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**Crime and Punishment**

By ANTHONY LEWIS

LONDON, June 27—When problems of conscience and politics are involved, the criminal law is always likely to be a crude weapon, dangerous to those who use it. That will surely be so in the case of Daniel Ellsberg. For the case may make the idea of "law," as it has been applied in the context of Vietnam, seem an ironic reflection of distorted values.

Hundreds of Americans have been concerned at a high level in planning and directing the Vietnam war. Civilian and military, they ordered the saturation bombing of a peninsula with napalm and antipersonnel devices that inevitably caused massive civilian casualties. They approved the use of defoliant chemicals over a large part of Vietnam—in violation, as we now see, of international conventions. They decreed the free-fire zones and search-and-destroy missions that, along with the bombing, made millions of Indo-Chinese refugees.

They did all this in stealth and deception, concealing the facts as long as they could from the American public and from Congress. They did more than deceive: they lied. One with the ultimate responsibility, the President, even played tricks with the Constitution's command that Congress declare war.

No law has been invoked against any of these men. Some are still in government. Others are back in private life teaching or managing — or writing their memoirs with the help of official documents they took with them.

Daniel Ellsberg participated for a long time in Vietnam policy, but he eventually faced up to the nature of the war. He saw that it was an American war carried on for American purposes in virtual disregard of any Vietnamese interest.

When he was interviewed by the Columbia Broadcasting System last week, that was his compelling conclusion. In all the thousands of pages of the Pentagon's Vietnam war history, he said, "I don't think there is a line" indicating official concern about "casualties among the Vietnamese or the refugees to be caused or the effects of defoliation."

Having faced all that, Mr. Ellsberg found that his conscience required some effort on his part to stop it. He did nothing violent. He tried reason; he talked with those who now advise on Vietnam policy. When that failed, he decided to try to bring the truth

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**AT HOME ABROAD**

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about the war home to the American public — or so the Government says. The formal charge is "unauthorized possession of top-secret documents." If convicted, he could go to prison for ten years.

As a matter of public policy, it is clearly right that Americans should know the truth about the origins of our involvement in Vietnam. Only by that self-knowledge can we hope to purge ourselves of the resentment that seethes through the United States.

And it is also plain enough that public awareness is more likely to end the fighting than executive wisdom. That is why it was sad to have a man as devoted to liberty as the Solicitor General, Erwin Griswold, tell the Supreme Court that the Government should be able to enjoin publication of material affecting "the process of termination of the war." Our theory of government is otherwise, and so are the facts here: only public and Congressional pressure, based on information obtained with difficulty, has wound the war down this far.

But the law raises different considerations. For one thing, the fact that officials responsible for the underlying Vietnam policies have never been called to account does not bar the Government from prosecuting specific offenses related to the war. It is highly doubtful that the United States should now undertake the equivalent of a Nuremberg trial, with all the anguish and witch-hunting that would arouse.

Our notion of law, moreover, requires that we obey the rules even when they seem unjust—or be willing to suffer the consequences of disobedience. When those consequences are grossly unfair, they can be abated by a prosecutor's discretion, by the conscience of a jury, by the understanding of a judge or pardoning authority. Or in the end, they can be endured with the help of public support or private conscience.

I do not know Daniel Ellsberg, and I have no idea what he has done, but I do not think he would disagree with the notion of being judged on the rules. For he has emphasized not only the importance of the truth about Vietnam but the obligation of those who lead the United States to respect law in the larger, the constitutional, sense.

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