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White House Ponders File Subpoenas

By Timothy S. Robinson

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A White House spokesman said late yesterday that presidential lawyers were still considering their response to two federal court subpoenas ordering the chief executive to allow access to White House files to Ellsberg break-in defendants John D. Ehrlichman and Charles W. Colson.

The response is due at 2 p.m. today before U.S. District Judge Gerhard A. Gesell, who has said that any failure by the White House to turn over relevant documents to the defendants could result in a dismissal of the case.

The defendants say the documents are necessary to establish at least a partial national security defense in the Ellsberg break-in. The scope of their defense will be determined in a ruling on the national security issue by Judge Gesell this morning.

The issues of national security and White House subpoenas are but two that have been addressed by defense lawyers and prosecutors during pretrial hearings this week before Judge Gesell in connection with the Ellsberg burglary case.

Yesterday's hearings were devoted to defense requests for either dismissal of the indictment, change of venue, or

postponement of the trial because of what the defense claims is prejudicial pretrial publicity.

"I don't want to go to trial in the District of Columbia," said Colson's attorney David I. Shapiro. "Anywhere you want . . . but not here. There's never been anything like it (the Watergate-related publicity) before."

He said that prospective jurors here had been saturated with Watergate publicity, and would not be able to try the defendants in this case solely on evidence they hear in the courtroom.

Assistant Watergate Special Prosecutor William Merrill argued, however, that Judge Gesell should attempt to select a jury first and that any attempts to move the trial or grant a delay should come only after he is unable to find 12 unbiased jurors.

Judge Gesell did not rule on the defense's publicity motions, but indicated that he would not be likely to grant them. He indicated that while the publicity in the Watergate case had been massive here, it had not been automatically prejudicial and that he would be able to sort out any jurors who had been prejudiced by the coverage.