

# Attempt to Compel Budget Chief Ash To Testify in Libel Suit Is Rejected

Special to The Washington Post

LOS ANGELES, Oct. 26—

Roy L. Ash, director of the Office Of Management and Budget, will not have to testify in a libel suit involving his connection with a \$43.4 million overcharge of the Air Force.

Superior Court Judge David N. Egelson today quashed a subpoena that would have required Ash's presence in Los Angeles on Oct. 31.

Ash's testimony was sought by Noah Dietrich, 85, former head of the Hughes Tool Co., owned by industrialist Howard Hughes. Dietrich is suing Litton Industries and its president, Charles B. (Tex) Thornton, for allegedly libelous statements made by him in 1962.

At that time, Dietrich gave a deposition in which he claimed that between 1950 and 1953, when Ash and Thornton were working for Hughes Aircraft Co., Ash, acting for Thornton, had forced Hughes certified public accountants to falsify records so that the Air

Force was overcharged millions of dollars.

Later, Hughes Aircraft made an uncontested return of \$43.4 million to the Air Force.

Earlier, the Dietrich deposition had elicited a press release from Thornton saying he had been "maliciously defamed." Dietrich sued, was awarded \$6.1 million, but an appellate judgment overturned the award and called for a new trial.

Ash's testimony, as a witness, was requested for that new trial, which begins here Oct. 31.

Through his attorney, Felice R. Cutler, Ash claimed he was not a full-time resident of Los Angeles County, and hence did not have to honor the subpoena. He also claimed that the press of official business keep him in Washington, D.C.

In his written opinion, Judge Egelson said that while Ash did have two residences, one in Los Angeles and one in Washington, "his predominant residence, at the moment, is Washington, D.C."

Requiring his presence at

the trial would "create the hardships he (Ash) described," the judge wrote.