

Defense Aide Denies Ordering Cover-Up Of Ellsberg Studies

2/2/73

By MARTIN ARNOLD

Special to The New York Times

LOS ANGELES, Feb. 1—In direct contradiction to another witness, a Defense Department official denied in the Pentagon papers trial today that he had written a memorandum ordering that studies of the papers be "removed from the files."

Yesterday, and again today, Lieut. Col. Edward A. Miller Jr., a retired Air Force officer, testified that he had seen such a memorandum, which had been written, he thought, because the studies involved concluded that disclosure of the Pentagon papers had not damaged the national defense.

But today the man he said had written the memorandum denied that he had. He was Charles W. Hinkle, director of security review for the Defense Department and formerly Colonel Miller's superior in the Office of Security Review.

Colonel Miller had testified that in the middle of December, 1971, he was assigned to analyze nine volumes of the Pentagon papers to determine if their disclosure had damaged the national defense. The information was to pass from him to his superiors in the Defense Department and on to the Justice Department to be used in the prosecution of Daniel Ellsberg and Anthony J. Russo Jr.

This afternoon, the prosecutor, David R. Nisson put Mr.

Continued on Page 6, Column 3

Continued From Page 1, Col. 4

Hinkle on the witness stand and asked him:

"Had you assigned Mr. Miller?"

"No," said Mr. Hinkle.

"Did you know he was doing an assessment?" the prosecutor asked.

"I was unaware of it," was the answer.

Mr. Hinkle was then asked if he had ever been told by his superiors, most particularly Jerry W. Friedheim, Deputy Assistant Secretary of Defense for public affairs, to get the Miller analyses removed from the files.

"No, not according to my recollection," Mr. Hinkle answered.

Did he ever write a memorandum saying that the analyses should be removed from the files?

"No," he said.

"Were the reports removed from the files?" Mr. Nisson asked.

"Not to my knowledge," Mr. Hinkle answered.

Colonel Miller had testified that not only had he seen a memorandum saying that his analyses should be removed from the files, but that in a private conversation with Mr. Hinkle he had been told that such an order had been given, and that Mr. Hinkle then add-

ed that if he were Colonel Miller he would keep a copy of the material despite the orders.

Asked if this conversation had ever taken place, Mr. Hinkle said, once again, "Not to my recollection."

Mr. Hinkle is a short, round man, who wears a white beard and black rimmed eyeglasses. He has a thick Southern accent and a merry face. Yesterday, when he walked into court, he smiled at Colonel Miller, and the colonel responded by raising his arm high in the air and giving him the V signal with his fingers.

Today, Mr. Hinkle, who has spent 32 years working for the Government, mostly in the Defense Department, was asked by Mr. Nissen his feelings toward the colonel. He answered, "I hold him in high esteem."

He then underwent cross-examination from Chares R. Nesson, one of Dr. Ellsberg's attorneys.

Defense Contention

The defense has been contending for many months that there have been a number of Government analyses of the Pentagon papers—all of them done to determine whether their disclosure affected the national defense.

In April, United States District Court Judge William Mat-

thew Byrne Jr., who is presiding over this trial, ordered the Government to produce in camera all such analyses and correspondence relating to them.

And ever since then, until recently, the Government has denied the existence of the analyses. Then, after the Government's own first witness, Frank A. Bartimo, an assistant general counsel to the Defense Department, admitted their existence when he testified on Jan. 18, the Government started handing over the analyses to the judge.

The importance of these analyses is that the defense has been contending that they contained exculpatory evidence—that is, evidence that the prose-

cution has that would tend to prove the innocence of the defendants.

Judge Byrne, who has reviewed most of the reports, has ruled that they do contain much exculpatory material and has ordered it turned over to the defense.

The defense attorneys had placed particular importance on Colonel Miller's analyses of the papers, because they believed that they could prove that his work had been ordered suppressed. If so, that fact in itself would be exculpatory, they held.

Dr. Ellsberg and Mr. Russo are accused of eight counts of espionage and seven of theft and conspiracy. Thus far, the material declared exculpatory

by Judge Byrne cuts across all these charges. To prove the espionage counts, the Government must first prove that the alleged illegal actions of the defendants damaged the national defense.

Judge Byrne could throw out some of the counts against the defendants because of the exculpatory material. At the very

least, the defendants will be able to use the exculpatory material—all of it Government analyses saying that the defendants' actions did not damage the national defense—to defend themselves before the jury.

The jury has not sat in this case this week while the matter of exculpatory material was being thrashed out.