

Pentagon Papers Case Is Ending, Beginning

Feb 12/11/72

LOS ANGELES (AP) — The Pentagon Papers case, initiated more than one year ago in angry controversy over the Vietnam war, is ending and beginning again.

U.S. District Court Judge Matt Byrne, presiding at pre-trial hearings for Daniel Ellsberg and Anthony Russo, says he will declare a mistrial Monday and order a new jury chosen to judge the matter. No testimony was taken at the pre-trial proceedings.

Although the law forbids the trial of any defendant twice for the same crime, Ellsberg and Russo have said they will waive their protection from double jeopardy in order to get a new jury and a fresh start.

The Ellsberg-Russo defense fund says the trial already has cost them \$250,000 and they are \$75,000 in debt. By the conclusion of the second trial, they estimate their expenses will reach \$750,000. Ellsberg, 41, and Russo, 35,

former researchers on secret government projects, have admitted roles in releasing to news media the Pentagon study of the Vietnam war origins. They said they hoped to help end the conflict. The government has charged them with espionage, conspiracy and theft. It has been 18 months since Ellsberg was first in-

dicted. A second indictment, including Russo, was issued last December. The trial was the first prosecution of Americans for giving government secrets to a newspaper in their own country. Espionage laws previously were interpreted to apply only in cases in which a person intended harm to his country or

aided a foreign power in doing such harm.

From the start of pre-trial court actions, the proceedings seemed destined for delay. Before most preliminary court matters had been resolved, the judge suffered an appendicitis attack, causing a brief postponement. Then lengthy arguments ensued over jury selection.

After one month, a jury was chosen and sworn in. Then another problem occurred.

The government prosecutor, prodded repeatedly by the defense team to say whether any of them had been wiretapped, delayed submitting his report until after jurors were sworn. Then, he told the judge secretly that a defense team member indeed had been overheard on an electronic "bug." But he refused to tell the defense who was overheard.

Defense lawyers demanded disclosure and when Byrne refused, they appealed to higher courts. On the eve of opening statements, U.S. Supreme Court Justice William O. Douglas, chiding the government for seeking more and more to pry into the privacy of

Americans, halted the trial to allow the nation's highest court to consider hearing the appeal. Since the court was in summer recess, a ruling was delayed until fall.

Last August, Ellsberg and Russo suggested dismissing the jury and offered to waive double jeopardy. The judge declined.

Last month, after a four-month hiatus, the high court declined to consider the wiretap issue. Ellsberg, Russo and their attorneys returned to Los Angeles for trial but immediately called for replacement of the jurors.

They said political issues discussed in the recent presidential election were also issues in the trial and jurors were probably swayed by the publicity.

The jury returned to court, and Byrne asked each member whether anything had prejudiced them in the last four months.