

6 in Cover-Up Trial Meet on Tapes

By Timothy S. Robinson
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Attorneys for the six men facing trial in the Watergate cover-up criminal case scheduled a meeting today to discuss strategies to deal with President Nixon's release Monday of tape transcripts that directly damage at least two of the defendants, informed sources said yesterday.

The discussion is expected to center on an attempt to postpone the cover-up trial, now scheduled to begin Sept. 9, at least until the impeachment process has run its course in the House and Senate, the defense sources said.

In addition, attorneys are expected to renew efforts to have the case dismissed, moved or delayed because of massive prejudicial pre-trial publicity. In the words of one defense source, "never have the facts of a case been advertised before a trial like they have been in this one."

The interest in delaying at least until the impeachment of President Nixon has run its course is prompted by the uncertainty over the extent of his role in the cover-up itself, the defense sources said.

At least one defense attorney said he considers President Richard M. Nixon an essential witness in the case, and pointed out that a subpoena would be more readily enforceable against a former President than a sitting President.

"President Nixon's role in

this case is now more crucial than ever," the defense attorney said yesterday. "His status must be determined before we can properly prepare a defense."

The lawyers' concern was aroused by the Monday release of the transcript of the June 23, 1972, meetings in which President Nixon ordered former White House chief of staff H. R. (Bob) Haldeman to tell the CIA to block the FBI probe of the Watergate break-in.

In addition, the transcripts show that Haldeman told Nixon on that date that former Attorney General John N. Mitchell had convinced Mitchell was aware of the Watergate break-in before Haldeman and Mitchell are defendants in the cover-up case.

Although the transcripts are potentially more directly damaging to Haldeman and Mitchell, the disclosure of the information is likely to affect the defense strategy of every defendant in the case because of its further implication that a massive cover-up was underway. The tapes thus could be used to buttress the conspiracy case presented by the Watergate special prosecutor against other defendants.

Some defense attorneys contacted yesterday refused to comment at all about the impact of the tape transcripts on their cases. Other attorneys, under court orders limiting their discussions of the case, would only make guarded assessments

of the case based on the transcripts' release.

Those persons familiar with the defense said in general that possible new strategies being considered at this point include:

- Raising once again the issue of prejudicial pretrial publicity. "The potential jurors will hear about these tapes for weeks. People will know them by heart. The jury is out on this case and it's not even selected yet," one defense attorney said.

Attorney who have lost their pretrial publicity motions once already in this case said that if the new disclosures do not force dismissal of the indictment, a change of venue or a delay "there never will be a point where prejudicial publicity is so great" to force those steps.

Asking that each defendant be tried separately for his alleged crimes in the Watergate cover-up. "We shouldn't be tainted by evidence that is damaging against Haldeman by sitting at the same defense table with him," said one defense source bluntly.

Asking for a delay of the trial that is specifically tied to the Nixon role in the cover-up and the necessity for some final action about the extent of his involvement before the defense in the cover-up can begin.

This latter move is the tactic apparently attracting most of the attention from defense attorneys involved in the case. "Look at this situation,"

said one defense attorney. "The defendants in the cover-up trial are almost certainly witnesses against Nixon in any Senate trial. Nixon is almost certainly going to be called as a witness in the cover-up trial. Meanwhile, we're having to prepare a defense for a serious criminal case against our clients. Lawyers can only do so many things at once."

Attorneys indicated they would first attempt to have U.S. District Judge John J. Sirica postpone the case, but said that if he rejects the motion they would move immediately, and as far as the Supreme Court if necessary, to block the trial.

Defense attorneys discounted reports that any of the defendants would be rushing to plead guilty solely as a result of the tapes disclosure.

"There's a wait-and-see attitude," one attorney said. "If we lose all of our pre-trial attempts" then the case "might be shortened by some guilty plea," another attorney added.

Several attorneys also pointed out that the taped conversation only included one defendant, Haldeman, and that any other defendants referred to in the conversation could argue as a defense that Haldeman's version of discussions with them was inaccurate.

Haldeman, Mitchell, former White House domestic affairs adviser John D. Ehrlichman, former White House aide Gordon Strachan, Nixon re-election unit

attorney Kenneth Wells and Nixon campaign aide and former Assistant Attorney General Robert C. Mardian are all charged with conspiracy to cover up the Watergate break-in.

The June 23 meetings between Nixon and Haldeman are not among the 45 specific "overt acts" listed in furtherance of that conspiracy by the Watergate special prosecution force. However, legal observers said that the tapes of the meetings would be admissible as evidence at the trial since they occurred during the time frame of the alleged conspiracy.

All of the defendants except Mardian also are charged with a specific obstruction of justice charge in connection with alleged attempts to have the CIA pay bail and expenses of the Watergate defendants.