

A.C.I.A. Analyst Disputes General in Ellsberg Trial

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By MARTIN ARNOLD

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LOS ANGELES, Feb. 20—An affidavit by an analyst for the Central Intelligence Agency, disputing a general's testimony, has emerged in the Pentagon papers trial and led today to a defense demand that the chief prosecutor be removed from the case for misconduct.

Attorneys for Daniel Ellsberg and Anthony J. Russo Jr., the defendants, also asked that the prosecutor, David R. Nissen, be held in contempt on the ground that he had attempted "to silence a witness," the C.I.A. analyst, and that he "has once again sought to suppress" evidence.

On the same ground, the defense again filed a motion to dismiss the entire case.

The analyst is Samuel A.

Adams. According to his affidavit, he read in The New York Times on Jan. 20, 1973, an article reporting the testimony of Lieut. Gen. William G. DePuy, a Government witness.

General DePuy told the jury that the disclosure of the Pentagon papers and also particularly the disclosure of a 1968 Joint Chiefs of Staff memorandum could have been helpful to Hanoi during the Vietnam war.

General DePuy helped write the Joint Chiefs of Staff memorandum, which is one of the 20 documents involved in this case, and in his testimony he cited statistics from it purporting to be the numbers of troops that the Communists committed to the Tet offensive in January, 1968.

These statistics were called "the Vietnamese Communist order of battle," and part of Mr. Adams's job at the intelligence agency from late 1965 to April, 1972, was to analyze and report on those statistics.

He now says that he subsequently came to the conclusion that "the statistics were derived from numbers which had been deliberately fabricated in late 1967." He says that he read in The Times that General DePuy

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was giving the same statistics to the jury in this case.

On Jan. 24, his affidavit says, he sent a memorandum to Lawrence Houston, general counsel of the intelligence agency, and asked that the facts "be brought to the immediate attention of the Department of Justice because it seemed to me to bear on the Pentagon papers trial."

When he did not hear from Mr. Houston, Mr. Adams, who believed that the facts constituted exculpatory material, sent a second memorandum to Mr. Houston. This memo said that if Mr. Adams had not heard from Mr. Houston by noon on Feb. 1, 1973, the analyst would send his own material directly to the Justice Department, according to the affidavit.

Exculpatory material is material possessed by the prosecutor that would tend to prove the innocence of the defendant, and the prosecutor has an obligation under the Constitution to turn it over to the defendant.

On Feb. 1, the affidavit says, Mr. Adams was informed by Mr. Houston that the material had been sent to the Justice Department, and the following day he was asked to prepare a memorandum of record entitled "Possible Exculpatory Evidence."

He was assured that this would be sent to Mr. Nissen here to be turned over to Federal District Court Judge William Matthew Byrne Jr., who is presiding over the trial.

Mr. Adams said that he would abide by the judge's decision on whether it was exculpatory and would not communicate with the defense.

Ruling Reported

On Feb. 9, Mr. Adams says, he received a memorandum from John K. Greaney, assistant general counsel to the C.I.A., informing him that the Justice Department had said that Mr. Nissen had discussed Mr. Adams's material with the judge and that the judge had ruled that it was not exculpatory.

The 1968 Joint Chiefs of Staff memorandum is involved in 10 of the 15 counts against the defendants, and in one of those counts it is the only document.

Today the judge said in court that he had never discussed the Adams material with Mr. Nissen and that it could in fact be exculpatory. He ordered it turned over to the defense, but Mr. Nissen refused to comply.

In addition to asking the judge to take action against Mr. Nissen and to dismiss the

case, the defense also asked, as a lesser remedy, that the Government be precluded from offering any evidence on the Joint Chiefs of Staff memorandum and that all of General DePuy's testimony and testimony pertaining to the memorandum by another Government witness, Brig. Gen. Paul F. Gorman, be stricken from the record.

The judge set tomorrow afternoon for an oral argument on the motions.

Meanwhile, a Government witness, Jan Butler, a Rand Corporation employe who used to be Rand's top secret control officer, testified today that until May 20, 1970, the copy of the Pentagon papers that Dr. Ellsberg is accused of copying was not in the regular Rand security system and that the particular set of the papers involved in this case was listed in Rand's computer as being

classified material controlled by the corporation.

The defense contends that the particular 18 volumes of the 47-volume Pentagon papers that Mr. Ellsberg is accused of copying was not in the Rand security system and that Dr. Ellsberg had a special relationship to them. Miss Butler testified that when she first heard of these volumes they were in fact referred to as the Ellsberg papers.

She testified under cross-examination that she was not now and never had been a Government employe. This is important because the indictment accuses Dr. Ellsberg and Mr. Russo of, among other things, failing to deliver the documents "to the officer or employe of the United States entitled to receive them."

Dr. Ellsberg and Mr. Russo are accused of eight counts of espionage, six counts of theft and one count of conspiracy.