

Judge Scolds Ellsberg Prosecution

Examiner News Services

LOS ANGELES — The Pentagon Papers trial was delayed again today when the government revealed it had not furnished the court material bearing on the possible innocence of Daniel Ellsberg and Anthony Russo.

U.S. District Judge Matt Byrne dismissed the jury for the day and ordered the government to try to get a military plane to fly three documents here from Washington, D.C.

The documents deal with an investigation of the Rand Corp. and its officials by government agencies, in-

cluding the Air Force, in 1971 after Ellsberg "leaked" the top secret documents on the Vietnam war to the news media.

Scolded

"The burden of the government cannot weigh with the rights of the defendants," said Byrne, as he scolded the government. "The rights of the defendants are superior and must prevail."

He told the prosecuting team "this material should have been turned over."

Tapping on his bench for emphasis, Byrne lectured the government attorneys on

their responsibilities to turn over to the judge every out-of-court statement made by a potential witness in the trial.

He said a cursory examination of documents turned over today indicates it may contain material which could help prove the defendants' innocence.

"The thing that concerns me," said Byrne, "is what other documents there are."

Defense attorneys, given transcripts of the 1971 interviews with Rand Corp. employees late yesterday, moved for mistrial, claiming at least one government wit-

ness probably committed perjury and others left out important details in their trial testimony.

New Questions

Byrne denied the motion but allowed the defense team to launch a new line of questioning in the midst of the government's rebuttal case.

The secret interviews concern the date on which Rand's security officer first found out Ellsberg had the Pentagon study of the Vietnam war at Rand's Santa Monica office, and the length of time before the study entered Rand's top secret control system.