

Ellsberg Wiretap Inquiry Is Set

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LOS ANGELES, June 20.— A federal judge here today ordered the Justice Department to search its voluminous files and those of other agencies to determine whether there has been any wiretapping of 11 lawyers who have represented Daniel Ellsberg and Anthony Russo.

Dismissal of protests by government prosecutors that he was imposing an "unreasonably burdensome" task on them, U.S. District Court Judge W. Matt Byrne Jr. said the search must be completed and a report given to the court before Ellsberg and Russo go on trial on July 3 or 5.

They are charged with conspiracy, theft of government property and violations of the espionage act in connection with disclosure of the top-secret Pentagon Papers a year ago.

If the government search reveals that there was electronic surveillance of any lawyers

currently or previously in the case, Byrne said, the logs of those wiretaps will have to be turned over to him.

The defense could, in turn, demand and obtain a hearing on whether any of the material in the wiretaps violates the lawyer-client privilege or otherwise prejudices the case against Ellsberg and Russo.

Byrne took specific note of the Supreme Court's decision Monday that it is unconstitutional for the Justice Department to use a wiretap without a court order against U.S. citizens and organizations suspected of allegedly subversive activities.

Some of the lawyers representing Ellsberg and Russo, who have also defended militant protesters and left-wing organizations, suspect that they may have been overheard in so-called "national security" wiretaps authorized by the Attorney General without a court order.

"The chances of any interception being illegal are

rather substantial," Byrne commented as he ruled.

In the meantime, Warren P. Reese, an assistant U.S. attorney from San Diego who is a special prosecutor in the case, told the court that a search of the files of eight different agencies had revealed absolutely no wiretapping on Ellsberg and Russo themselves.

Reese and chief prosecutor David R. Nissen reacted angrily to the judge's order regarding the attorneys, calling it "an extreme departure from the state of the law at this point."

"There may be enormously voluminous transcripts" to be examined, Reese said. "It will take a team of men days to do the job."

He also warned that "the court's order in this case will receive widespread publicity" and perhaps encourage defense attorneys in other cases to make similar demands.

But Byrne scolded the prosecutors, as he had done with a defense attorney a few moments earlier, saying that "this case is like any other case" and that he would not

tailor his rulings because of the controversy surrounding it.

Under the terms of the judge's order today, the Justice Department must reveal any surveillance of an attorney after he entered the case.

As each lawyer was listing how long he had been involved in the litigation, Leonard Boudin, chief attorney for Ellsberg, revealed that he had been consulting with his client as early as December, 1970, six newspapers and three months before Ellsberg first made them available to The New York Times.

Leonard Weinglass, who argued this aspect of the case might find it useful to check wiretapping of the defense whether the CIA had done any lawyers.

Byrne's ruling also included Russo each to list three "fact investigators" or "consultants" who had been working with them, whom the Justice Department will also be required to check for government wiretapping.

The prosecutors reserved the right to object to any of those six names, however.