

Marquis Childs

The Scene in Courtroom No. 9

LOS ANGELES—The fate of Daniel Ellsberg and Anthony J. Russo Jr. hangs in the balance here in one of the most complex and far-reaching trials in American judicial history. The government contends that nothing more than criminal charges, espionage, theft and conspiracy, are at issue in the copying and distribution by the two defendants of the Pentagon Papers.

Yet no one can doubt that if Ellsberg and Russo are convicted on one or more of the 15 counts of the indictments and their convictions upheld by the Supreme Court the shadow of secrecy and suppression will be felt at every level of government. With the jailing of reporters for refusing to disclose confidentiality of sources, two notable cases here in California, state courts are beginning to close their doors to the coverage of trials that would normally be open. Those most concerned with keeping the channels open describe it as a contagion of suppression.

What is most impressive in the great gray cliff of the Federal Courts Building is the power of the government as it has been marshalled in this case. It is all there, the FBI, the Department of Justice, the top military, felt if not seen in the subdued, aqueous light, the careful silence of Courtroom No. 9.

As a manifestation of that power, the defense has just charged the prosecution with deliberately withholding a document that would have refuted testimony on the damage done to national security by release of the Pentagon study of decision-making during the Vietnam war. The document was an affidavit by an analyst for the Central Intelligence Agency stating that figures giving Communist strength at the

time of the Tet offensive in 1968 had been fabricated in December of 1967. Lt. Gen. William G. DePuy, a government witness, had previously testified that releasing the Joint Chiefs of Staff study of the Communist order of battle would have helped Hanoi.

At times, as in this instance, the atmosphere in Courtroom No. 9 is strangely unreal. The phantoms of that longest and most divisive of all wars are summoned out of the past by the defense and the prosecution.

The record piles up in a whole library of volumes. At 3 a.m. each day the transcript of the day before is available. The young volunteers working for defense counsel collect it and comb it over preparatory to more of the same.

The cost is astronomical. At last report the defense was \$60,000 in the hole. Chief Defense Counsel Leonard B. Boudin has three associates and Russo has two lawyers. A small army of researchers and secretaries does the spade work. Money to foot the bill is raised by a variety of fund raising devices always falling behind the need.

The prosecution having presented the case against the defendants in two months the defense now takes over. Six to seven weeks will be taken up with a procession of witnesses who will testify not only that no damage was done to the national security but that Ellsberg and Russo served the right to know in exposing the bland optimism of the decision-makers in public as contrasted with their continuous escalation of the war.

The service to the nation in the revelation of the Pentagon Papers, the de-

fense will contend, is to show the catastrophe of secret and private presidential wars; an unwinnable war that divided the nation, alienated world opinion and threatened at times a third world holocaust. In a sense the verdict will be passed on the war itself, those who prosecuted it and those who opposed it.

Week after week, month after month the jury sits in impassive silence listening to technicalities of the law that seem at times to confuse even the battery of lawyers on opposing sides of the counsel table. Ten women and two men, the latter one black and one Chicano, are average citizens such as jury panels turn up. Judge Matthew Byrne Jr. is crisp, matter of fact, almost invariably overruling the objections of defense counsel to the interrogation of Chief Prosecutor David R. Nissen.

How these 12 men and women can separate the emotions of the war, their prejudices whether dove or hawk, from the allegation of criminality is the question that will press harder as the day of summation and then decision draws nearer. The prosecution holds to the narrow line of criminality, making out the defendants, both with scholarly attainments and research backgrounds, as thieves and saboteurs.

In the weeks ahead the defense will try to paint a portrait of men motivated by stern conscience to reveal to the nation the duplicity and deceit that generated the tragedy of Vietnam. The fate of the two individuals to one side, the verdict when it comes can only accentuate the divisiveness which is one of the tragic consequences of the war.