

Ex-Aide Subpoena Bid Seen

By Thomas J. Robinson
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Attorneys for former White House aide John D. Ehrlichman are three weeks away from trial in the Ellsberg break-in case and are expected to intensify their efforts this week to call together and confront top Nixon administration officials as witnesses for their client's defense.

Persons familiar with all aspects of the case said those attorneys probably will be met with almost scrutiny by U.S. District Court Judge Gerhard Gesell, who has set a June 26 trial date.

Those persons indicated that a previous list of defense witnesses—submitted more than a week ago and naming such persons as President Nixon, Secretary of State Henry A. Kissinger and presidential chief of staff Alexander M. Haig Jr.—was received with some reluctance by the judge. The judge immediately cancelled a subpoena addressed to the President and took the others under consideration.

Ehrlichman's attorneys have indicated they want to call the top White House aides to prove that there was a widespread, concentrated effort within the White House to stop leaks of classified information, but it was confined to legitimate national security interests.

On a ruling on the national security issue three weeks ago, Gesell said that it could be introduced into the trial only to the extent of showing that Ehrlichman had legitimate reasons for meeting with other alleged co-conspirators engaged in the case.

"That ruling did not appear to give Ehrlichman the opening to call people like Secretary Kissinger," said one legal source who has been following the case.

However, that source said Ehrlichman's attorneys might agree to a compromise on their subpoena if they were allowed by the judge to submit a written statement from Kissinger or Haig about the concern over leaks. The possibility of such written statements being made available for use at the trial or the acceptance of such statements by the judge is unclear at this point, sources said.

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Other than blocking the subpoena of Mr. Nixon, Gesell has not publicly stated his policy concerning potential defense witnesses at the trial in the perjury trial of former president appointments secretary Dwight Chapin last April—Gesell's only other Watergate-related trial—he limited defense testimony to what could be termed character witnesses.

Judge Gesell is not likely to let Ehrlichman's attorneys call every Tom, Dick and Harry in the White House, said another legal source familiar with Watergate prosecutions in general and Gesell in particular.

Informed sources said that any attempt by Ehrlichman's attorneys to call persons like Kissinger and Haig would have to be based on specific information relevant to the Ehrlichman defense in the 1971 break-in of Daniel Ellsberg's psychiatrist's office and could not be a general reconstruction of the atmosphere in the White House concerning leaks at the time.

Meanwhile, Ehrlichman has continued to review his handwritten notes of conversations with the President in an attempt to prove that he and his attorneys need all the notes to help prepare his defense.

The former aide's attempt to gain access to those notes along with attorneys was the cause of a three-week controversy between Gesell and White House lawyers over release of the material.

Ehrlichman, former White House aide G. Gordon Liddy and Marcians Bernard, G. Barker and Eugenio Martinez are charged with conspiring to violate the civil rights of Dr. Lewis Fielding, who was Pentagon Papers defendant Daniel Ellsberg's psychiatrist, by breaking into his Los Angeles office. Ehrlichman is also charged with four counts of lying to federal investigators probing that break-in.