

U.S. Published Part of Data in Ellsberg Case

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LOS ANGELES, Jan. 19 — Much of the material contained in a Joint Chiefs of Staff report that Daniel Ellsberg and Anthony J. Russo are accused of disclosing in 1971 was already available to the general public in an official government publication early in 1969.

The Ellsberg-Russo defense today produced in court a "Report on the War in Vietnam" by the commander of U.S. forces in the Pacific and in Vietnam, released by the Government Printing Office at \$6 a copy shortly after President Nixon's inauguration in 1969.

U.S. District Court Judge W. Matt Byrne Jr. admitted it into evidence over the angry objections of David R. Nissen, chief prosecutor in the Pentagon papers trial.

Lt. Gen. William G. DePuy, assistant to the Army vice chief of staff and a key prosecution witness, acknowledged that the public document, which he helped edit, including many of the statistics and statements that he had testified on Thursday might have helped the Vietnamese Communists plan their 1972 offensive in South Vietnam.

In a section written by Gen. William C. Westmoreland, then the U.S. commander in Vietnam, for example, it gave the American estimates of how many Vietcong and North Vietnamese troops had been involved in the 1968 Tet offensive, how many communist casualties there had been and how many units remained active.

The same statistics were cited by DePuy on Thursday as being among the "most sensitive" aspects of a February, 1968, report by Gen. Earle G.

Wheeler, then chairman of the Joint Chiefs of Staff, after he, DePuy, and other officials visited Saigon to assess the effects of the Tet offensive.

Eight pages of the Wheeler report are among the top-secret documents that the government says Ellsberg and Russo duplicated in 1969.

The defendants are charged in a 15-count indictment with conspiracy, espionage and theft of government property in connection with disclosure of the Wheeler report, a Rand Corp. study of the 1954 Geneva accords and the Pentagon papers, Defense Department history of the U.S. role in Southeast Asia.

Leonard Weinglass, chief counsel for Russo, also produced a clipping from the

March 10, 1968, edition of the New York Times headlining the military's request for an additional 206,000 American troops in South Vietnam.

The clipping, projected onto a courtroom screen for the jury, demonstrated that the troop request, also contained in the Wheeler report, was a matter of public knowledge only a few weeks after the report was compiled and a year before Ellsberg and Russo allegedly entered into their conspiracy.

But DePuy stood by his assertion that the statistics remained sensitive to the "national defense" when available in the full Wheeler report.

As "isolated facts"—for example, in the newspaper or Government Printing Office publication—he said they had "very little significance."

But the defense stressed

that the eight pages, about half of the Wheeler report's summary, were but a small percentage of the full report, which DePuy testified was about two inches thick.

Weinglass also elicited from DePuy the concession that some of the information in the Wheeler report, dealing with the location of American troops in South Vietnam, became obsolete within a month.

There was a furor in court today over a press release distributed by the defense, in which Russo called DePuy "a principal war criminal" who "bears direct responsibility for the deaths of hundreds of Vietnamese of all ages and both sexes."

The general once served as an operations officer in the American headquarters in Saigon and for two years was commander of the First U.S. Infantry Division in Vietnam. He later became special assistant to the Joint Chiefs of Staff on counter-insurgency matters.

Russo's statement said that DePuy "is one of the chief architects of the U.S. Army's strategy of attrition in Vietnam" and that he "should be brought to trial; unless he is, the law has little meaning as far as justice is concerned—it simply functions as an instrument of repression."

Provoking the anger of the judge and the prosecution, Russo personally handed DePuy a copy of his statement.

Byrne admonished the defense that the incident must not be repeated and that its press releases were to be kept out of the courtroom.

There were repeated clashes throughout the day between Nissen and Weinglass, as the defense attempted to whittle away DePuy's testimony during extensive cross-examination.

At one point, out of the presence of the jury, the prosecutor accused Weinglass of using "cheap tricks" to get around the rules of evidence.

Russo's attorney shot back that Nissen was merely trying to provide "a quote for the newspapers."