



Dr. and Mrs. Daniel Ellsberg and Anthony Russo. The government seeks to jail Ellsberg for 115 years and Russo for 35.

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The Pentagon Papers Trial— What's Happening?

by Lloyd Shearer

LOS ANGELES, CALIF.

Next month, unless the government decides to drop its prosecution or unforeseen circumstances come into play, the *United States of America versus Daniel Ellsberg and Anthony Russo*—better known as the Pentagon Papers case—should be going full speed ahead here.

The federal government is charging Ellsberg and Russo with 15 offenses ranging from conspiracy to illegal possession of documents. These offenses are punishable by 115 years in jail for Ellsberg and 35 years for Russo. By charging Ellsberg with 12 violations and Russo with three, the government hopes to get a conviction on at least one count.

Originally scheduled for the summer of '72, the Pentagon Papers trial was delayed when the government at the last moment admitted to Judge Matt Byrne that a member of the defense team had been overheard in an FBI wiretap. The case was thereupon stayed for four months while the U.S. Supreme Court eventually decided that the wiretap was irrelevant and the trial could get started.

The Ellsberg and Russo attorneys,

however, requested a new jury, pleading that in the four-month interval, the jury already chosen to hear the case had been contaminated by events including the Presidential election, time, inconvenience and other factors.

Federal District Judge Matt Byrne denied the defense motion for a new jury. His ruling was appealed to the Ninth Circuit Court of Appeals in San Francisco, one of the most conservative appellate courts in the nation. The circuit court suggested that Byrne would be "foolish" to start a trial with a jury whose members had been inactivated for four months, intimating that Byrne's ruling might eventually constitute a legitimate grounds for appeal once the trial was over.

Byrne declared mistrial

Acting on that suggestion, Byrne, one of Los Angeles' most eligible bachelors—he used to date Elizabeth Drew of the Atlantic magazine and a TV commentator for the Public Broadcasting Corp. (educational TV)—declared a mistrial and ordered a new jury.

The old jury, which was dismissed before it heard one word of testimony, was subsequently invited by the Ells-

berg-Russo defense team to a party.

Eight of the original 12 arrived at the gathering with members of their families. They spoke frankly of their impressions, feelings, attitudes and beliefs.

Persons who attended the party are convinced that had these original jurors heard the Pentagon Papers case, they most probably would have split six-to-six for Ellsberg and Russo, thus providing the defense with a hung jury, necessitating another trial if the government so desired.

General to testify

Next month, the government plans to call as one of its star witnesses in the case, Brig. Gen. Paul Gorman of Syracuse, N.Y., 45, now Assistant Division Commander of the 4th Infantry Division (Mechanized) at Fort Carson, Colo.

Gorman who has the well-deserved reputation of being able to charm the feathers off a duck, is one of the authors of the Pentagon Papers—Vol. IV A-5, "Origins of Insurgency"—1954-1960."

A West Point graduate, class of '50, and one of the sharpest, most brilliant officers in the military—he ranked 167 in a class numbering 670—Gorman was promoted to brigadier general last May

after pulling stints at the U.S. Army Infantry School, the U.S. Marine Corps School, the U.S. Army Command and General Staff College and the National War College.

He is expected to testify in uniform on the importance and secrecy of the Pentagon Papers, which are, of course, now on sale by bookstores everywhere and the U.S. Government Printing Office.

Westmoreland's friend

In addition to Gorman, the government plans also to trot out as a leading witness another general, William Dupuy, a close friend and associate of retired Gen. William Westmoreland, formerly commanding general in Vietnam.

As for the defense, it plans to call as witnesses some of the best-known personalities in the fields of law, government and journalism, many of whom are expected to testify on the government's practice of classifying and leaking documents.

What may possibly lead to a cancellation of the Pentagon Papers trial, however, is the government's use of electronic surveillance devices. The government claims that at no time has any FBI agent ever wiretapped Ellsberg or Russo. It does admit, however, that at least on two occasions, a member of the Ellsberg defense team was overheard on telephone intercepts.

The government has lied to federal judges in the past about wiretaps, most significantly in the Judith Coplon espionage

case of 1949, in which Justice Department attorneys swore that Miss Coplon had never been wiretapped. Subsequently Judge Sylvester Ryan learned that at least 30 FBI employees had tapped Miss Coplon's home phone, her parents' phones and her office phone, and had overheard conversations with her attorney.

It has been assumed in some quarters that the FBI maintains an on-going wiretap of the Chilean Embassy in Washington as well as a wiretap on the Czech Embassy which represents Cuban interests in this country.

It so happens that Leonard Boudin, Ellsberg's chief counsel, is a senior partner in a law firm which handles legal matters for both Chile and Cuba. Boudin is in periodic telephone conversation with Cuban and Chilean representatives. Moreover, it has been suggested that there is a link between some of the defendants in the Watergate break-in and bugging scandal and Daniel Ellsberg. Time magazine reported in an article that at least one of the Watergate defendants was connected with a planned beating of Ellsberg.

Will wiretaps help?

If the defense can show that government wiretaps impaired the attorney-client relationship between Boudin and Ellsberg, the judge may throw the case out, or the government may choose to drop it.

If wiretaps played no relevant part in the Pentagon Papers trial then it will proceed on its big-name course.