

# President Won't Testify In California

By Susanna McBee  
Washington Post Staff Writer

President Nixon will not testify personally in the Los Angeles trial of his former domestic adviser, John D. Ehrlichman, despite a California court order that he do so, the White House announced yesterday.

Deputy press secretary Gerald L. Warren said Mr. Nixon's attorneys "will recommend to the President that he respectfully decline to appear . . . on constitutional grounds."

Warren did not spell them out, but presumably the President could decline on grounds of executive privilege and separation of powers—arguing that a court, especially a state court, cannot subpoena a President. Or he could contend that his appearance in Los Angeles would create a hardship.

Warren did not rule out the possibility that Mr. Nixon might respond in writing to interrogatories from defense lawyers. "If other requests are put to the White House, they will be dealt with as they arise," Warren said.

Ehrlichman is charged with  
See **SUBPOENA, A30, Col. 1**

## SUBPOENA, From A1

Burglary, conspiracy and perjury in connection with the 1971 Labor Day weekend burglary at the office of Dr. Lewis J. Fielding, the former psychiatrist of Daniel Ellsberg, who a few months earlier had leaked the Pentagon Papers to the press.

Two other former White House aides, David R. Young Jr. and G. Gordon Liddy, are charged with burglary and conspiracy in the case.

Ehrlichman and his two co-defendants—who were members of the so-called "plumbers" unit that Mr. Nixon set up to probe leaks of alleged national security information to the press—claim they were acting as federal law officers at the time of the break-in.

Their defense is that they cannot be charged with crimi-

nal intent since they say they were acting in good faith as federal officers investigating leaks that Mr. Nixon believed were impeding the government's ability to conduct foreign relations.

On Tuesday Los Angeles Superior Court Judge Gordon Ringer said the defense team had persuaded him that "the Honorable Richard M. Nixon is a material witness for the defense."

Ringer's law clerk, Larry Fidler, said yesterday that the judge would probably not sign a certificate demanding Mr. Nixon's appearance until next Monday or Tuesday.

Meanwhile, Attorney General William B. Saxbe told reporters here that Ringer's decision was "a little bit unrealistic."

Saxbe argued, "A President of the United States can't appear in every justice of the peace court in the country at the whim of the justice of the peace."

Earlier, he compared the subpoena to those issued recently by the Senate Watergate committee for more than 500 White House tapes and documents, an action that he called "somewhat absurd."

Saxbe said he has ordered a Justice Department study to determine how great a barrier executive privilege is to what he sees as an onslaught of subpoenas against the President. The study is being conducted by Assistant Attorney General Robert G. Dixon Jr.

Saxbe said White House tapes also have been subpoenaed in the case of Dr. Kenneth Riland, a New York osteopath who formerly treated Mr. Nixon. Riland is under indictment on tax-evasion charges.

The Attorney General said the doctor had been to the Oval Office and apparently believes that tapes of his conversations with the President there will help him in his tax case.

"This is going to pop up all over the country," Saxbe said of the outbreak of subpoenas against Mr. Nixon. "We've got to determine the extent of it."

Saxbe said the Justice Department might file a friend-of-the-court brief in the Los Angeles case, but such a filing seems unlikely since the White House is handling Mr. Nixon's response.

Despite the outward appearance of a break between Mr. Nixon and his trusted former

aide, Ehrlichman, over the burglary case, one defense lawyer, Joseph Ball, has made it clear there is no split.

Asked whether there had been a falling-out between the two men, Ball replied, "I haven't heard of any."

On Tuesday another Ehrlichman defense attorney, Douglas Dalton, said Mr. Nixon's chief lawyer, James St. Clair, had indicated that the President might respond to written questions submitted by defense counsel.

If the President does not respond, however, Ehrlichman and his co-defendants might

be able to argue that their case should be dismissed because they are unable to produce the best evidence available to exonerate them.

Charles Gessler, the public defender appointed to handle Liddy's case, told Washington

Post staff writer Leroy F. Yarons yesterday that the defense wants Mr. Nixon's testimony and is "willing to take a chance" on the possibility that the President might declare, as he did last May 22, that the Fielding burglary was outside the scope of the "plumbers" unit.

Mr. Nixon also said last Nov. 17 that "I personally thought it was a stupid thing to do, apart from being an illegal thing to do."

Gessler said, "I'm not interested in Mr. Nixon's opinion of what was legal or illegal. I want to get into the record the facts as Mr. Nixon laid them out in his May 22 speech." At that time the President admitted creating the unit and assumed responsibility for its actions "despite the fact that I at no time approved or had knowledge of them."

The certificate from Los Angeles Judge Ringer ordering Mr. Nixon to testify there on Feb. 25, when a hearing will be held on a motion to dismiss the case, and on April, the trial date, will be sent here by registered mail.

It will go to the District of Columbia Superior Court clerk, who will forward it to the U.S. attorney's office, which will draw up an order asking Mr. Nixon to show cause why he should not appear in Los Angeles.

This order will be filed with the special procedure section in the Superior Court clerk's office, which will send it on to the judge in chambers, Sylvia Bacon. She will sign the order and set a hearing to be held in about 10 days. The hearing will probably be held before either Chief Judge H. Greene or the judge who controls the criminal calendar, John F. Doyle.

That hearing will determine whether Mr. Nixon is, in fact, a material and necessary witness, whether his Los Angeles appearance would cause undue hardship, and whether California and other states he might pass through will protect him from arrest or other subpoenas.

If all those determinations are made in favor of the defendants in the burglary case, the judge would then issue a summons and a U.S. marshal would serve it at the White House. Any Superior Court order to Mr. Nixon would undoubtedly be appealed.