

U.S. Shelving Plan To Call Ehrlichman For Mitchell Trial

By George Lardner Jr.
Washington Post Staff Writer

Government prosecutors reported a change of heart yesterday and said they do "not now intend" to call former White House aide John D. Ehrlichman as a witness against former Attorney General John N. Mitchell and former Commerce Secretary Maurice H. Stans.

Richard Ben-Veniste, Watergate assistant special prosecutor, announced the switch in an affidavit filed in U.S. District Court here.

The pleading was submitted to Judge John J. Sirica in a hearing yesterday afternoon. Ehrlichman's lawyers wanted the judge to quash subpoenas directing Ehrlichman to appear here next week before two federal grand juries investigating the Watergate scandal and other misdeeds tarnishing the Nixon administration.

Mitchell and Stans are scheduled to go on trial in New York Tuesday on obstruction of justice charges involving financier Robert L. Vesco, but the trial could be delayed by appeals to the Second U.S. Circuit Court of Appeals.

Ehrlichman's lawyers had cited his agreement to testify as a prosecution witness at that trial as one of the reasons that would make the grand jury subpoenas particularly "burdensome."

Ben-Veniste gave no reason for the decision not to call Ehrlichman. He said he telephoned the federal prosecutors assigned to the Vesco case yesterday morning but asked only "for the bottom line" on whether Ehrlichman would be testifying, and was told he would not.

The government prosecutors handling the New York trial refused to comment.

The hearing before Sirica on Ehrlichman's complaints against more grand jury appearances was inconclusive. The judge made plain that he could not quash the subpoenas simply because Ehrlichman was "a target" of the inquir-

ies, but he urged Ben-Veniste to get together with Ehrlichman's lawyers in an effort to reach a "fair" solution.

At the same time, Ben-Veniste disclosed that both grand juries assigned to Cox here want to question Ehrlichman about the 1971 White House-sponsored break-in at the offices of Daniel Ellsberg's California psychiatrist.

The Watergate grand jury, Ben-Veniste indicated, is investigating the 1971 break-in as a possible reason for the cover-up of high-level involvement in the Watergate break-in. Five of the men convicted of the Watergate bugging allegedly took part in the 1971 break-in.

The second federal grand jury is also investigating the 1971 break-in as part of its probe of the activities of the so-called White House "plumbers." Ehrlichman was served with a subpoena yesterday directing him to appear before this grand jury as well.

Citing Ehrlichman's three appearances before the Watergate grand jury in May, the former White House aide's chief attorney, John J. Wilson, complained that "the threat of perjury" was a very real risk if Ehrlichman should be called back again. "It's a cinch to trap a witness," he told Judge Sirica. "You and I know there are slight variations in a man's memory over the months."

Wilson also charged that Cox' prosecutors "want to whipsaw this man (Ehrlichman)" by questioning him about the California break-in when he has just been indicted by a Los Angeles County grand jury for perjury and conspiracy in that episode.

He asked Sirica to prohibit any federal grand jury questioning about the Ellsberg

break-in and to order Cox' office to supply Ehrlichman with transcripts of his Watergate grand jury testimony in May so that he could refresh his recollection of what he said then.