

Ellsberg Asks Court to Hear 'Leak Experts'

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LOS ANGELES, June 7 — Lawyers for Daniel Ellsberg and Anthony Russo, charged with violating the law by disclosing the top secret Pentagon Papers last year, today offered to provide 17 expert witnesses who would testify in federal court here that such alleged violations of the law routinely occur in Washington every day.

The witnesses include a current member of Congress, three former White House staff members, one former presidential "confidante," a former member of the CIA, four other ex-government officials, five working journalists, a diplomatic historian and a former official of the National Archives.

Pressing U.S. District Court Judge W. Matt Byrne Jr. to hold a full evidentiary hearing on their motion to dismiss the indictment against Ellsberg and Russo, attorneys Charles Nesson and Charles Goodell, a former Republican senator from New York, said their witnesses could detail regular traffic in secret documents.

The witnesses' names were kept secret, pending Byrne's decision whether to hold the hearing, which government prosecutors contend is inappropriate at this stage of the case.

Sources close to the case said, however, that the congressman is Rep. William B. Moorhead (D-Pa.) and that the others include Arthur Schlesinger, a former aide to President Kennedy, Morton H. Halperin, a former Defense Department and White House official, and William G. Florence, a retired security classification expert for the Air Force.

The defense contends that the testimony would be relevant to show that Ellsberg and Russo "were singled out for prosecution according to a

principle of selection which is invidious, discriminatory and constitutionally impermissible." b6

Submitting an advance "offer of proof" as required by the judge, Nesson and Goodell filed an affidavit with the court indicating for the first time the number of witnesses and the nature of their positions.

The affidavit also included

examples of the testimony that would be given:

• A veteran Washington correspondent: "The government regards information of a classified nature as ammunition to be fired, not as secrets to be guarded. . . . I see documents classified secret or top secret on a regular basis. Often I don't even know the source of the documents myself. They are made available through intermediaries."

• A former government official: "Everybody takes top secret papers home. I did it constantly even though the regulations said it shouldn't be done."

• A Washington correspondent: "I don't think there is anything particularly illegal or illegitimate about it, but let's face it, most of the time government uses the press for their own purposes. Usually the system of which they are now complaining is the system they use."

• A former White House aide: "I was one of those whose function it was to brief newspapermen. It was one of my jobs at the White House

to leak classified information. We did it all the time."

• A diplomatic historian: "In the course of my work, I was given access to the personal papers of Dean Acheson. These papers consisted of approximately two file drawers of highly classified and exceedingly sensitive documents taken from the State Department by Dean Acheson and stored by him in his (law office). I was given full access to these voluminous papers without any condition of receiving a security clearance."

• A former foreign correspondent: "For a period of time I was given access to the daily CIA bulletin, which is classified top secret. They knew that I had access, and they found out who it was in CIA giving it to me. Eventually, they transferred that person. He was never prosecuted."

The points made in the Nesson-Goodell affidavit were similar to those advanced last summer by The New York Times, The Washington Post and other newspapers sued by the Justice Department for publishing articles based on the Pentagon Papers, a history of American involvement in Southeast Asia.

The Supreme Court eventually ruled that the newspapers were entitled to print the articles, since the disclosures did not endanger national security.

Byrne withheld a ruling on the defense request for an evidentiary hearing, pending a government response to the affidavit which is due on Friday.

In courtroom argument today, the defense insisted that in order to convict Ellsberg and Russo of violating the espionage act, as charged, the government must prove that the defendants had the "intent" to harm the United States and to help a foreign nation.

But the prosecutors in the case claim that the specific sections of the act under which Ellsberg and Russo are charged do not require proof of that intent.