

Ellsberg Loses Jury Challenge

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LOS ANGELES, July 13—Daniel Ellsberg and Anthony Russo, on trial here in connection with disclosure of the top secret Pentagon Papers, failed today in their effort to strike from the jury all persons who have ever held government security clearances.

U.S. District Judge W. Matt Byrne Jr. ruling without comment, rejected the defense's contention that it would be impossible for anyone holding such a clearance to act fairly in a case that intimately involves government security regulations.

Leonard I. Weinglass, an attorney for Russo, pointed out in court today that 10 of the first 17 prospective jurors questioned in detail either hold clearances, did in the past or are married to someone with a clearance.

In almost all of those instances, the potential jurors have at some point depended for their livelihood on defense industries in Southern California.

Raising a challenge for cause against Enriqueta A. Arroyo, for example, Weinglass said that she might fear that an acquittal of Ellsberg and Russo could affect the earning capacity of her husband, who works at the McDonnell-Douglas Aircraft Corp.

Sitting on the Ellsberg-Russo jury, he suggested, could put Mrs. Arroyo in a "difficult position."

Chief prosecutor David R. Nissen replied only briefly to the defense argument, saying that he felt jurors could be trusted to disregard their exposure to security clearances and documents stamped classified.

Byrne sustained only two challenges for cause raised against potential jurors today, one by the prosecution and the defense. They were:

- John I. Hietala, challenged by the defense, because he said Wednesday that he had reached the advance "conclusion" that Ellsberg and Russo are guilty, as charged of conspiracy, theft of government property and espionage.

- Marie Goldstein, a supporter of Democratic presidential nominee George McGovern, who said she had "definite sympathy" for the defendants, but insisted she could put that sympathy aside as a juror.

There was a loud gasp from defense supporters sitting in the courtroom as the challenge to Mrs. Goldstein was sustained.

Ellsberg's chief counsel, Leonard B. Boudin, had insisted that there was a significant difference between Hietala and Mrs. Goldstein.

While Mrs. Goldstein indicated only "sympathy" for the defense, he argued, Hietala seemed to be saying that he would consider Ellsberg and Russo guilty until proven innocent, contrary to a cardinal principle of the American judicial system.

Insisting that he was considering only the limited question of whether each potential juror could be "fair and impartial," Byrne denied the specific challenges for cause raised by the defense against five other prospective jurors.

They included Mrs. Arroyo and Dorothy J. Berkeley, who said that her husband works on development of the new B-1 bomber at the North American

can Rockwell plant.

The defense said that it accepts the notion that the eventual jury in the case will include some persons who favor American policy in the war in Vietnam, as well as some who oppose it.

But Weinglass and Boudin sought to challenge Homer R. Walls, who said he hopes for an American "victory," on grounds that his views were on the "fringe" of the political spectrum. The term "victory" is no longer even used in "high government circles" as a formulation of American goals, Boudin contended.

The defense also raised an unsuccessful challenge to Louis J. Asta, an Italian immigrant with little education who speaks broken English, on grounds that he might not be competent to read the Pentagon papers when they are introduced in evidence.

Nissen complained however, that this contention was "arrogant" and contradicted the original position of the defense that the jury panel would not include enough people in the lower socio-economic classes.

Byrne, frequently cutting off the defense lawyers in the midst of their arguments, appeared determined to try to complete selection of the trial jury this week. Today was the fourth day of jury selection in the case.