

U.S. Sees Ellsberg Issue As Simple Case of Theft

Special to The New York Times

LOS ANGELES, Calif., Jan. 17—The Pentagon papers trial, considered by many to be a landmark constitutional case, opened today with the Government attempting to make it a simple case of theft.

The chief prosecutor, in a courtroom crowded with 150 spectators, including about 20 uniformed Vietnam veterans who are opposed to the war, said in his opening statement to the jury:

"We will present no witnesses in evidence to litigate the war; we will not present any evidence on the information policies of the Government or evidence on whether the Government has withheld information about the war— withheld too much, too little."

Nor will the Government present evidence on "the defendants' reasons; motives do not excuse doing something wrong," said the chief prosecutor, United States Attorney David R. Nissen.

Rather, the Government will present a simple case charging that Dr. Daniel Ellsberg and his codefendant, Anthony J. Russo Jr., stole and received "guarded" classified information, information that was classified by duly constituted authorities.

18 Volume History

The documents involved are 18 volumes of the Pentagon papers, a Defense Department history of United States involvement in Southeast Asia; a 1968 memorandum by Gen. Earl C. Wheeler, then chairman of the Joint Chiefs of Staff, and a 1954 memorandum on the Geneva accord. Dr. Ellsberg and Mr. Russo are charged with 15 counts of espionage, theft and conspiracy in the case.

Mr. Nissen made use of slides that were projected onto a wall in the courtroom.

There was a slide that listed the various persons and agencies that had contributed to the "guarded" papers: the President, the National Security Council, the Central Intelligence Agency, the Commander in Chief, Pacific; the Military Assistance Command in Vietnam, the Department of State, the Bureau of Intelligence and Research, and several Ambassadors. Each was listed separately.

And there was another slide, listing the 15 counts in the indictment, using labels such as "Ellsberg Steals," "Ellsberg Retains," "Ellsberg Conveys," "Russo Retains," "Russo Receives."

"The documents are related

to the national defense in 1969," Mr. Nissen said, explaining that the term "national defense is a broad one that covers not only military matters, but covers things as broad as the interstate highway system."

But, he said, in this case, the "government is talking about documents that were guarded, not lawfully available to everyone."

The defense, in its opening, broadened the issues considerably to tell the jury that it is relevant to determine whether or not the documents involved should, in fact, have been classified; to determine whether or not all the information contained in the documents had not already been long in the public domain, even if the physical papers themselves were being guarded. The constitutional issue, as the defense and many authorities see it is the right of the public to information.

Leonard B. Boudin, one of Dr. Ellsberg's attorneys, gave the opening speech for the defense. He told the jury that when Dr. Ellsberg's case was finally presented "you will come to conclude that the revelation of the information [in the Pentagon papers] to your Senators and Congressmen was helpful to the United States."

The motivation behind Dr. Ellsberg's action, he said, was to make the information contained in the papers available to the Senate Foreign Relations Committee, which did not have it, and then to the public at large.

He also said the defense would prove that more than 100,000 persons have the right to classify information, and that this is "an absurdity."

Opening statements are not arguments. They are, rather, presentations to the jury on how each side perceives the issues, and at one point United States District Court Judge William Matthew Byrne Jr. admonished Mr. Nissen to state his case, not to argue it.

When the courtroom was opened today, spectators were startled to see that a 12-foot-by-10-foot screen had been put up facing the judge's bench, but blocking out the spectators' view of the proceedings.

Mr. Nissen said that he needed the screen to give his opening, but after the defense objected, Judge Byrne ordered it removed and made the prosecution use one that rolled down on the courtroom wall directly opposite the jury box.

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