

# Ellsberg, Russo Differ in Case

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LOS ANGELES — Tony Russo invites members of the Vietnam Veterans Against the War to come watch his trial in federal court here, but Dan Ellsberg asks them please to stay home.

Ellsberg signs on a former deputy assistant secretary of defense as his "chief of staff" for the Pentagon Papers case, but Russo, resenting the man as a former "war criminal," refuses to deal with him.

As witnesses, Ellsberg chooses men who went to Saigon on official U.S. government missions. Russo prefers those who were expelled from South Vietnam or visited Hanoi.

And so it goes.

If they had their druthers, Daniel Ellsberg and Anthony J. Russo Jr. would probably just as soon not be on trial together.

To be sure, they're old friends, once colleagues at the Rand Corp. "think tank" in Santa Monica, both veterans of the civilian side of the American war effort in Vietnam. And back in October, 1969, Russo helped Ellsberg photocopy a top-secret history of American involvement in Southeast Asia—the act that eventually led to their being charged with conspiracy, espionage and theft of government property.

But as one person close to both of them puts it, "Tony and Dan come at this thing from different perspectives."

After months of false starts and endless delays, problems and tensions, public appearances and private meetings, pretrial and trial proceedings, their perspectives are showing.

This week, the contrast may be emphasized more than ever, when, at the conclusion of their case, the two men take the witness stand in their own defense.

It is inevitable, of course, that codefendants in a federal criminal case with political overtones have varying interests and preferences. That has been true in most recent controversial trials, with lawyers struggling to

hold fragile defense teams together.

In the Pentagon Papers trial, however, this problem has been especially acute.

Ellsberg and Russo seem to have totally different goals in the courtroom here, with Ellsberg striving to show that disclosure of the top-secret document was not really against the law and that to prosecute him violates the First Amendment, while Russo has in

mind a broader effort at "political" education.

The case was, after all, only Ellsberg's to worry about initially. He was indicted in June, 1971, even before the Supreme Court had ruled against the government's effort to stop newspaper publication of the Pentagon Papers.

Russo's name was added six months later in a superseding indictment, apparently because of his continued refusal to testify before a federal grand jury here investigating the case.

(He spent more than six weeks in jail on contempt-of-court charges for that refusal, and, as Russo partisans like to stress, that may be more of a penalty than Ellsberg ever has to pay.)

Even in prosecution testimony, it has been clear that Russo played a relatively minor role as the "helper" in duplicating the Papers—a role the Justice Department has chosen to translate into that of a "receiver" of allegedly stolen national defense information.

But the two men are codefendants and stand accused as co-conspirators, equal in every respect in the eyes of the court.

In fact, for some unexplained reason—perhaps prosecutorial impishness—the name of the case is now officially "United States v. Russo and Ellsberg," and on some mornings court clerk James Haggard shortens this to "U.S. v. Russo et al."

Some members of the defense team feel that this has ranked Ellsberg, that he is resentful of sharing a long-sought spotlight with Russo. Indeed, at some press con-

ferences where both defendants appeared, he has not permitted Russo to get a word in edgewise.

Russo, of course, is quite capable of communicating on his own behalf, and sometimes in a way that infuriates Ellsberg.

For example, while Ellsberg has generally been respectful and polite to the team of three federal prosecutors, Russo sometimes follows them through the court house corridors chanting, "There go the pigs." On another occasion while in an elevator with the prosecutors, Russo delivered a lecture on the "lies and deception" in the government case.

On one level, the difference between the two defendants is one of lifestyle and attitude, with Russo and his wife far less reverent about the judicial process than the Ellsbergs.

Patricia Marx Ellsberg sits in the second row of the courtroom every day, wearing designer fashions and often bringing along friends from the movie world or Los Angeles society.

Katherine Barkley, who is Russo's wife but refuses to be known as "Mrs. Russo," comes to hear only the witnesses she is interested in, and when she does, she sells organic food sandwiches to the defense staff, press and spectators. U.S. District Court Judge W. Matt Byrne Jr. passed an order through the courtroom marshal for her to stop, but she has defied it.

One person in the "Russo half" of the defense team analyzes the contrast this way: Russo is ashamed of and has rejected his past ties to the Rand Corp. and

Vietnam war-related work, while Ellsberg still has a "class loyalty."

According to this view, Ellsberg fully intends to return to friendship with his old Rand colleagues, while Russo would accept them only if they publicly recant their sins of the past.

Such differences were clearly reflected in the choice of some 25 defense

witnesses here. At Ellsberg's insistence, the list was packed with such former Kennedy and Johnson administration figures as McGeorge Bundy, Arthur M. Schlesinger Jr. and John Kenneth Galbraith.

Ellsberg and his aides—especially former Pentagon official Morton H. Halperin, defense "chief of staff" for the trial—fought a running battle against Russo's proposal for more "radical" witnesses.

Finally, as "a test," Russo was permitted to call Howard Zinn, a history professor from Boston University who has visited Hanoi.

Once Zinn seemed to impress the jury, the defense, in one of its hours-long

"strategy" meetings, then voted to call, among others, Don Luce, the man who discovered South Vietnam's "tiger cage" prison, and Tom Hayden, founder of Students for a Democratic Society.

In these matters, there has been virtually no compromise between the two defendants, and that is one of the reasons the defense case in the Pentagon Papers trial has taken so long.

Despite the public facade of unity, both defendants concede to having separate purposes here.

"We should struggle with the trial, not just use it to try to get off," Russo said in a recent interview. "We have to represent those broad segments of the American public, those millions of people who were opposed to the war."

Ellsberg has mellowed considerably from his original view of the case, but he still says, "I don't believe we can try to talk to history or to reach the public through this trial. . . . On the whole, I'd rather not be here."