have the indictment against the defendants dismissed on the ground that it represents a "selective prosecution."

Ellsberg and Russo, both former employees of the Rand Corporation, a research institute in Santa Monica, are charged with conspiracy, theft of government property and violations of the Espionage Act in connection with disclosure of the top secret Pentagon Papers a year ago.

Ellsberg and Russo contend that they are being prosecuted

for alleged "crimes" which are commonplace occurrences in official Washington.

U.S. District Court Judge W. Matt Byrne Jr. is scheduled to rule Tuesday on whether the defense may present witnesses to describe the daily traffic in secret documents in the nation's capital.

The Justice Department has strenuously opposed the defense request for such a hearing on the "selective prosecution" contention.

In a memorandum filed with the court today, chief prosecutor David R. Nissen explained that the testimony which the defense proposes to offer would be "irrelevant, conclusory, conjecture, hearsay, opinion, or otherwise incompetent."

But today, in addition to the 17 witnesses offered last week, defense attorney Charles R. Nesson proposed to subpoena Cooke to testify about the facts discussed in his letter to Moorhead.

The letter was in response to the one that Moorhead had written a month earlier to Secretary of Defense Melvin R. Laird, apparently in preparation for Moorhead's recent hearings on the security classification system in the executive branch, its uses and abuses.

Cooke's statistics—1,193 "formal" and 991 "informal"

investigations between July 1, 1967, and June 30, 1971—do not include any alleged security violations involving only the Army.

The Army figures are not included, Cooke explains in his letter, because that branch of the military does not "have files which would enable it to retrieve such information without impractical manpower costs."

Of the total investigations, Cooke wrote Moorhead, 1,966 concerned "improper physical protection of information" and 12 concerned "failure to assign a high enough security designation to information."

Only two, the deputy assistant secretary of defense added, involved "the assignment of too high a security designation to information."

Moorhead and the defense in the Ellsberg-Russo case contend that the security classification system is often used to classify material that need not be kept secret, but that overclassification is rarely punished.

The defense lawyers also contend that violations of the classification system are appropriately a matter for administrative sanctions, rather than prosecution on serious criminal charges.

If convicted of all charges in connection with disclosure of the Pentagon Papers, a history of U.S. involvement in Vietnam, Ellsberg could be sentenced to 115 years in prison and Russo to 35 years.

The defense also filed today an affidavit from Robert Manning, former Assistant Secretary of State for public affairs and now editor-in-chief of The Atlantic Monthly, who was to be one of the 17 surprise witnesses at the evidentiary hearing on "selective prosecution."

Manning, speaking through an affidavit because he was leaving the country this week, said that "the government is and long has been a willing and active partner with the press in channeling to the public the substance and frequently the precise contents of documents, cablegrams and other material that has been classified." Among other incidents,

Manning described arranging "advance briefings" for journalists on the day in 1962 when President Kennedy decided on the blockade of Cuba to prevent Soviet ships from delivering missiles there.

"If the letter of the regulations" governing classified information were applied, he added, "certainly hundreds of public servants could be found to be in persistent violation."

But the Justice Department, in its own legal papers filed today, said that "the remedy for such unequal enforcement of the law does not lie in the exoneration of the guilty at the expense of society, but in recourse to those who have authority over the derelict prosecutor."