



AP Wirephoto

Daniel Ellsberg and Anthony Russo outside the federal courthouse in Los Angeles after session.

## War as an Issue

# First Arguments In Ellsberg Trial

### Los Angeles

The prosecution and defense, in opening arguments at the Pentagon Papers trial, disagreed sharply yesterday on whether the Vietnam war is a major issue in the trial of Daniel Ellsberg and Anthony Russo.

The prosecutor said it should not even be mentioned during the trial, but Ellsberg's chief attorney, Leonard Boudin, told the jurors the case "is about a war."

The gray-haired, bespectacled Boudin, following the prosecutor's opening statement, told the panelists, "It's about a war which in the view of all defendants and many other people had origins and reasons that nobody could understand and that were concealed from the American people."

### RELEASE

He said the defense would prove during the trial that the Pentagon Papers Study of Vietnam war origins was wrongfully concealed by the government and that Ellsberg and Russo broke no law by releasing the data to the public.

He said the defense would attack the classification system itself, showing that it is "not a lawful governmental function."

"Instead, it's a system of keeping things secret," said Boudin, "not only from the American people, but from the Congress of the United States, the people we have elected to decide what should happen to this country."

He added that the defense would show Ellsberg felt it was "not only his right, but his duty as an American citizen and former government official to give this information to the Congress of the U.S."

Although the case involves charges under the espionage laws, Boudin pointedly told jurors: "There is no charge that anything was given to an enemy . . . or that the defendants had any intention of injuring the U.S."

But Assistant U.S. Attorney David Nissen, in his opening argument, said, "The government case will not present matters irrelevant to the charges. We will present no evidence—no wit-

nesses—no documents to litigate the war. There will be no witness called to say whether the war should have begun."

Promising jurors a "calm, unemotional presentation of the facts," he said: "There will be no appeals to the passions and prejudices of anyone."

He then listed the subjects the government would not mention.

Nissen said he would not discuss whether the government has withheld information on the war. "Such matters are irrelevant," he said. "The charges in this case do not deal with making information available to the public."

Ellsberg, 41, and Russo, 35, are charged with espionage conspiracy and theft in connection with the leak to news media in 1971 of top-secret papers detailing origins of U.S. involvement in the Vietnam war.

Nissen said the government case would make no mention of the newspaper publication of the documents, no evidence on whether other persons have violated secrecy laws and no evidence on whether the defendants "felt justified or not."

### MOTIVES

"The defendants' motives will not be discussed in our evidence," said Nissen. "Motives do not excuse behavior."

The defense has contended in pretrial arguments that a key point of the espionage law is the requirement of intent to harm the government. Nissen has claimed the government need not prove such intent.

The prosecutor's opening statement was delayed more than an hour as he fought unsuccessfully to keep a 12-foot-high black movie screen raised across the front of the courtroom, blocking the view of spectators and the press. He said he wanted to project charts on the screen.

Members of the defense accused Nissen of trying to block out the public, and at one point in the dispute Nissen was hissed by spectators. The judge reprimanded them.

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