

Ellsberg Trial Resumes Today; Basic Issues Seen at Stake

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LOS ANGELES, Jan. 16—
With a new jury and a de-
termination to score points
against American involv-

ment in Vietnam, Daniel
Ellsberg and Anthony J.
Russo Jr. go on trial in fed-
eral court here for disclos-
ing the top-secret Pentagon
Papers.

It has been 19 months
since the Nixon administra-
tion failed in its efforts to
stop newspaper publication
of the Defense Department
history of the U.S. role in
Southeast Asia.

But only now will many of
the issues they posed—in-
cluding government secrecy
and restrictions on the First
Amendment's guarantee of
freedom of the press—be lit-
igated and perhaps tenta-
tively resolved.

Ellsberg and Russo are
charged in a 15-count indict-
ment with conspiracy, espio-
nage and theft of govern-
ment property.

The case was brought to
Los Angeles because the
government contends that it
was in this federal judicial
district that the defendants,
both former researchers at
the Rand Corp. "think-tank"
in Santa Monica, conducted
their illegal conspiracy be-
tween March, 1969 and Sep-
tember, 1970.

There is no mention in
the indictment of how the
Washington Post, the New
York Times and other news-
papers obtained the secret
study, a matter that has
been the focus of another,
currently suspended, federal
grand jury investigation in
Boston.

Rather, the case centers
on Ellsberg's and Russo's
dealings with each other,
with Lynda Sinay, the Los
Angeles advertising woman
who rented them a photoco-

pying machine to duplicate
the papers, and with Vu
Van Thai, a former South
Vietnamese ambassador to
Washington to whom Ells-
berg allegedly showed one
of the most sensitive of the
study's 47 volumes.

The trial, much delayed
by debate over legal issues,
disclosures of government
wiretaps that overheard a
defense attorney and dis-
missal of the first jury be-
fore it heard a word of evi-
dence, is expected to be long
—perhaps two months or
more—dramatic and emo-
tional.

Unlike the controversial
Chicago and Harrisburg con-
spiracy cases against anti-
war activists, there will be
no secret government in-
formers and relatively little
dispute over the facts
charged in the indictment.

But with major questions
of public policy at stake, the
Pentagon Papers trial could
become one of the most sig-
nificant court battles of the
Vietnam war period.

Ellsberg and Russo have
come to realize that their
disclosure of the Pentagon
Papers probably had only
minimal effect on the course
of the Vietnam war.

Their team of seven de-
fense lawyers feels that the
same is true of the trial,
that the court proceedings
themselves cannot realisti-
cally be expected to influ-
ence the peace negotiations
or their outcome.

Still, the defendants hope
they will be able to talk of
their intentions and mo-
tives, of their own conver-
sion on the war after their
exposure to it in Vietnam
and at home, thus intensify-
ing the national revulsion to
the conflict.

Over the months, how-
ever, other matters that
have little to do with Ells-
berg and Russo personally
have come to the forefront,
and these are some of the

questions that may be de-
cided by a conviction or ac-
quittal in the case:

Is information itself, when
classified, actually "govern-
ment property" as implied by
the indictment, or does it be-
long to the people as a whole?

Does the much-abused
government security classifi-
cation system—under which
thousands of people can put
documents into perpetual
secrecy by using a rubber
stamp—have the force of
law, although it is embodied
in presidential executive or-
ders rather than acts of
Congress?

Can the government be
"defrauded" of "its lawful
governmental function of
controlling the dissemina-
tion of government studies,"
as charged in the indict-
ment, whenever someone
leaks or mishandles a docu-
ment stamped secret?

Can it legitimately be
called "espionage," and pun-
ished as such, when a per-
son with a security clear-
ance shows classified mate-
rials to others who do not
have such a clearance?

Civil libertarians fear that
if the answers to some or all
of these questions is "yes,"
the United States will in ef-
fect have an Official Secrets
Act of the sort that Con-
gress has repeatedly refused
to enact.

What is more, they warn
that a conviction in this case
could seriously impede the
flow of information from
dissident government offi-
cials to the public, through
the press.

Indeed, if Russo is con-
victed for his role in the al-
leged conspiracy—essen-
tially that of a "receiver"—
similar charges could be
filed against the journalists
and newspapers that ob-
tained the Pentagon Papers
and other classified docu-
ments over the years.

The way chief prosecutor
David R. Nissen tells it,

none of those issues—really
is at stake in this trial, and
the Ellsberg-Russo indict-
ment poses just another rou-
tine criminal case like the
tens of others he has tried.

But ranking Justice De-
partment officials readily
concede that they know bet-
ter, that the implications of
the case go far beyond the
indictment. They say that
the Nixon administration
has merely decided that the
time has come to assert fed-
eral authority and stem the
tide of leaks to the press.