

Separate Trial Asked By Russo

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LOS ANGELES, June 14—Anthony Russo today asked a federal judge to separate his trial, on charges of conspiracy and receiving stolen national defense documents, from the trial of Daniel Ellsberg.

In a motion filed with U.S. District Court Judge W. Matt Byrne Jr., lawyers for Russo argued that he should not go to trial until the Supreme Court had decided whether it will consider an appeal in which Russo challenges the validity of his indictment.

Russo was originally granted immunity from prosecution last summer when he was subpoenaed before a grand jury here that was investigating Ellsberg in connection with disclosure of the top secret Pentagon Papers.

But he refused to testify and served 47 days in jail for contempt of court.

Subsequently, Russo agreed to testify under the terms of an order from U.S. District Court Judge Warren J. Ferguson which required that he be supplied a prompt public transcript of his grand jury

appearance.

The government rejected that condition and asked in United States District Court for the Southern District of New York that Russo be held in custody.

Russo contended in an appeal lodged with the high court last month that his indictment was therefore not lawful.

The Justice Department challenges that view and says that immunity from prosecution is not actually triggered until the person testifies before the grand jury, which Russo never did.

Russo's lawyers asked the Supreme Court to expedite consideration of his petition, so that the joint trial scheduled to begin here June 26 could proceed on schedule, but that request was denied last week.

The high court is now expected to decide within the next few weeks whether to consider Russo's appeal.

But in the meantime, the motion filed with Judge Byrne today said, the only way to prevent Russo's appeal from denying Ellsberg his right to a "speedy trial" is to separate the two cases.

Russo's attempt to leave the case has been the source of some friction. Some of Ellsberg's lawyers think that his chances for acquittal are greater if he is tried along with Russo, rather than alone.

Russo's attorneys and advisers, on the other hand, believe that he would be much better off if tried alone, since the charges against him are less serious than those against Ellsberg.

In fact, some legal observers here theorize that if separated from the Ellsberg case, Russo may never actually be tried for his part in photocopying the history of U.S. involvement in Vietnam for public distribution.