

# DISMISSAL OF SUIT IN BREAK-IN ASKED

## Lawyer for 5 in Watergate Incident Asserts Publicity Precludes Fair Trial

WASHINGTON, Sept. 1 — The attorney for five men arrested in the June 17 break-in at the Democratic National Committee's headquarters filed motions today in Federal court seeking the dismissal of a \$1-million civil suit by Lawrence F. O'Brien, former Democratic national chairman.

The lawyer, Henry B. Rothblatt of New York, also asked Federal District Court Judge Charles R. Richey to stay all pretrial proceedings in the case, including the taking of depositions from his clients by lawyers for Mr. O'Brien, until the judge could rule on the dismissal motion.

Mr. Rothblatt argued in the motion for dismissal that Mr. O'Brien was not a proper plaintiff in the suit, and that because of wide publicity surrounding the early morning raid, it would be "impossible for my clients to get a fair trial."

Judge Richey ruled last month that neither the Democratic National Committee, which originally brought the civil action, or the Committee for the Re-election of the President, which it named as defendant, had the legal status to sue or be sued.

However, he allowed Mr. O'Brien to remain as plaintiff on behalf of all Democrats against the five men represented by Mr. Rothblatt.

Reached by telephone at his New York City office, later, Mr. Rothblatt said he now believed that Mr. O'Brien, who has since left the Democratic committee to become Senator George McGovern's campaign chairman, no longer had the necessary legal standing to bring such a class action suit.

He also noted that the court had previously sealed all pretrial testimony in the case to minimize publicity prejudicial to his clients, but that the effect of the order had been, in his view, "just the opposite."

Edward Bennett Williams, Mr. O'Brien's attorney, has asked for secret depositions from at least 13 persons, including John N. Mitchell, President Nixon's campaign mana-

ger at the time of the break-in, and Maurice H. Stans, former Secretary of Commerce and now finance chairman of the Committee for the Re-Election of the President.

Although no details of the depositions taken so far have been officially made public, Mr. Rothblatt is arguing in his motion for a stay of the proceedings that speculation about the case in the press may prevent his clients from receiving a fair trial.

Mr. Mitchell, who for family reasons resigned on July 1 as head of the Committee for the Re-election of the President, appeared at 10 A.M. today at Mr. Williams's Washington office for questioning under oath by Mr. Williams's staff.

But after Mr. Rothblatt, who was also present, made known the filing of his motion for a stay of proceedings, Mr. Mitchell's attorney, Kenneth Parkinson, advised the former Attorney General not to answer questions pending a ruling on the motion. Later, Mr. Mitchell told reporters that the questioning, which lasted less than half an hour, never touched on the question of his role in the break-in incident.

But, he said, he was willing to "swear now" that he had no advance knowledge of the break-in.

"If I did I certainly wouldn't be stating it for the press, because criminal proceedings are going on," he added, a reference to a Federal grand jury investigation of the incident now under way.

Mr. Parkinson, a lawyer for the Presidential re-election committee, said later that Mr. Mitchell was "awaiting clarification" of the situation and was "anxious to testify at the earliest appropriate time."

Judge Richey will hold a hearing on the motion for a stay tomorrow morning, but lawyers for Mr. O'Brien said that barring a court order to stop proceedings, they expected the depositions to go ahead as scheduled next week.

Among those to be called there are the five men who the police said carried electronic bugging equipment and copying cameras when arrested at gunpoint during the 2:30 A.M. raid.

The five are Bernard L. Barker, a Miami real estate operator who on April 20 deposited in his firm's bank account \$114,000 in checks intended for President Nixon's campaign fund; James W. McCord Jr., a former employe of the Central Intelligence Agency who at the time of his arrest was employed as a security consultant by both the Nixon re-election committee and the Republican



Former Attorney General John N. Mitchell, right, with his lawyer, Kenneth Parkinson, after the deposition hearing in the Watergate case in Washington.

National Committee; Eugenio R. Martinez, a Miami real estate man and notary public; Frank Sturgis, a self-described "soldier of fortune," and Virgilio R. Gonzales, a Miami locksmith.

A report of an audit of the Nixon committee's finances, released by the General Accounting Office last week, quoted Republican campaign officials as saying that a former Republican finance committee counsel, G. Gordon Liddy, gave the \$114,000 in checks to Mr. Barker to be converted into cash.

Mr. Liddy was dismissed by the committee on June 28 for refusing to cooperate with Federal agents investigating the break-in.

According to a report in The Washington Post today, Mr. Liddy and a former White House aide, E. Howard Hunt, were inside the Watergate complex at the moment of the break-in, but fled after being

alerted to the arrival of the police by a lookout stationed in a motel across the street.

Both Mr. Liddy and Mr. Hunt have given depositions on their roles in the affair. However C.B.S. News reported last night it had learned that Mr. Hunt had invoked the Fifth Amendment's provision against self-incrimination on all questions relating to his whereabouts on June 17.