

Duplicity Laid to U.S.

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LOS ANGELES, Sept. 21—A lawyer for Dr. Daniel Ellsberg charged today that the Federal Government had "used duplicity and failed to honor an order of the court" in seizing 28 boxes of Dr. Ellsberg's personal papers and possessions.

The seizure took place late yesterday after an Assistant United States Attorney, David R. Nissen, had obtained a search warrant from a Federal magistrate.

The tangled legal battle began last week when the grand jury investigating the Pentagon papers case here issued a subpoena for several dozen boxes Dr. Ellsberg had stored with the Bekins Moving and Storage Company.

Dr. Ellsberg, now a research fellow at the Massachusetts Institute of Technology, has said that he gave the Pentagon papers to the news media. He was indicted here in June on two counts of stealing and possessing secret Government documents.

In fighting the subpoena, Dr. Ellsberg's attorney argued that the Government was conducting "a blanket fishing expedition" and could not use the grand jury to investigate Dr. Ellsberg further since he was already under indictment. Mr. Nissen replied that the Government was investigating persons other than Dr. Ellsberg and needed his property for that investigation.

Subpoena Was Quashed

Federal District Judge William Mathew Byrne Jr. took the case under submission and ordered Bekins not to release Dr. Ellsberg's property to anyone. He also ordered the Government attorneys to inform him if they obtained a search warrant to seize the property. Yesterday morning he quashed the subpoena.

Morse A. Taylor, lawyer for Dr. Ellsberg, asked if the Government was still required to inform the court if it obtained a search warrant. Mr. Taylor came away feeling that the Government had agreed to inform the court, and so, apparently, did Judge Byrne.

When the transcript was reviewed later it showed that Mr. Nissen had agreed to only one thing: that he would not execute a search warrant before noon.

When Judge Byrne was informed of the situation he heard further arguments, reviewed the transcript and ruled that the Government attorney had violated no court ruling. He also said that any motion by Dr. Ellsberg's attorneys to quash the search warrant was premature and would have to be made after the evidence seized in the search was presented in court.

"What is so irritating," Mr. Taylor said, "is that the Government, by choosing a position of duplicity — which is the whole point of the Pentagon papers anyway — violated the spirit and intent of the courts' order."