

Ellsberg Jury Is Told for First Time

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LOS ANGELES, April 3 — Government analyses concluding that disclosure of some of the Pentagon papers did not damage the national defense was presented to the jury today for the first time in the trial of Daniel Ellsberg and Anthony J. Russo Jr.

The existence of such analyses was developed during six days of testimony out of the hearing of the jury late in January and early in February.

On Jan. 30, Federal District Court Judge William Matthew Byrne Jr. ruled that these analyses were exculpatory evidence that must be turned over to the defense. Exculpatory evidence is evidence in the possession of the prosecution that would tend to prove the innocence of the defendants.

Analyst Testifies

Today, the 61st trial day, the existence of the analyses was made known to the jury. This took place when the defense called as a witness William Gerhard of the National Security Agency, who was assigned by the Defense Department to prepare analyses of the Pentagon papers for this case.

Mr. Gerhard, after a brief legal dispute, was allowed to read to the jury the conclusions of his analysis of nine of the 20 top secret documents involved in the trial.

In each case, the witness's evaluation contained such statements as this: "At present [1969], it would be difficult, if not impossible, to isolate specific parts of this volume with a view to relating them to national defense."

The analyses pertain to the six espionage counts still outstanding against Dr. Ellsberg and Mr. Russo. On Feb. 26, the judge dismissed two other espionage counts against the defendants, in part because of the exculpatory material.

To prove espionage, the Government must first prove that the defendants' actions damaged the national defense or were prejudicial to it or gave an advantage to a foreign nation.

Turned Over Findings

Mr. Gerhard testified today that he turned over his findings to the general counsel of the Defense Department, J. Fred Buzhardt, in January or February, 1971, and that Mr. Buzhardt then gave them to

John L. Martin, head of the Research and Evaluation Section of the Justice Department's then Internal Security Division.

Mr. Martin was in charge of investigating this case, Mr. Gerhard testified.

Mr. Martin and Mr. Buzhardt, as well as Mr. Gerhard, previously testified out of the hearing of the jury.

On cross-examination, David R. Nissen, the chief prosecutor, set out to undermine Mr. Gerhard's testimony.

He elicited from the witness, for instance, that Mr. Gerhard's evaluations finding that much of the material contained in the Pentagon papers was in the public domain in 1969 was based on what other people told him, not on personal research.

Each Volume Studied

"You didn't relate information in one volume to information in another," Mr. Nissen asked, but studied "each volume isolated?"

"Yes, Mr. Gerhard replied. "When you say 'we' or 'it is believed' you are talking about yourself, aren't you?" Mr. Nissen asked.

"It was my personal opinion," the witness replied.

"You didn't undertake a public search, did you," for public domain material?, he was asked.

"No," Mr. Gerhard replied. "The 'we' in fact is you alone?" was the question.

"That's true," the witness said.

Earlier, the first so-called "radical" witness for the defense said that the disclosure

of the Pentagon papers did not harm the national defense.

The witness was Howard Zinn, professor of political science at Boston University, who in 1968 visited Hanoi with the Rev. Daniel J. Berrigan and returned home with the first three American prisoners of war to be released.

All the previous defense witnesses were members of what could be considered the establishment. Professor Zinn was called after some internal debate between Daniel Ellsberg's side of the case and Anthony J. Russo Jr.'s.

More May Be Called

Finally, at Mr. Russo's behest, the defense decided to test how the jury would respond to a "radical."

If, in the judgment of the defense, Professor Zinn made a good impression on the jury, more "radical" witnesses will be called.

The professor spoke to the jury warmly and quietly, as if he were addressing a history seminar.

Towering over the courtroom, the 6-foot, 6-inch educator was asked by Leonard I. Weinglass, a defense attorney, to give a summation of five volumes of the papers, and he did so. He read from them and then he discussed them.

He said that the papers pointed out that the United States role in Southeast Asia became larger and larger and that no one questioned that role, except for "these voices in the

wilderness" who raised questions.

"The questions were raised," Professor Zinn said. "No one answered them." One such question, he said, was how important was Southeast Asia to the security of the United States?

He said that during the Eisenhower Administration it was suggested that American bombers be used to support the French army in Vietnam and that the proposal had been code named — here he paused a few moments — Operation Vulture.

One of the volumes, he said, tells how "this old colonial power [France] gets out and the United States gets in."

He used such words as "corruption" and "repression" to

describe the conditions in South Vietnam, and he said the late Robert F. Kennedy was, in 1965, "another voice in the wilderness."

He quoted Mr. Kennedy as having said that "maybe no government [in South Vietnam] can resist the Communists, and if that's so, maybe now is the time to get out entirely."

Throughout Professor Zinn's direct testimony, David R. Nissen, the chief prosecutor, raised only one objection. He appeared content to let the witness talk in the hope that the professor would associate himself before the jury with the cause of the North Vietnamese. The defense had decided to take this risk, the defense attorneys said.

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of Exculpatory Analyses