

JURY IS RETAINED IN ELLSBERG CASE

Judge Denies Defense Plea
Over Possible Bias

By WALLACE TURNER

Special to the New York Times

LOS ANGELES, Dec. 1—The defense in the Pentagon papers trial lost an attempt today to have the jury dismissed on the ground that its members had become biased during a four-month recess.

The defense will appeal the decision to the United States Court of Appeals for the Ninth Circuit, a move that may delay opening arguments scheduled for Wednesday.

United States District Judge William Matthew Byrne Jr. refused to grant the motion after spending more than two hours questioning the jurors, first as a group and later one by one.

Each of the 12 jurors and six alternates said that nothing had occurred to change the impartial attitude held when

the jurors were sworn on July 26.

Defense attorneys for Daniel Ellsberg and Anthony J. Russo Jr. had previously told Judge Byrne that they intended to appeal.

Although some told of being asked trivail questions by family or friends, all 18 jurors and a ternates said that nothing had happened to shake their belief that thy could be fair and impartial jurors.

The defense motion asserts that the fact of the four-month delay between the jury's selection and the possible opening of the trial is in itself enough to warrant dismissal of the jurors.

Nervousness Acknowledged

Defense attorneys, who wanted the mistrial declared without questioning of the jurors, asserted repeatedly yesterday that some "taint" must have entered the jurors' minds because the knowledge that they were to decide this case would have given them unusual sensitivity to events that otherwise would be commonplace to them.

Only one juror had anything unusual to report in the talks with Judge Byrne, which were

conducted in open court. Mrs. Sally Gordon hinted strongly that she wanted to be excused, although she did not directly insist on it.

Mrs. Gordon said that her husband told her that "Mr. Ellsberg wanted a new jury" and therefore she might not need to serve.

"I was a little bit relieved," she said. "I am quite nervous. Just realizing I would have to come down here every day bothered me."

Mrs. Ardis C. Turnbull told Judge Byrne that her brother-in-law had called up and said, "I hear they want to get rid of the whole bunch of you."

Lawyers Voice Concern

The defense lawyers say they fear that the jurors will blame them for the delay and thus prejudice their case. They asked Judge Byrne to question jurors on this point. But he would not.

The jurors reported such things as catching a bit of something about the trial on a television news program before turning it off or leaving the room, or a random question from an employer about when the trial would start or finish.