

JAWORSKI ALTERS TACTICS ON TRIAL

Won't Seek to Prove That Ehrlichman Tried to Hide Ellsberg Burglary Role

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The Watergate prosecutor's office told a Federal judge today that it was changing its tactics in the upcoming "plumbers" trial and would no longer try to prove that John D. Ehrlichman attempted to conceal his alleged involvement in an unlawful burglary in 1971.

In a brief filed with Judge Gerhard A. Gesell of United States District Court, the prosecutors said they would attempt to prove only that Mr. Ehrlichman and three other defendants in the case conspired to enter and search the office of Dr. Daniel Ellsberg's former psychiatrist in 1971.

In the indictment handed up by a Federal grand jury last March, the defendants were accused not only of conspiring to commit the crime but also of conspiring to conceal it. The prosecutors' change was made in what seemed to be a final attempt to end a long pretrial dispute over Mr. Ehrlichman's personal notes.

The voluminous personal notes of Mr. Ehrlichman, a former top aide to President Nixon, are now under seal in White House files. Judge Gesell has ruled previously that Mr. Ehrlichman and his attorneys could not have full access to those notes, but could seek to subpoena any portions deemed by the court to be relevant for use in his defense.

Request for Notes

Last Thursday, Mr. Ehrlichman and his attorneys urged Judge Gesell to request that the White House turn over at least 10 of his notes of Presidential meetings, contending they were necessary—among other things—to prove that his reluctance to discuss the Ellsberg burglary with investigators in 1973 came at the specific request of President Nixon for "national security" reasons.

Mr. Ehrlichman and the other defendants, C. Gordon Liddy, Bernard L. Barker and Virgilio R. Gonzales, are scheduled to begin trial Wednesday for their alleged conspiracy to burglarize the Beverly Hills, Calif., office of Dr. Lewis J. Fielding, Dr. Ellsberg's former psychiatrist.

At the time, the men were

involved with the White House "plumbers" unit, an ad hoc special investigations unit set up by President Nixon in July, 1971, to stop leaks to newspapers.

Mr. Ehrlichman's attempt last week to subpoena notes of Presidential conversations involving the "national security" aspects of the "plumbers" unit was viewed by many legal authorities as a means of raising that issue before the jury—not to justify the break-in itself, but to dispute the allegation that he and the other defendants conspired to conceal the burglary.

Security Issue Ruled Out

Judge Gesell had ruled previously that national security could not be used to justify the break-in.

The prosecutors office apparently elected to finesse the issue.

"The Government believes th concealment is essentially collateral to the far more serious question of the unlawful entry into Dr. Fielding's office," its brief said. "To pursue this phase of the conspiracy might necessitate time-consuming litigation on the eve of trial concerning the production of presumptively privileged materials."

The brief, signed by Leon Jaworski, the special prosecutor, added that the prosecutors were electing, therefore, not to introduce evidence or request a jury instruction relating to the grand jury's charge that part of the conspiracy was to conceal.

The evidence that would have been used in an attempt to show that Mr. Ehrlichman was seeking to conceal the crime will instead be produced, the prosecutors said, "to show defendant Ehrlichman's consciousness of guilt in the conspiracy to enter and search."

Only one of the 19 overt acts alleged in the conspiracy indictment dealt with concealment, the Jaworski brief noted, and that act involved Mr. Ehrlichman's alleged attempt in April, 1973, to destroy all relevant documents relating to the Fielding break-in.

As for the other notes requested by Mr. Ehrlichman and his attorneys, the prosecutors said that only three of the Presidential conversations sought took place after the Fielding break-in on Sept. 3, 1971.

"It is difficult," the brief said, "to comprehend how what are in effect post-conspiracy conversations not even alleged to involve discussion of the break-in could be relevant to the issue of whether Ehrlichman conspired to break in prior to Sept. 3, 1971."

The prosecutors accused Mr. Ehrlichman of "trying to create an issue over production [of his White House notes] to prove a point that is both irrelevant and undisputed."