

Ellsberg, Russo Move for Acquittal

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LOS ANGELES, Feb. 23— Defense attorneys in the Pentagon Papers case today asked U.S. District Court Judge W. Matt Byrne Jr. to direct the acquittal of Daniel Ellsberg and Anthony J. Russo Jr. on all 15 counts in the indictment against them.

In a 50-page written motion, and in a full day of courtroom argument, the defense contended that government evi-

dence in the case was not sufficient to convince the jury beyond a reasonable doubt of Ellsberg's and Russo's guilt.

The motion, a standard one that is presented at the conclusion of prosecution evidence in most criminal cases, was the focus for a new defense attack on this trial as a breach of the 1st Amendment guarantee of free speech.

"To allow this prosecution to proceed," said Leonard I. Weinglass, Russo's attorney,

"would be to undermine . . . the strength and vitality of the 1st Amendment."

Weinglass contended that this trial is the first case in which "the United States government has claimed a lawful governmental function of controlling information." He predicted that the Justice Department, if successful, would bring others.

(The first count in the indictment charges that Ellsberg and Russo, conspiring with others not indicted, agreed "to defraud the United States . . . by impairing, obstructing, and defeating its lawful governmental function of controlling the dissemination of classified government studies, reports memoranda and communications.")

Charles Nesso, arguing on Ellsberg's behalf, said that the prosecution had failed to show that the government's security classification system was "lawful," that the Pentagon Papers and other documents covered by the indictment were properly classified, or that any violation of the system was punishable by criminal statutes.

Under questioning by

Byrne, chief prosecutor David R. Nissen insisted that the mere existence of an executive order issued by President Eisenhower in the 1950's established the lawfulness of the classification system.

In another part of its attack on the government case, the defense complained that the prosecution had yet to make clear whether, by charging Ellsberg and Russo with theft of government property, it alleges the theft of "pieces of paper" or of the "information" contained on them.

Nissen gave the same reply he has at several points in the case — that the government was deprived of its "exclusive possession" of the Pentagon Papers when Ellsberg and Russo disclosed them.

The defense also challenged the government's case on the espionage counts in the indictment and, in a separate motion, asked the judge to strike from the record all of the testimony by a key prosecution witness, Brig. Gen. Paul F. Gorman.

Byrne is committed, by an earlier ruling, to granting a verdict of acquittal on one count in the indictment.