

# Ellsberg

## Dismissal

## Plea Refused

### Los Angeles

United States District Judge Matt Byrne rejected yesterday a motion to dismiss all charges in the Pentagon Papers case but ordered that the defense be given the statement of a CIA agent bearing on the possible innocence of the defendants.

Prosecutor David Nissen told Byrne that on instructions of his superiors in the Justice Department he would respectfully refuse to turn over the information from Samuel A. Adams of Leesburg, Va., who worked with the Central Intelligence Agency in Vietnam.

The judge then warned Nissen that such refusal might lead to exclusion of a key exhibit from the government case backing up its charge that Daniel Ellsberg and Anthony J. Russo were guilty of espionage.

### EFFECT

Such court action could have the effect of striking down a number of counts of the indictments against the defendants. Nissen asked for time to consult with Washington and was told to come up with his action this morning.

Defense lawyer Leonard Boudin, charging Nissen with "deliberate, outrageous conduct," had also asked that, if the charges were not dismissed, Nissen be held in contempt of court and removed from further participation in the trial.

Byrne denied all the defense motions but he ordered Nissen to file an affidavit explaining seemingly misleading information given to the court about Adams.

Adams, who still works for the CIA had given that agency a memorandum stating that he believed earlier testimony in the case by Major General William DePuy about Communist troop strength in Vietnam was inaccurate and was based on information that had been fabricated.

### FORWARDED

The Adams memo was forwarded to the Justice Department and to Nissen in Los Angeles but was not turned over to the court. Nissen did tell the court he had received information from a Samuel A. Adams and gave his address, but did not mention that he was a CIA employee.

Judge Byrne also ordered that affidavits be submitted by John Martin of the Justice Department and John F. Greaney, assistant general counsel for the CIA in Washington, stating their role in the Adams matter.

The arguments over the dismissal motion overshadowed testimony before the jury earlier of a former girl friend of Russo, who said she furnished a Xerox machine to copy the Pentagon Papers and personally clipped off top secret markings before they were duplicated.

*United Press*