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8/1/72

Douglas Stay Unprecedented

WASHINGTON (AP) — The government told the Supreme Court Monday it could lose its right to prosecute Daniel Ellsberg and Anthony Russo for theft of the Pentagon Papers unless the trial is resumed right away.

The government raised the double jeopardy issue in asking the court to reverse Justice William O. Douglas, who has halted the trial possibly for months.

Solicitor General Erwin N. Griswold and Daniel M. Friedman, his deputy, said the stay issued Friday by Douglas in a wiretap dispute was unprecedented, an impermissible interference with criminal proceed-

ings and possibly disastrous.

The Justice Department lawyers argued that if the jurors were discharged by U.S. District Court Judge Matt W. Byrne Jr. while the wiretap question was debated, the government could lose its right to try Ellsberg and Russo on charges of espionage, theft and conspiracy.

The indictments came about from the leak to newspapers of the classified Pentagon Papers, which concern U.S. involvement in Vietnam.

The trial of Ellsberg and Russo had already begun in Los Angeles when the fight over wiretapping broke out. Defense attorneys asked for a de-

lay so they could ask the high court to order that wiretapping information be revealed in open court.

A new trial, the Defense Department lawyers said, could mean under recent Supreme Court decisions, that the defendants were unconstitutionally being put twice in jeopardy for one offense.

And yet, Griswold and Friedman said, if the jurors were kept waiting for months for the trial to resume they could be influenced by "contacts and comments" about the case and their impartiality could be weakened.

Judge Byrne instructed the jurors Monday to return to court Aug. 9, when, he said, he hoped to give them an indication of when the trial might resume. He told them that a legal matter in the case is pending in appellate courts and told them not to read newspaper accounts of it nor to expose themselves to television or radio news concerning the case.

In its application, the Justice Department said the court should overrule Douglas even if it means calling another special summer session.

Earlier this month the justices assembled in a special meeting to consider the question of seating at the Democratic National Convention.

Griswold and Friedman noted that the court rarely upsets a stay granted by an individual justice.

The government lawyers insisted that the wiretapping was totally unrelated to the Ellsberg-Russo trial and that the defendants and their lawyers have no right to examine the wiretap transcripts.

The wiretapping logs were submitted along with the application. Before Douglas blocked the trial, Judge Byrne had looked them over and concluded they had nothing to do with the prosecution of Ellsberg and Russo.