

Jury selection begins for Flats protesters



Photo of defense lawyer Steven Silvern and defendant Daniel Ellsberg

By MYRON LEVIN
News Staff

Sixty Rocky Flats protesters went on trial Monday on charges that could bring each one at least a year in jail.

But as jury selection began in Jefferson County Court in Golden, defense lawyers weren't fighting merely to keep their clients on the streets.

Their main hope for acquittals, the attorneys believe, comes if they can turn this criminal case into a major political trial. The defense hopes it can put prosecutors in the position of having to defend the operations of the Rocky Flats nuclear weapons plant.

The protesters are members of the group that calls itself the Rocky Flats Truth Force. Each protester faces at least one charge of trespass and a

charge of obstructing a passageway for blocking railroad tracks leading to the Rocky Flats complex.

Each violation can be punished by up to six months in jail, and the most famous and oft-jailed defendant, Dr. Daniel Ellsberg, could get up to 3½ years in jail if convicted of four trespass and three obstruction charges. Ellsberg is the former defense analyst who leaked the Pentagon Papers to the New York Times.

The protesters aren't denying they've been blocking the tracks since they began their civil disobedience campaign more than six months ago.

But they're saying they must be acquitted under Colorado's "choice-of-evils" statute, which protects illegal behavior committed to avoid imminent danger to public welfare.

A seven-lawyer defense team will seek to call a series of expert witnesses who would testify that the radioactive pollution emitted by Rocky Flats poses a grave health threat to its neighbors and workers.

Prosecutors say the choice-of-evils law applies more narrowly to imminent danger situations, as when a pedestrian trespasses to avoid the attack of an angry dog.

Even if the law could be more broadly construed, they contend, it would be an allowable defense only if the demonstrators had availed themselves of every legal opportunity to get rid of Rocky Flats. That's something, the prosecution asserts, that they haven't tried.

In general, assistant district attor-

neys Gay Guthrie and Steve Cantrell are trying to keep the issues narrowly defined and the case open-and-shut. They killed a plan to move the trial to U.S. District Court in Denver, claiming such a venue change would give "undue publicity to a misdemeanor, petty criminal trial."

Whether the protesters succeed in using choice-of-evils as a vehicle for putting Rocky Flats on trial depends on 31-year-old County Judge Kim Goldberger.

Judge Goldberger may not allow the jury to hear that defense, but if he hears it before ruling that it can't apply, the protesters will at least have succeeded in bringing the Rocky Flats safety issue squarely before the public.

A decision on the novel defense probably won't come until Wednesday or Thursday, after the prosecution presents its case and gives the demonstrators something against which to defend themselves.

In the meantime, prosecution and defense lawyers spent the whole day Monday questioning prospective jurors. Both parties sought to learn whether those questioned would be unable to render an unbiased verdict because of their attitudes towards nuclear weapons and those who protest them.

The courtroom was jammed with nearly 60 prospective jurors and a like number of defendants and their supporters.