

Colonel at Ellsberg Trial Says Pentagon Hid Data

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By United Press International

LOS ANGELES, Jan. 31—Studies that indicated that release of the Pentagon papers would not endanger national security were ordered covered up by the Defense Department, a witness testified today at the espionage trial of Daniel Ellsberg.

Lieut. Col. Edward A. Miller Jr., retired, the "mystery witness" promised by the defense, said that he had prepared an analysis of nine volumes of the secret Vietnam war documents and concluded that fewer than 150 of 800 points believed to be related to national defense were properly classified.

Colonel Miller said that his superior at the Pentagon, Charles Hinkle, director of security review in the office of the Assistant Secretary for public affairs, told him that he had received instructions from

Jerry W. "Friedheim at the Assistant Secretary for Public Affairs at the Pentagon that the "damage report" should be removed from the files.

Colonel Miller said that he had seen a memo confirming that the documents were to be removed from the files in July, 1972.

United States District Court Judge William Matthew Byrne Jr. had ordered the defense to produce the witness that it contended could prove that the Government had deliberately withheld information that would help to prove Dr. Ellsberg's innocence.

Mr. Hinkle also flew to Los Angeles from Washington to testify on orders of the judge.

Judge Byrne disclosed yesterday the series of "damage reports" indicated that 11 of the 20 volumes of the Pentagon papers contained no information that was vital to national security.

Jury Is Sent Home

By MARTIN ARNOLD
Special to The New York Times

LOS ANGELES, Jan. 31—The jury in the Pentagon papers trial was sent home today until Monday to give the defense time to study new evidence in the case.

The evidence consists of the Government's own secret eval-

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uation of whether the disclosure of the Pentagon papers damaged this country's national defense.

The judge has ruled that some of the Government's analyses showed that the national defense was not affected, and last night this material was turned over to the attorneys for Daniel Ellsberg and Anthony J. Russo Jr., the defendants.

The defense has been contending since April that such material existed, and that the Government had suppressed it

until last week. For months the prosecution has been denying in court the existence of the exculpatory material.

The analysis of the volume entitled "Phased Withdrawal of United States Forces (1962-1964)" said, for instance, that "DOD review of this volume does not show that its compromise would affect in any way national defense interests in 1969 or today."

Earlier Release Cited

Even more telling was this Defense Department evaluation of disclosure of the volume entitled "Re-emphasis on Pacification (1965-1967)." It concluded this way:

"Since virtually all the information presented in this volume has been in the public domain prior to 1969, it would be difficult, if not impossible, to assess the contents of the volume as having any effect whatsoever on national defense as of 1969."

Dr. Ellsberg and Mr. Russo are accused of eight counts of espionage, six of theft and one of conspiracy. To prove the espionage charges, the most serious charges against them, the Government must first prove that their alleged illegal actions damaged the national defense of this country.

Exculpatory material is evidence that the prosecution has that would tend to prove the innocence of the defendants, and in this case it consists of portions of various secret analyses that the Government made to determine what effect, if any, disclosure of the Pentagon papers and two other top secret documents had on the national defense.

The two other documents are a 1968 Joint Chiefs of Staff memorandum evaluating the Communist Tet offensive in Vietnam that year and a 1954 memorandum on the Geneva accord. All of these documents were first made public in a series in The New York Times starting June 13, 1971.

The exculpatory evidence turned over to the defendants last night by United States District Court Judge William Matthew Byrne Jr. touched on 12 of the 15 counts against them—six of the espionage counts, five of the theft counts and the conspiracy count. That such evidence exists does not mean that the judge will throw out any or all of the counts that it touched upon, but he could. It does mean that the defense will be able to use portions of the Government's own analy-

ses to defend itself before the jury.

Similar conclusions were made in the analyses of eight other volumes. Nine of the analyses were made by the Defense Department and two by the State Department. The year 1969 is important because the time period covered in these indictments is from March 1, 1969, to Sept. 30, 1970.

The Government's first witness, Frank A. Bartimo, an assistant general counsel to the Defense Department, admitted on Jan. 18 that shortly after the Pentagon papers were published in The Times, a special panel was set up at the behest

of the Justice Department to analyze the publication's effect, and that in December, 1971, still more analyses were ordered.

Thus far, the exculpatory material has been found in the later analyses, and there are 37 such analyses.

After Mr. Bartimo's testimony, Judge Byrne reiterated his order of last spring that all such analyses and related correspondence be turned over to him in camera, and, reluctantly, starting last week, the Government began to comply.

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