

## Overrule Douglas, Court Asked

# U.S. Raps Halt

Examiner News Services

WASHINGTON — The government urged the Supreme Court today to overrule Justice William O. Douglas and order a resumption of the Pentagon Papers trial of Daniel Ellsberg and Anthony Russo.

Douglas has blocked the trial, possibly for months, in a dispute over wiretapping.

The Justice Department accused him of impermissible interference and said the action could forever preclude trial of Ellsberg and Russo on the indictment.

Solicitor General Erwin N. Griswold was at the court when the clerk's office opened to submit copies of the government's application for all the justices. Only Chief Justice Warren W. Burger was due in his office. The others are vacationing.

Griswold's plea could lead to a special summer session. Earlier this month the court was called back from recess to rule on the Democratic Party's credentials fight.

Ellsberg and Russo were on trial in Los Angeles on various charges stemming from public disclosure of the once-secret study of the Vietnam war when the government revealed a defense attorney had been overheard in a wire tap.

The government said the "bugging" involved a matter of foreign intelligence with no bearing on the Ellsberg and Russo trial. But

the defendants said that under Supreme Court decisions they were entitled to examine the logs to make that determination themselves.

Douglas last Friday stopped the trial for 30 days — longer if an appeal is filed with the Supreme Court on the question. He acted in his role as the justice with supervisory powers over courts in California.

The current situation calls for reversal, argued Griswold and his deputy Daniel N. Friedman, in their application. They said: "It was error, we submit, for the circuit justice Douglas to grant a stay of an on-going trial when no right of the defendant's is jeopardized by the trial's continuance."

Meanwhile, lawyers for Ellsberg and Russo have protested the move by the government.

Ellsberg lawyer Charles R. Nesson, a Harvard law professor, said yesterday that "nothing more clearly confirms the political nature of this case" than for Griswold to "take this extraordinary step."

# on Ellsberg

He said such reconvenings had only taken place four times in the court's history.

"If Chief Justice Burger, a Nixon appointee, convenes a special session of the court . . . then the implication can only be that this Administration and this court sees the politics of the Pentagon Papers case as of overriding importance," Nesson said in a prepared statement.

Chief Defense counsel Leonard Bouding said he hopes his side will be given a chance to file a written answer to any request for a stay revocation filed by the solicitor general.