

U.S. Casts Ellsberg Trial As a Simple Criminal Case

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LOS ANGELES, Jan. 17—The government moved quickly today to cast the Pentagon Papers trial of Daniel Ellsberg and Anthony J. Russo Jr. as a simple, narrow criminal case involving the theft and misuse of secret "guarded" documents.

Meticulously reviewing the 15-count indictment with slides projected onto a screen in federal court here, chief prosecutor David R. Nissen told the jury he would prove that Ellsberg and Russo entered into an illegal conspiracy in 1969 to "defraud" the government and violate the laws against espionage and theft of government property.

Nissen promised first to reconstruct the compilation of the Pentagon Papers, a Defense Department history of U.S. involvement in Southeast Asia, and two other documents at issue in the case, a 1968 memo by Gen. Earl C. Wheeler, then chairman of the Joint Chiefs of Staff, and a study of the 1954 Geneva accords prepared at the Rand Corp. in nearby Santa Monica.

Then, he said, he will present expert witnesses to explain why the documents, all classified, related to the national defense and therefore could not legally be shown "to just anyone."

(Sources close to the case

said one of the first prosecution witnesses in the trial is expected to be Army Brig. Gen. Paul Gorman, who was assistant director of the task force assigned by then Defense Secretary Robert S. McNamara to prepare the Pentagon Papers in the closing months of the Johnson administration.)

Speaking in slow, measured tones, Nissen stressed that the prosecution case will be "a calm, unemotional presentation of the facts" without appealing to anyone's "prejudices."

But the prosecutor's opening statement to the jury was notable mostly for what he insisted is not involved in this much-delayed controversial trial.

"We will not litigate the war," he declared, cautioning the jurors that neither their opinions on the American role in Vietnam nor those of anyone else are at stake here.

Ticking off a list of other matters that Ellsberg and Russo feel are indeed central to the case, Nissen said the government will offer no evidence on:

- Whether the government has withheld too much information from the public.
- Newspaper publication of the Pentagon Papers in June, 1971.
- Whether others had committed similar violations of the law in the past by leaking

secret documents to the press and public.

• The motives and intentions of Ellsberg and Russo in disclosing the Pentagon Papers.

• Whether the historical study and other documents in the case were properly classified secret.

There will be no proof, the prosecutor said, that the documents were "something exciting that if disclosed would spell disaster" for the nation. It is enough, he declared, to show that they carried classification stamps, justified by congressional statute and presidential executive orders, and should not have been "communicated" to persons "not entitled" to receive them.

In an apparent contradiction, however, Nissen told the jury that the documents were so sensitive that "if they came into the hands of a foreign country, they could be useful for substantive intelligence" directed against the United States.

He then proceeded to discuss the war after all, asserting that any compromise of the documents was dangerous in 1969 because of American "efforts to negotiate an end to the war."

Nissen repeatedly warned the jurors that they must judge the case according to the conditions that prevailed in 1969, at the time of the alleged conspiracy, rather than today.

The prosecution opening also included a civics lesson during which the initials of agencies that contributed material to the Pentagon Papers—from Cincpac (commander-in-chief Pacific theater) to NSC (National Security Council)—were projected onto the screen and the agencies' roles explained.

There was an initial uproar this morning when U.S. District Court Judge W. Matt Byrne Jr. entered his courtroom and found, to his surprise, that the prosecutors had erected a huge 10-foot by 12-foot screen in a place that blocked the view of almost all the 150 spectators at the trial.

After defense attorneys complained, Byrne forced Nissen to take down the screen and use another, smaller one on one wall of the courtroom.

Among the spectators were about 20 members of Vietnam Veterans Against the War, including a paraplegic in a wheelchair. To the judge's annoyance, some of the veterans remained standing after the jury entered the courtroom.

Even before their own attorneys had presented the defense's opening argument, Ellsberg and Russo held a noontime press conference on the courthouse steps, complaining of the Executive Branch's "arrogance" in bringing the case.