

REPORTER BACKED IN ELLSBERG CASE

MAR 31 1973

Judge Says He May Keep
His Sources Confidential
NYTimes

By MARTIN ARNOLD

Special to The New York Times

LOS ANGELES, March 30—
The judge in the Pentagon
papers trial today upheld a
former reporter's right not to
reveal the sources of his in-
formation.

However, the ruling was not
made on constitutional grounds,
but on the grounds of ma-
teriality to this case.

The issue arose over the tes-
timony in United States Dis-
trict Court of Stuart H. Loory,
journalist and author who was
a defense witness on cross-
examination.

Mr. Loory, now executive
editor of WNBC-TV news in
New York and formerly a
Washington correspondent for
The Los Angeles Times, is co-
author of a book entitled "The
Secret Search for Peace in
Vietnam," published in 1968 by
Random House.

He was called by the defense
in an effort to show that much
of the material contained in the
Pentagon papers had appeared
in his book one year before
Daniel Ellsberg and Anthony J.
Russo Jr. were accused of steal-
ing and copying the papers.

Part of the thrust of his tes-
timony was that he had used
some of the same sources of
information — foreign govern-
ment officials and United
States Government officials —
in writing his book that were
cited in the Pentagon papers.

Prosecutor Rebuffed

David R. Nissen, the chief
prosecutor, asked Mr. Loory
about the source of one pas-
sage in his book, and the for-
mer reporter replied: "Mr. Nis-
sen, I'm sorry but I cannot
get into a discussion of
sources."

The prosecutor then asked
Judge William Matthew Byrne
Jr. to instruct the witness to
answer, and the judge refused
to do so. Twice during the tes-
timony the judge intervened to
ask the defense attorneys if
they had any objections to that
line of questioning.

Mr. Nissen asked about a
second source of the Loory
book, and Mr. Loory started to
answer "I'm sorry Mr. Nissen"
when Judge Byrne interrupted
to inquire if there was a de-
fense objection. The defense
said "yes" and the judge sus-
tained the objection, saying
"that issue is not one for the
jury to consider — whether the
sources are the same."

Mr. Nissen protested the rul-
ings, asking how he could
counter the defense assertion
that Mr. Loory's sources were
the same as some of the sources
in the Pentagon papers. The
judge then agreed to strike
from the record all of Mr.
Loory's testimony about sour-
ces that was developed under
questioning by the defense.

The prosecutor also tried to
introduce into evidence two
articles about the Pentagon pa-
pers that Mr. Loory wrote for
The Los Angeles Times in June,
1971, after The New York
Times first published parts of
the papers on June 13, 1971.

Mr. Nissen said that he be-
lieved that Mr. Loory had been
provided late in June, 1971,
with two volumes of the papers
and that the Government knew
who was the source for those
volumes. This was important,
Mr. Nissen said, because it
would tend to prove that Mr.
Loory was biased in behalf of

the defense. But the judge re-
fused to allow the Loory news-
paper clippings into evidence
and again blocked questioning
on sources of information.

Another defense witness was
Howard Zinn, professor of poli-
tical science at Boston Univer-
sity, who testified that an ex-
cerpt from a book he wrote in
1967 took up an entire page in
the Pentagon papers and that
page was classified "top secret."

Professor Zinn, who traveled
to Vietnam in January, 1968
with the Rev. Daniel J. Berrigan,
represented the defense's first
attempt at putting a radical on
the witness stand. Defense at-
torneys have said that if he
appears to make a good impres-
sion on the jury, more such
witnesses will be called.

Professor Zinn and Father
Berrigan brought back three
American prisoners of war with
them when they returned from
Vietnam. He will continue his
testimony Monday.

Dr. Ellsberg and Mr. Russo
are accused of six counts of
espionage, six counts of theft
and ten counts of conspiracy.