

Ellsberg Lawyers Ask for Acquittal

LOS ANGELES, Feb. 23 (UPI) — The defense asked the judge in the Pentagon papers case today to order a directed verdict of acquittal on all charges, arguing that the Government had not proved espionage, theft or conspiracy.

The motion argued that the prosecution had not produced sufficient evidence that either Daniel Ellsberg or Anthony J. Russo Jr. "intended to achieve any unlawful objective" in removing and copying the top secret, classified documents in 1969.

United States District Court Judge William Matthew Byrne Jr. did not indicate how quickly he would rule on the defense motion.

Charles Nesson, a defense lawyer, presented the main oral argument in court outside the presence of the jury. It came after five weeks of prosecution presentation in which 10 wit-

nesses were called. The Government is scheduled to rest its case next Tuesday.

Mr. Nesson said that the First Amendment to the Constitution guaranteed citizens the right of criticism and public discussion of Government conduct.

He said the prosecution was attempting to persuade the jury to draw an inference of criminal conspiracy on the basis that Dr. Ellsberg and Mr. Russo knew each other, worked together at the Rand Corporation and that Mr. Russo helped copy the papers.

Contradiction Claimed

"There is insufficient evidence to support a finding that the control of the dissemination of classified Government documents is a governmental function," the motion said.

The defense argued that at most, the trial evidence had shown an agreement and intent

to copy a very limited number of documents over a very limited time span.

Mr. Nesson contended that application of the 1940 espionage law to the case of Dr. Ellsberg, who subsequently leaked the documents to the press, "contradicts the entire history and structure of this country's law concerning protection of official information."

"If the governmental property is its claimed ownership of the physical objects, these sheets of paper themselves, no evidence whatever has been presented of a deprivation of the benefit of that ownership of physical material," Mr. Nesson said.

The motion said the testimony had shown that by the time of the indictment in 1971, the documents reviewing the evolution of the Vietnam war up to 1967 had lost whatever relation to the national defense that they might ever have had.