In declining to consider the appeal of former MIT research associate Daniel Ellsberg and Anthony Russo, the Supreme Court has cleared the way for the resumption of their "Pentagon Papers" trial in Los Angeles.

According to a recent story in the Boston Globe, Ellsberg stated that he had no plans to appeal the case, saying that "our government" and the "courts," not the "justice department," run the country. "What we have in this case is an indication that our private business is the government's business," he said. "We are being asked to compete against our own business, and we have no choice but to do so.

Ellsberg and Russo are charged with espionage, conspiracy, and theft of government property. The trial was expected to be rescheduled for sometime next month after a delay of over four months. It is not yet known if the jury, which was sworn in on July 21, would be retained. They have been banned from reading or listening to any development in the case, but Ellsberg has said he will ask that a new jury be selected on the grounds that the long delay may have affected their formerly impartial attitude.

There is also a federal grand jury investigation pending here in Boston. It involves Ellsberg, some of his academic colleagues, those newspapers and reporters who published the Pentagon Papers, and Senator Mike Gravel (D-Alaska) who released a copy of the report which he had received from Ellsberg.

The Supreme Court decision was not signed but Justice William J. Brennan Jr. and William O. Douglas, who issued the stay, disavowed the decision. The Court had previously ruled that defendants who had been overheard on an illegal government wiretap had right to see the transcripts before their trials, to assure them that no illegally obtained information was being utilized by the prosecution.

Douglas asserted that this same rule should be extended to cover overheard conversations involving the defendants' lawyers. The justice also stated that the tap involved one of the 15 defense lawyers and not one of the four consultants.

The presiding judge of the District Court, W. Matt Byrne, read the transcript of the tap, which was one of the Justice Department's "foreign intelligence" taps placed without court warrant after an investigation pending here. The judge has not decided whether the taps had anything to do with the investigation. He noted that the Court had previously given the defense right to see the transcripts before their trials, to assure them that no illegally obtained information was being utilized by the prosecution.

Douglas' dissent, reported the Times, disclosed that the tap was on the phone of a foreign national, but that "the conversation was an inquiry by one of the counsellors concerning wholly personal social and commercial matters." He noted that the tap involved one of the 15 defense lawyers and not one of the four consultants.

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