

Ellsberg Trial Delayed, Defense Reviews Data

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LOS ANGELES, Jan. 31—The jury in the Pentagon Papers trial was sent home this morning until next Monday while defense attorneys for Daniel Ellsberg and Anthony J. Russo Jr. review internal government studies asserting that disclosure of the documents did not affect the "national defense."

Chief prosecutor David R. Nissen turned the studies over to the defense Tuesday night on the orders of U.S. District Judge John J. Byrne.

Jr. The studies had been withheld for nine months.

Prepared by officials of the National Security Agency and the State Department, the studies advised the prosecution in this case that more than half the documents in the indictment did not fall under the "national defense" requirement of the espionage act, which Ellsberg and Russo are charged with violating.

The defendants are also charged with conspiracy and theft of government property.

One study, prepared by William Gerhart of the NSA, states flatly that "it would be difficult, if not impossible, to isolate specific parts of this volume (entitled "Vietnam and the United States 1940-1950") with a view to relating them to the national defense."

"The only possibly sensitive passages" in a different volume of the papers, dealing with French-American relations in the 1950s, says another study, "are those which imply U.S. criticism of the French in Indochina some 20 years ago."

"Since much of the American view of the French in this period is well known and has appeared in open sources, we do not believe national defense interests have in any way been affected by the compromise of this volume," that study concludes.

Even one of the four "diplomatic volumes" of the

Pentagon Papers, which are generally considered to be the most sensitive, is adjudged in a study by Walter Cutler of the State Department as not relating to the "national defense."

In the volume's discussion of American and North Vietnamese bargaining positions, Cutler advises, "None of the issues is treated in detail and little information is revealed that was not known publicly in 1967-68."

All of the studies are directed toward the volumes' possible relationship to the "national defense" in 1969, the time of Ellsberg's and Russo's alleged conspiracy. The Pentagon Papers were published in newspapers two years later.

The jury was in court for only 10 minutes this morning.

Byrne told the jurors, who last heard testimony in the case last Friday, that they would have an "extended weekend" and that the delay "was not caused by any of the parties or counsel."

Defense attorney Leonard B. Boudin objected to that statement by the judge, insisting that the jury should have been told the delay was caused by the prosecution's belated compliance with a pre-trial order issued last April.

The judge set a hearing for Friday on defense motions to dismiss the indictment or "impose sanctions" on the prosecution.