

ELLSBERG FIGHTS TO KEEP TRIAL OFF

Lawyers Offer Explanation
for Opposing Court Session

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LOS ANGELES, Aug. 2—
Lawyers for Dr. Daniel Ellsberg and Anthony J. Russo Jr. told the Supreme Court today that its image as a "measured deliberative body" would be eroded if it convened a special summer session to consider overturning Justice William O.

Douglas's order delaying a Pentagon papers trial.

In papers filed in Washington this morning and released here, the lawyers also said that "the integrity of the Court's summer recess" would be threatened if the Justices returned from their vacation to hear the Justice Department's motion to throw out the stay.

In raising those two points, the defense touched on two factors that have reportedly influenced some of the Justices to oppose a special session to consider the stay.

One is a feeling that the Supreme Court should not take the extraordinary step of convening hurriedly to consider countermanding a fellow Justice's order at the behest of

the Justice Department.

There has reportedly been some pique among the Justices over the Nixon Administration's campaign to bend the Court to the President's way of thinking through the new appointments, and some Justices are said to feel that it would be unseemly for the Court to rush into special session to preserve a prosecution that is viewed in some quarters as essentially political.

The other factor is that the Court was called into special session for the fourth time in history only last month, when it stopped a lower Federal Court from deciding credentials challenges during the Democratic National Convention, and a call for a second special session soon could lead to habitual in-

terruptions of the Justices' traditional three-month summer recess.

If the Court is to consider countermanding Justice Douglas's stay, a quorum of at least six Justices apparently must assemble in Washington. But four of the nine Justices have reportedly expressed opposition to a special session, and so a quorum may be unavailable.

It is expected that if the Justices decide not to meet, a notice will be issued shortly, stating that the Government's application is denied.

Then the trial of Dr. Ellsberg and Mr. Russo for allegedly making public the secret study of the Vietnam war would be delayed at least until the Court decides in October

if it will hear the defendants' appeal of a wiretap issue. They assert that the Government should disclose details of a wiretap that picked up a conversation involving an unidentified defense lawyer or consultant.

The only way the trial could promptly proceed would be for the Government to disclose the details of the "foreign intelligence" wiretap, which a Government lawyer has said is still in operation.