

# Defense Opens Its Case at Pentagon Papers Trial

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LOS ANGELES, Feb. 27—The defense in the Pentagon papers trial opened its case today with a promise to the jury that it would present "extensive" and "compelling" testimony from high-ranking civilian and military officials of the Kennedy and Johnson Administrations and from "the leaders of Congress" in 1969 and 1970.

The major thrust of this testimony will be that had the Pentagon papers been disclosed in 1969 they would not have harmed the national defense and that the information contained in the papers "indeed was needed in that year" by the public.

And, further, the defense will try to show that it was not the defendants who defrauded the Government out of the papers but that the Government, in withholding the papers from Congress, was defrauding Congress. For it was the mission of the defendants, they say, to make the information available to Congress.

## Long List of Witnesses

The year 1969 is important because the period covered by the indictment is from March 1, 1969, through Sept. 30, 1970, nine months to more than two years before the Pentagon papers were made public by The New York Times on June 13, 1971.

The defendants are standing trial on six counts of espionage, six counts of theft and one count of conspiracy. Federal District Court Judge William Matthew Byrne Jr. dismissed two espionage counts yesterday.

In his opening argument, Leonard I. Weinglass, a defense attorney, said today that the defense would present a "long list" of witnesses that would include a former counsel to a President, a former am-



Associated Press

Dr. and Mrs. Daniel Ellsberg arriving at the Federal Building in Los Angeles yesterday.

bassador, a man who drew up national intelligence estimates and an official who attended National Security Council meetings.

He did not name them, but the list is expected to include Theodore C. Sorensen, counsel to President Kennedy, and John K. Galbraith, President Kennedy's Ambassador to India.

Testimony will also be heard from Morton Halperin, a defense consultant, who was a deputy assistant secretary of Defense, and Representative Paul N. McCloskey Jr. Republican of California, an outspoken critic of the war in Vietnam.

Mr. Weinglass is the head counsel for Anthony J. Russo Jr., one of the defendants. When opening statements were made to jury Jan. 17 by the Government and by counsel for Daniel Ellsberg, the other defendant, Mr. Weinglass reserved the right to make his opening

when the government concludes its case, which it did this morning.

Mr. Weinglass said today that the Government had failed to "trigger" the espionage counts because it had failed to prove that the documents in the case were "material related to the national defense in 1969, in a way that caused injury to the United States or [gave] an advantage to a foreign nation."

## Defense Argument

He said that the defense would argue that "no violation" of law had occurred.

"We stand by the Federal statutes as written by Congress," he said, indicating that the defense would attempt to prove that the Government was trying to use the jury and judge to make law where none existed — involving the classification of documents.

Mr. Weinglass said that the only contact that his client,

Mr. Russo, had with the documents was "a physical touching."

More important, he said, the documents involved did not relate to military matters but were "a history" of United States involvement in Southeast Asia that the Government itself treated them as such.

He indicated that the defense would in a sense try to vindicate the nation's top secret classification system and that to do this it would call among others, "historians" because the material involved in the case was not military but historical.

The documents involved are 18 volumes of the 47-volume Pentagon Papers and a 1966 Joint Chiefs of Staff memorandum.

On Feb. 7, the judge presided over a 1954 Geneva Accord memorandum from the case as far as the espionage counts were concerned, and yesterday he put that document out of the case entirely. But Mr. Weinglass said today that the author, Melvin Curtob, a teacher at the University of California in Riverside, would be called as a defense witness.

The first defense witness was Rear Adm. Gene LaRocque, retired, who is director of the Center for Defense Information, a private organization that disseminates defense information to the public.