

High Court OKs

WASHINGTON — (AP) — The Supreme Court turned down the government yesterday and continued a delay in the Pentagon Papers trial of Daniel Ellsberg and Anthony Russo, probably at least until October.

The unanimous order, signed by Chief Justice Warren E. Burger, means prosecution for the alleged theft of the once-secret study of the Vietnam War will have to await a ruling on a wire-tap dispute.

A jury had been seated for the trial in Los Angeles.

The government has acknowledged that an unnamed individual associated with the defense was overheard by government agents. Ellsberg and Russo are seeking the right to examine "bugging" records.

Appeal Expected

Burger said he had consulted all members of the court before rejecting the government's motion for a special summer session.

Justice William O. Douglas initially suspended the trial last Saturday.

If Ellsberg and Russo file their expected appeal on wiretapping with the court by the end of this month, there evidently is no way the trial could resume before mid-October.

Douglas's stay would remain in effect until the high court rules on the appeal. The justices begin their next term Oct. 2, and the first decision day is Oct. 9.

In asking the court to

Ellsberg Delay

over-rule Douglas, the Justice Department said it could lose its right to prosecute Ellsberg and Russo on theft, espionage and conspiracy charges unless the trial was resumed right away.

Solicitor General Erwin N. Griswold and Daniel M. Friedman, his deputy, said it would be difficult to shield the jurors from "contacts and comments" during a long postponement.

And yet, the government went on, if Trial Judge W. Matthew Byrne Jr., dismissed the jurors, Ellsberg and Russo might invoke the double-jeopardy provision of the constitution, which gen-

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erally bars two trials for the same offense.

This would mean, according to the government, that they might never be prosecuted.