

DEFENSE HOPEFUL ON ELLSBERG CASE

Says Court Will Hold That
Trial Is 'Political'

NYTimes

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Special to The New York Times

LOS ANGELES, July 30—Defense lawyers said today that the Supreme Court would confirm their contention that the Pentagon papers case "is indeed a political prosecution" if it convenes a special session to consider overturning Justice William O. Douglas's stay of the trial.

On Friday night, Justice Douglas blocked further proceedings in the trial, which had been scheduled to start tomorrow, to allow the defendants to appeal to the Supreme Court their assertion that the Government should be required to disclose details of a wiretapped conversation involving a defense lawyer or consultant.

The Government then announced that it would seek a reversal of the stay by the full Court.

The defense reacted to the Government's announcement by charging that this "extraordinary step" taken yesterday by Solicitor General Erwin N. Griswold, confirmed the political nature of the prosecution of Dr. Daniel Ellsberg and Anthony J. Russo Jr.

Western Jurisdiction

Opening arguments were to have been presented to the jury tomorrow in the trial of Dr. Ellsberg and Mr. Russo for allegedly making public the top-secret study of the Vietnam war. The stay issued by Justice Douglas, who has jurisdiction over the Western states, blocked the trial until the

Court rules on the defense's wiretap appeal.

The wiretap question centers on whether the Government must disclose details of a wiretap, not directed at any of the participants in this case, which picked up a conversation between an unknown party and the defense lawyer or consultant. On Thursday, the United States Court of Appeals for the Ninth Circuit ruled that no disclosure was required because the conversation did not concern the Pentagon papers case.

Within hours after it became known yesterday that Justice Douglas had issued the stay stay from his isolated mountain retreat in Goose Prairie, Wash., the Justice Department said it would ask the Court to reverse the order. Mr. Griswold said in Washington today that he would file the application "the first thing tomorrow morning."

Asked about the defense charges that the move was politically tinged, he said, "We will file our papers with the Court and they will have to speak for themselves."

'Overriding Importance'

In a statement issued from the Ellsberg-Russo defense office, Charles R. Nesson, a Harvard law professor who is one of Dr. Ellsberg's lawyers, said, "If Chief Justice Burger, a Nixon appointee, convenes a special session of the Court, departing from the normal judicial process of reviewing constitutional issues, then he implication can only be that this Administration and this court see the politics of the Pentagon case as of overriding importance."

A Court official said that the defense would be furnished a copy of the Government's application and would be given time to respond in writing before any action is taken. The defense statement said that it would oppose any review of Justice Douglas's stay.

Actions by the Supreme

Court during its summer recess are so unusual that no firm procedures exist for handling them. It is believed that the Court has reconvened only four times during the summer, including last month, when court challenges to credentials rulings affecting delegates to the Democratic National Convention were thrown out.

A Government source implied today that a telephone poll of all the Justices might be sufficient to act on Justice Douglas's stay, but a veteran Court official said that a quorum of six Justices would probably have to be present in Washington.

If a quorum of six or more Justices should be convened, a majority of those voting would be required to overturn the stay. If the Court should decide not to act on the Government's application, it is expected to make an announcement to that effect in a few days. The result would be to postpone the trial at least for several months.