

Ellsberg Judge Bars Exhibit of Security Books

By Sanford J. Ungar
Washington Post Staff Writer.

LOS ANGELES, Feb. 13—A judge's ruling today may deprive the government of an important part of its case against Daniel Ellsberg and Anthony J. Russo Jr. in the Pentagon Papers trial.

U. S. District Court Judge W. Matt Byrne Jr. said the prosecution cannot introduce into evidence the "industrial security manuals" used by the Defense Department and a major research contractor, the Rand Corp., for "safeguarding classified information."

Before the manuals can be introduced, the judge said, it must be shown that the Pentagon Papers were stored with Rand under the terms of a specific contract with the Defense Department.

Without those manuals, the prosecution will be unable to question several of its own witnesses from Rand on whether Ellsberg, as a Rand researcher, violated the rules that govern the handling of classified documents by removing the papers in 1969.

Testimony from those witnesses is a crucial part of the government's attempt to prove its charges that Ellsberg and Russo stole and misused government property. It also bears on the conspiracy and espionage counts in the indictment against them.

There is no doubt that the Pentagon Papers, a Defense Department history of U.S. involvement in Southeast Asia, were classified or that a copy of them was deposited at Rand in early 1969.

According to chief prosecutor David R. Nissen, that was enough to trigger the applicability of the "security manuals" which set out standards

governing who may see secret documents and how they may be used.

Nissen insisted today that he need not fulfill Byrne's demand for production of a specific contract between Rand and the Pentagon dealing with research on the Pentagon Papers.

Attorneys for Ellsberg and Russo argued that, in any event, no such contract can be produced, because the Pentagon Papers were sent to Rand under a unique arrangement.

The defense today introduced into evidence a Dec. 18, 1968, memorandum to Henry S. Rowen from three Defense Department officials—then leaving office at the end of

the Johnson administration—spelling out that arrangement.

The officials were Paul C. Warnke, then Assistant Secretary of Defense for International Security Affairs, and two of his assistants, Morton H. Halperin and Leslie H. Gelb. Gelb was the director of the task force that compiled the Pentagon Papers.

Their memo to Rowen said that "access (to the papers) will be granted on a continuing basis to those Rand employees recommended by Rand. Messrs. Warnke, Halperin and Gelb should be informed in advance of Rand's granting access."

Ellsberg was on the approved list of persons with access and was specially assigned by Rowen to study the papers.

But the defense contends, further, that the copy of the papers at Rand was the property of the three departing Pentagon officials and not the government. Therefore, it is argued, their instructions rather than the security manuals governed the use of the papers.

Halperin, on leave from the Brookings Institution in Washington to serve as a consultant to the defense attorneys, is prepared to testify to that arrangement.

Nissen ran into trouble this morning as soon as he attempted to resume his questioning of Richard Best, Rand's top security officer.

After Byrne's ruling, defense attorney Leonard B. Boudin began cross-examining Richard Best, Rand's top security officer, ahead of schedule.

Best acknowledged to Boudin that when 18 volumes of the Pentagon Papers were first delivered to Rand's Washington office in early 1969, they were not entered into the office's "top secret log" apparently because of the special arrangements.

Only on Dec. 31, 1970, long after Ellsberg had begun using the papers for his research, were the documents entered into the security system at Rand's headquarters in Santa Monica, Calif., Best said.

Boudin also attempted to show that when Rand turned its copy of the Pentagon Papers over to the Defense Department in June, 1971, after newspapers published articles revealing their contents, it first sought the permission of Warnke, Halperin and Gelb.