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**PLUMBERS' JUDGE
REFUSES TO QUASH
CALL TO KISSINGER**

**Directs Him to Be Ready
to Testify for Defense—
Prosecution Rests Case**

By LINDA CHARLTON
Special to The New York Times

WASHINGTON, July 5—The prosecution rested its case today in the conspiracy trial of John D. Ehrlichman and three others, and the judge ordered Secretary of State Kissinger to "hold himself in readiness" for a possible appearance as a defense witness.

Mr. Kissinger had been subpoenaed to appear today, presumably to testify that he had no knowledge of or interest in the preparation of a "psychological profile" of Dr. Daniel Ellsberg in the summer of 1971, and thus undercut the credibility of David R. Young Jr., a co-director of the White House "plumbers" unit and a major prosecution witness.

Lawyers for Mr. Kissinger presented a motion to quash the subpoena on the ground that he had no information relating to the break-in at the office of Dr. Lewis J. Fielding, Dr. Ellsberg's former psychiatrist. The break-in is the central incident on which the conspiracy charge is based.

'Unduly Oppressive'

In addition, the motion contended that it would be "unduly oppressive and injurious to the public interest to require Dr. Kissinger to appear at this time."

"Such an order would require Dr. Kissinger to abruptly terminate his official mission abroad, including critical meetings with United States allies and various NATO officials in Europe," the motion said.

William S. Frates, the Miami lawyer who heads Mr. Ehrlichman's four-men defense team, told Judge Gerhard A. Gesell in United States District Court that the defense was "not trying to call Dr. Kissinger just to have Dr. Kissinger here."

"Mr. Young has testified that the psychological profile was ordered by Dr. Kissinger and John Ehrlichman," he said. "We expect the evidence to show that is not true."

Judge Gesell, commenting on

the motion to quash, said, "I understand he's [Mr. Kissinger] presently seeing the Pope. I wouldn't want to interfere with that."

However, after learning that Mr. Kissinger was due back in the United States Wednesday, he said, "He's to hold himself in readiness, which is a polite way of saying he is under subpoena." The motion to quash was held in abeyance.

The defense still hopes to have testimony from President Nixon in the form of answers to written interrogatories, which have not yet been approved by Judge Gesell.

The question of the psycho-

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logical profile of Dr. Ellsberg, the research analyst who said that he made the Pentagon papers available to the press in 1971, related to false-statement charges against Mr. Ehrlichman. He and three others, Bernard L. Barker, Eugenio R. Martinez and G. Gordon Liddy, are charged with conspiring to violate Dr. Fielding's civil rights by breaking into his office Sept. 3, 1971, in a search for files concerning Dr. Ellsberg.

In addition, Mr. Ehrlichman is charged with four counts of making false statements, once to an agent of the Federal Bureau of Investigation and three times to a grand jury or court.

The last of the 16 witnesses called by the prosecution in its 4½ days of testimony testified concerning Mr. Ehrlichman's alleged false statements to grand juries. She was Karen Sheinberg, the court reporter at Mr. Ehrlichman's grand jury appearances in May and September, 1973.

Miss Sheinberg, who records the proceedings by repeating what is said into a tape-recorder mouthpiece, was asked to read aloud from the transcripts of the two sessions. Each time she was asked, "And did he [Mr. Ehrlichman] take an oath to tell the truth?"

Testimony Changed

The portions that Miss Sheinberg read included Mr. Ehrlichman's statement on May 14, 1973, that "I learned after the break-in that they were looking for information for what they call a psychological profile."

She also read the statement that he made to the grand jury on September 13, 1973, in which he changed his testimony, saying that he had seen the psychiatric profile before the break-in. He explained the change to the grand jury by saying that he had seen, in the interim, material that refreshed his memory.

It is in connection with these and similar statements, and with statements that he made

to a grand jury concerning files on the plumbers' operation about which he disclaimed any knowledge, that Mr. Ehrlichman is charged on three counts with having made false statements.

The fourth count concerns making a false statement to an F.B.I. agent. Judge Gesell dismissed today a defense motion for acquittal but conceded that he had reservations about this one charge.

The three preceding witnesses were the staff assistant in the White House in charge of the "special files," including Mr. Ehrlichman's files, and two White House attorneys, Cecil Emerson and Jeff Sheppard. They testified concerning the security surrounding these files, who had access to them, how the files were identified and by whom and when certain documents were removed from them.

Although Mr. Kissinger may appear for the defense, the question of the written interrogatories—a series of questions that takes the place of a personal courtroom appearance and is subject to many of the same rules—that the defense wishes to submit to Mr. Nixon remained uncertain.

At the end of today's proceedings, Judge Gesell rejected the proposed interrogatories

submitted by Mr. Frates, saying, "They do not comply with the standards that I indicated must apply in the case of the President."

Proper questions, he said, "must be directed only to essential issues that can be answered only by him [the President]." The defense is expected to revise the interrogatories over the weekend and submit them to Judge Gesell again Monday.

First Defense Witness

The prosecution concluded its case at 11:35 A.M. The trial recessed until 1:15 P.M., when the first defense witness was called.

She was Jana Hruska, Mr. Ehrlichman's secretary. Miss Hruska, who is the daughter of Senator Roman L. Hruska, Republican of Nebraska, first read aloud the daily log of Mr. Ehrlichman's appointments during the month of July 30-Aug. 30, 1971, during which time it is alleged the break-in conspiracy was formed.

The defense, attempting to establish that Mr. Ehrlichman was a hardworking man with myriad responsibilities, asked her how long his average work-day was. She replied, 13 or 14 hours.

Miss Hruska was then questioned about a cardboard storage box of files that Mr. Young testified he took to Mr. Ehrlichman's office in March, 1973. Mr. Young also said that Mr. Ehrlichman removed two crucial documents from the box before returning it, including a memorandum of August 11, 1971, in which Mr. Ehrlichman approved a "covert operation" to obtain

information about Dr. Ellsberg from Dr. Fielding.

The next witness was Todd Hullin, Mr. Ehrlichman's former executive assistant. He testified about Mr. Ehrlichman's heavy work load.

Psychiatrist Testifies

The next witness was Dr. Bernard Malloy, a psychiatrist on the staff of the Central Intelligence Agency. He said that he had been told by Mr. Young that a profile of Dr. Ellsberg "had been requested by Dr.

Kissinger and Mr. Ehrlichman," and that "I was informed that the President was aware of the study."

He was asked by Judge Gesell who had told him that. "Mr. Young," he replied.

Dr. Malloy, under cross-examination, said that he was aware that Dr. Ellsberg is a United States citizen—the C.I.A. is forbidden to involve itself in domestic matters. He was asked if he had been told that the object of gathering this information was to "render Daniel Ellsberg ineffective, a broken man, an object of pity," and he said "Yes."

The day's final witness was Arthur Fletcher, a former Assistant Secretary of Labor in the Nixon Administration, who was asked about Mr. Ehrlichman's reputation for "truth and veracity."

He said that his reputation was good. Mr. Fletcher is black. Of the 17 jurors and alternates, 14 are black and three are white. Two of Mr. Ehrlichman's four lawyers are black.