Sanitized Copy Approved for Release 2010/07/21 : CIA-RDP90-00552R000302470004-3

STAT

2

ARTICLE APPEARED ON PAGE A-24

WASHINGTON POST
21 October 1985

Espionage Trial Jurors Split for Several Ballots

Potential Impact Caused Spirited Debate

By George Lardner Jr.
Washington Post Staff Writer

BALTIMORE—The 12 jurors who found former Naval intelligence analyst Samuel Loring Morison guilty of espionage and theft here last week reached their verdict after several ballots and some spirited debate over the potential impact of his leaks of classified information.

Morison, 40, is the first American to be convicted under the espionage statute for providing information "relating to the national defense" to the media.

But one of the jurors said after the verdict that it would have made "a big difference for me" if U.S. District Court Judge Joseph H. Young had included in his final instructions an explanation of the word "potential," an explanation that the judge had initially said he would provide.

A crucial question left hanging as the case went to the jury was whether disclosure of the secret KH-11 spy satellite photos and other classified documents Morison was accused of stealing would have been "potentially" damaging to the United States.

Unknown to the jurors, Judge Young had informed prosecution and defense lawyers Tuesday evening he would instruct the jurors that "the potential must be real and not imagined." But he subsequently changed his mind and left the defense-proposed instruction out of his final charge to the jury late Wednesday.

The landmark case has touched off warnings from the American Civil Liberties Union that it could have a chilling effect on news reporting, especially in connection with national security matters.

The Justice Department, in turn, has dismissed as "nonsense" talk of a wave of repressive censorship-by-prosecution. But officials there refuse to rule out more indictments under the same statutes, given sufficient evidence. Neither the government officials who do the leaking, nor the news publications at the receiving end, these officials add, should consider themselves exempt.

Here in Baltimore, the jury of seven men and five women, most of them in their fifties and sixties, returned their decision Thursday afternoon after six hours of deliberations. But several seemed reluctant when the court polled them individually.

One, Evelyn Miller of Baltimore, remained silent when asked if she agreed with the verdict and had to be prodded by the judge to speak up before she said yes.

"There were two or three of us that had a real problem" [with the guilty verdict], one of the jurors, who asked not to be identified, said later. It took several ballots and some wrenching debate, the juror added, before the reluctant panelists made it unanimous. The controversy in the jury room, as in the courtroom, centered on two key questions, it was explained.

The first was whether the information about the KH-11 satellite system was "closely held" in light of leaks dating to 1978.

The second was whether the disclosure of the documents Morison was accused of stealing—two of which never left his apartment—could have hurt the United States or helped a foreign power, again in light of past leaks.

The Soviet KGB, the jurors were reminded frequently, had bought the KH-11 operations manual from a renegade CIA officer for $3,000 in 1978, and other KH-11 photos had leaked out before.

Government witnesses insisted in response that the new disclosures could still have prompted the Soviets to take fresh "countermeasures" against KH-11 surveillance.

Against this backdrop, Morison was convicted of one count of espionage and one of theft for taking three KH-11 satellite photos from a colleague's desk at the Naval Intelligence Support Center in Suitland and sending them to Jane's Defence Weekly in the summer of 1984.

They were published in the magazine's Aug. 11, 1984, edition, showing the Soviet Union's first nuclear aircraft carrier under construction.

A civilian analyst at NISC since 1974, Morison also was found guilty of one count of espionage and one count of theft for taking home portions of two NISC "Weekly Wires," a sort of classified newsletter, dealing with a devastating series of explosions in May 1984 at Severomorsk, the main ammunition depot for the Soviet Union's Northern Fleet.

Morison, who for years had been the American editor of the authoritative military yearbook, Jane's Fighting Ships, had sent off a summary of the incident at Severomorsk to JDW in late June 1984.

But his dispatch to Jane's made no mention of the "Weekly Wires" or the fact that the information in them had been been gleaned from "satellite imagery." It was not until government witnesses at the trial began citing chapter and verse from the Wires that the Soviet Union was on notice of the "potential" value of these documents.

Some of the jurors contacted declined to discuss their deliberations.

James A. Frye, a retired manufacturing engineer from Glen Burnie, said he did not feel free to talk "until someone gives me the authority."

Lester L. Troup, a retired dairy farmer from Rockville, took exception to a reporter's inquiry.

"If you want to find out what happened in that room, you talk to Judge Young," Troup said. "I think you're invading my privacy if you try to find out what happened in that room. I think you're invading my privacy and the privacy of the 11 other people in that room."

Another juror said, however, that there was heavy debate over the two key issues. Told of the instruction about the meaning of "potential" damage the judge had said he would give and then decided against, this juror paused and said, "That would have made a big difference for me."

Morison, the grandson of the U.S. Navy's foremost historian, the late Samuel Eliot Morison, will be sentenced Nov. 25. He could be sentenced to up to 10 years in prison and $10,000 in fines on each count.

Continued

Sanitized Copy Approved for Release 2010/07/21 : CIA-RDP90-00552R000302470004-3

Sanitized Copy Approved for Release 2010/07/21 : CIA-RDP90-00552R000302470004-3

His attorneys have said they will appeal the conviction, and they have indicated that one of the grounds they plan to cite will be Young's decision to drop the "potential" damage instruction.

The controversy over the effect of the case on the media, meanwhile, is far from settled. Under the government's theory of prosecution, anyone who "willfully" transmits photographs or documents "relating to the national defense" to someone not authorized to receive them is guilty of espionage, "no matter how laudable his motives."

In addition, under the theft statute as applied in the Morison case, it is not only a crime for a government official to take information worth more than $100 without authorization, but also a crime for anyone to receive that information "with intent to convert it to his use or gain."

P

The ACLU's Washington director, Morton H. Halperin, contends that the biggest danger lies in inhibiting effects of the Morison prosecution. "Every time a reporter comes into a newsroom with information relating to the national defense, the question will be, 'Are we risking an indictment?'

"The reporter will call the Pentagon and they'll say, 'We view this information as closely held.' The newspaper will then call its lawyers and the lawyers will say, 'They could put you in jail.' "

Halperin concluded that the case is going to have "a chilling effect on what reporters are prepared to write and what their editors are prepared to print."

The assistant attorney general in charge of the criminal division, Stephen Trott, said in an interview that the Justice Department is "very mindful of the First Amendment and of the legitimate interest [of the media] in issues of public concern.

"The sense that this is part of some program to pursue an Official Secrets Act is a bunch of nonsense," Trott added. "There's a certain hysteria about what we're up to."

But beyond that, he said, "The laws will be enforced . . . . I don't think it's at all helpful to state whether we will or will not [move against a publication]. Every case or potential case will be reviewed on the basis of the facts."

Sanitized Copy Approved for Release 2010/07/21 : CIA-RDP90-00552R000302470004-3