

Ellsberg Charges Jury Selection Bias

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LOS ANGELES, June 13—Daniel Ellsberg and Anthony Russo, scheduled to go on trial in federal court later this month in connection with the disclosure of the Pentagon Papers, have charged that the jury selection system here discriminates against youth and poor people.

In affidavits based on 1970 census data, the defendants contend that "young people" are 38 per cent underrepresented on the list from which federal jurors are chosen here.

The list is based exclusively on voter registration files.

"Young people constitute an identifiable grouping in society with distinct ideas and experiences," lawyers for Ellsberg and Russo argue in a motion seeking to delay jury selection until a new list is drawn up that cures the alleged discrimination.

Defining youth for jury selection purposes as those between the ages of 18 and 29, the defense contends that they have different "attitudes towards the courts and the law" which could affect the outcome of the case here.

Residency Requirement

Ellsberg and Russo are denied "a jury chosen from a cross-section of the community," the defense contends, because of requirements that potential jurors must have lived in the judicial district

for a year and must be at least

The defense lawyers say that census studies they commissioned show that the poor are also less likely to be on juries here than they should be.

Their attempts to demonstrate substantial underrepresentation of women and of racial minorities have apparently failed, however.

U.S. District Court Judge W. Mat Byrne Jr., who is presiding over the case concerning disclosure of the top-secret history of U.S. involvement in Vietnam, today delayed a decision on whether to hold a hearing on the defense's jury-selection complaints.

In a brief court session, the judge also postponed a ruling on whether the defense will be permitted to present witnesses to support their contention that Ellsberg and Russo are being "selectively" prosecuted for actions that are routine in Washington.

As it began to look unlikely that the Ellsberg-Russo trial will begin, as now scheduled, on June 26, Byrne complained that "we're going to have an understanding that the time for motions has been exhausted."

The proliferation of motions, affidavits and other court papers in the case is

caused partially by the inability of the prosecution and the defense to agree on any details of how the trial should be conducted. They disagree even on how the indictment should be summarized to the jury.

In one memorandum filed today, the defense accused the prosecutors of engaging in a "bitter diatribe against the defendants, their counsel and the news media" in court papers that had said the press was helping Ellsberg and Russo

distort the meaning of the case against them.

The defense appealed to Byrne not to follow the government's suggestion of forbidding courtroom discussion of the war in Vietnam, freedom of the press and congressional attempts to obtain secret documents.

Contrary to the government's contentions, the defense memorandum said, pretrial publicity in the case has included many "disparaging comments" about Ellsberg and Russo, including some by former President Johnson and Los Angeles Mayor Sam Yorty.