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U.S. Wiretap Challenged By Ellsberg

Daniel Ellsberg and Anthony Russo Jr. formally have filed a brief with the Supreme Court charging that government wiretapping has tainted their defense in the Pentagon Papers trial.

Ellsberg and Russo, whose trial in Los Angeles has been delayed by Justice William O. Douglas, said in a brief yesterday that they should have a hearing with both sides present to determine whether the interception could affect their right to a fair trial.

In the challenge the two defendants called into question the government's right to conduct "foreign surveillance" by wiretap without a court order. The government has stated it picked up conversations bearing on the case in the course of surveillance of foreign subjects.

The two are charged with conspiracy, theft of government property and violation of the Espionage Act in leaking to the press in 1971 the once-secret Defense Department study on the origins of the Vietnam war.

They are appealing from decisions by U.S. District Court Judge W. Matt Byrne Jr. and the 9th U.S. Circuit Court of Appeals, which denied them special wiretap hearings. Byrne examined the government's eavesdropping disclosure himself and said it could not possibly have any bearing on the trial.