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## Ellsberg Using Indirect Tactic In Battle Against Theft Charge

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LOS ANGELES, April 3—The defense in the Pentagon papers trial put two Government intelligence analysts on the witness stand today in an effort to taint the prosecution's theft case against Daniel Ellsberg and Anthony J. Russo Jr.

The effort was indirect, but defense attorneys said they hoped it would pay off then they summed up their cases.

The effort, which began yesterday, involves the testimony of William D. Gerhard, an intelligence analyst for the National Security Agency of the Department of Defense, and of Lieut. Col. Edward A. Miller of the Air Forces, retired, who is a former analyst in the department's Security Review Division.

Both men had produced reports to the effect that disclosure of portions of the Pentagon papers did not damage the national defense. The defense contends that the Government suppressed these reports for many months.

Both men testified that they prepared their analyses for the Department of Justice in December, 1970, and in January and February, 1971, in preparation for this case.

Defense attorneys say they believe that they have presented strong case against the espionage counts, and indeed, on Feb. 26, Federal District Judge William Matthew Byrne Jr. dismissed two of the original eight espionage counts.

But these same attorneys say that they do not feel that they have made a strong case against the six theft counts, even though they believe that there is a constitutional issue involved in the Government's attempt to punish people for stealing what is regarded as historical information.

To counter this weakness,

they have developed a strategy of pounding away at the espionage counts, with the hope that the theft counts will ride on the espionage coattails.

A subdivision of that strategy, they say, is the tainting of the Government's entire case, and that is where Mr. Gerhard and Mr. Miller come in.

The idea, in the words of one defense attorney, is "to show that the Government is playing games with the jury."

The Government, in preparing its case, had the Pentagon papers analyzed to determine if their disclosure injured the national defense—a prerequisite to proving espionage. The Government then put on the witness stand two generals to support the contention that there had been a harmful effect.

But the Government did not call Mr. Gerhard and Colonel Miller to the stand. Judge Byrne has ruled that some of the Government analyses are exculpatory evidence, and he has allowed the defense to use that evidence before the jury. But he has not allowed the defense to bring out its allegations of suppression.

The defense attorneys say that they may be making their point, if only because they, and not the Government, called the two intelligence analysts. They plan to hammer away at that point in their summations to the jury.

Both Mr. Gerhard and Colonel Miller had given evidentiary testimony out of the hearing of the jury. Yesterday, for the first time, the jury learned of the exculpatory material and of Mr. Gerhard. Today, it learned of Colonel Miller.

Besides espionage and theft, the defendants are accused of one count of conspiracy.