

REBUTTAL OPENS IN ELLSBERG TRIAL

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Testimony by Final Defense
Witness Is Barred
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LOS ANGELES, April 19—Daniel Ellsberg and Anthony J. Russo Jr. rested their defense today in the Pentagon papers trial, and the Government immediately started its rebuttal case.

The defense's case ended on the 74th trial day after the judge refused to allow a final defense witness, Richard A. Falk, professor of international law at Princeton University, to testify that the war in Vietnam was illegal and that, therefore, the defendants had "a right and duty" to disclose the Pentagon papers.

The first Government rebuttal witness was retired Rear Adm. Lloyd R. Vasey, retired, a former submarine and destroyer division commander and Navy strategic planner, who testified that the disclosure of some of the military plans in one of the volumes of the Pentagon papers could have damaged the national defense in 1969 even though some of the plans were several years old.

Admiral Vasey, a tall pale man with deep-set dark eyes, was called to rebut retired Rear Adm. Gene Larocque, retired, who had testified for the defense that disclosure of the same plans could not have damaged the United States.

Denies Uselessness

But Admiral Vasey, now the Pacific representative of the Center for International Business in Honolulu, was asked by David R. Nissen, the chief prosecutor, whether the plans disclosed in the volume were, as Admiral Larocque had said, "utterly useless" in 1969. He answered, "Absolutely not, sir." He said that their disclosure could also be of "prejudice to the United States" and of use by a foreign nation.

He said there were seven plans, and that they showed the thinking of American military planners in the deploy-

The Government has also subpoenaed as rebuttal witnesses Brig. Gen. Robert Gard of the Air Force, a special aide to Robert S. McNamara, then Secretary of Defense, who in the summer of 1967 at the behest of Mr. McNamara set the guidelines for putting together the Pentagon papers at a meeting in the Pentagon.

F.B.I. Agents Called

Also getting subpoenas were two agents of the Federal Bureau of Investigation. They conducted a series of interviews with Morton H. Halperin, a former Defense Department official, shortly after the papers were disclosed by The New York Times on June 13, 1971. Mr. Halperin, who had over-all supervision of the study group that put together the papers, was a defense witness and a defense consultant in this case.

Dr. Ellsberg completed nearly 5 days of testimony yesterday, and that, so far, has been the dramatic highlight of this trial.

So the end of the defense case was somewhat anticlimatic. Professor Falk was called to the stand as the 27th defense witness and, under questioning from Leonard B. Boudin, a defense counsel, gave a long summation of his education and professional background.

Then Mr. Boudin asked him if the reading of the 18 volumes of the papers involved in the case "revealed to you violations of international law."

Richard Barry, an assistant prosecutor, jumped up and said, "I object," and Federal District Court Judge William Matthew Byrne Jr., who is presiding, said, "Sustained."

The jury was then excused, and Mr. Boudin offered a long "offer of proof," based generally on the ground that international law had been violated by the war, that international law in many cases superseded the country's laws, and that under international law Dr. Ellsberg and Mr. Russo had a "right and duty" to disclose the paper. He also argued this orally.

Leonard I. Weinglass, another defense attorney, argued that Dr. Ellsberg and Mr. Russo were in an "impossible conflict situation" in that if they had not disclosed the papers they could be convicted themselves for crimes under international law, and that if they did disclose them they could, if the Government's theory of this case was upheld, be convicted of violating Federal laws.

Judge Byrne reiterated that Mr. Barry's objection was sustained, and Professor Falk was dismissed as a witness. Both sides agreed to strike his previous testimony about his background from the record. It was clear that the defense felt it had at least gained a point to argue on appeal, if needed.

Dr. Ellsberg and Mr. Russo are accused of six counts of espionage, six counts of theft and one count of conspiracy.

Mr. Nissen estimated that the government's rebuttal would take a week. Then it will be up to the judge to determine whether the defense will be allowed a surrebuttal, which is not an automatic right.