

Ellsberg Is Denied Challenge on Secrecy

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The judge in the Pentagon papers trial ruled today, with apparent finality, that Daniel Ellsberg and Anthony J. Russo Jr. would not be allowed to challenge the Government's system of classifying secrets.

This promptly led Leonard I. Weinglass, a defense attorney, to charge that the defendants were being deprived of a "very important and major portion" of their case. He added that a matter of such "substance" should have been argued in open court, rather than at the judge's bench.

The issue had arisen before during the trial, and each time Judge William Matthew Byrne Jr., who is presiding in Federal District Court, had refused to allow it to develop.

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But the defense made its major effort, through the testimony of its chief consultant on classification, William G. Florence. Mr. Florence had served 22 years in the Army and Air Force and 21 years as an Air Force civilian employe—specializing all that time on the development and implementation of policies to safeguard military secrets.

He was allowed to testify that disclosure of the 18 volumes of the 47-volume Pentagon papers involved in this case had not injured or prejudiced the national defense and had not been advantageous to a foreign nation.

The documents were all classified "top-sensitive" and were so labeled. However, Judge Byrne has repeatedly

told the jury that it should ignore the labeling and should determine itself whether or not the contents of the papers could in fact have been injurious.

The conspiracy count against the defendants mentions "classified government studies, reports, memoranda and communications" although the six espionage and six theft counts do not use the word "classified."

The Government, however, has strongly implied that the mere labeling of the documents "top secret-sensitive" meant that their disclosure was, in fact, injurious.

To combat this, the defense called Mr. Florence, who explained how documents became classified and who told the jury who in the Government had the authority to classify documents.

But the judge called the lawyers and the defendants to a conference near his bench, out of hearing of the jury, and told them that the challenge to the system would not be allowed.

This so angered Mr. Russo that he stomped away from the bench before the conference ended. The judge does not have to give a reason for such a ruling, nor did he.

Eisenhower Order Cited

Mr. Florence was allowed, under direct examination from H. Peter Young, one of the defense attorneys, to read to the jury sections of Executive Order 10501, signed by President Eisenhower, under which the Pentagon papers were classified.

He was also allowed to read to the jury the various categories under which documents were classifiable under Exec-

utive Order 10501, and he was asked whether the Pentagon papers, as of 1969, fell under those categories. To each question he answered, "No." The year 1969 is when the defendants allegedly stole and copied the Pentagon papers.

The jury was allowed to draw its own conclusions from the questions and answers, but the major issue, whether or not the papers were properly classified, was not allowed to be explored.

Earlier today, Theodore C. Sorenson, counsel to President Kennedy, completed his testimony. He was the fourth member of the Kennedy Administration to testify for the defense.

He said that when he left the White House he took cartons of documents with him but was not allowed to say whether they were classified. He also said that he believed that disclosure of two volumes of the papers he had been asked to testify about had not damaged the United States.

He was asked only two questions on cross-examination by David R. Nissen, the chief prosecutor.

Did he ever serve in the armed forces?

"I have not served in the military," he answered.

Did he ever visit Vietnam?

"At no time," he replied.

On the way out of court, Mr. Sorenson said, "I advised President Kennedy on the mission to the moon and I've never been there."