

NYTimes JAN 30 1974
**NIXON IS ORDERED
 TO GIVE TESTIMONY
 AT EX-AIDES' TRIAL**

**Coast Judge Acts at Behest
 of Ehrlichman and Two
 in Ellsberg Break-In
 APPEARANCE IS DOUBTED**

**Lawyer Opposed a Request
 Earlier for the President
 to Testify Voluntarily**

By STEVEN V. ROBERTS
 Special to The New York Times

LOS ANGELES, Jan. 29—
 President Nixon was ordered
 by a state judge today to testi-
 fy in person at the trial of
 John D. Ehrlichman and two
 other former White House
 aides, now under indictment
 here for the 1971 break-in at
 the office of Dr. Daniel Ells-
 berg's former psychiatrist.

The defendants are seeking
 Mr. Nixon's testimony to rein-
 force their contention that
 when the break-in occurred,
 they were acting in "good
 faith" that they were Federal
 officers and lacked any crimi-
 nal intent.

In Washington, Gerald L.
 Warren, deputy Presidential
 press secretary, said the order
 would be studied by the White
 House. "When it is received,
 it will be considered and an
 appropriate response will be
 given," he said.

Recommendation 'Against'

Mr. Warren added that he
 talked with James D. St. Clair,
 the President's lawyer, earlier
 in the day. Mr. St. Clair,
 Mr. Warren said, recommended
 "against a voluntary appear-
 ance" by the President at the
 trial of Mr. Ehrlichman.

In addition to Mr. Ehrlich-
 man, formerly the President's
 chief domestic adviser, the
 other defendants are David R.
 Young Jr. and G. Gordon Lid-
 dy, two members of a group
 called the "plumbers," which
 was organized by the White
 House to investigate security
 leaks in 1971.

All are charged with con-
 spiracy and burglary for their
 role in the break-in at the of-
 fice of Dr. Lewis Fielding in

September, 1971. In addition,
 Mr. Ehrlichman is charged with
 perjury for statements made
 before a grand jury here last
 year.

Judge Notes Import

According to Judge Gordon
 Ringer of Superior Court, this
 marks the first time that a
 state court has "issued this
 kind of process directly to a
 President of the United States."
 Under this procedure the Cali-
 fornia court will issue a "cer-
 tificate commanding the Presi-
 dent" to testify before it, which
 will be forwarded to Washing-
 ton where a court will issue a
 subpoena.

Lawyers here consider it un-
 likely that Mr. Nixon will ever
 keep his date in court, but the
 decision has important legal
 and political significance. Leg-
 ally it raises the thorny ques-
 tion of whether a President,
 like other citizens, is subject
 to normal court procedures.

While pointing out that not
 just anyone can thus summon
 the President, legal experts in

**Continued on Page 12, Column 2
 Continued From Page 1, Col. 8**

Washington said today that
 the judge's action raised some
 complex questions. They are:
 Can a state judge subpoena
 someone outside the state, can
 a state court subpoena a Fed-
 eral official and can a state
 court subpoena the President?
 The answer to all three, these
 experts indicated, is a quali-
 fied "yes."

Politically, the decision in-
 dicates that Mr. Nixon will
 continue to be enmeshed in
 Watergate-related events, no
 matter how hard he struggles
 to put the issue behind him.

Sources close to Mr. Ehrlich-
 man asserted that the action
 did not indicate a personal
 break between the two men.
 However, other sources said,
 the situation does pose a po-
 litical problem for Mr. Nixon in
 that if he does not appear—
 which is expected to be his
 probable course—his refusal
 might be construed by some
 as another facet of a Water-
 gate cover-up.

The attorneys for Mr. Ehr-
 lichman, Mr. Young and Mr.
 Liddy argue that if the men
 were Federal officers, they are
 victims of "discriminatory
 prosecution" by local officials.
 It is not standard procedure
 here, the attorneys contend,
 for law enforcement officers
 to be charged with a crime
 while performing their assigned
 functions.

A pretrial hearing has been
 set for Feb. 25 on the issue
 of discriminatory prosecution
 and last week Douglas Dalton,

a lawyer for Mr. Ehrlichman,
 called the White House to ask
 if the President would appear
 voluntarily as a witness on
 that date. James St. Clair, now
 defense team, told Mr. Dalton
 head of the President's legal
 defense team, told Mr. Dalton
 that the President would not
 do so, Mr. Dalton said today.

Since Mr. Nixon and Mr.
 Ehrlichman were so close for
 so long, this refusal raised
 questions about a possible
 breach between the two, but
 most lawyers here generally
 agree that the problem is prob-
 ably more procedural than po-
 litical.

Need to Be 'Consistent'

According to Mr. Dalton, Mr.
 St. Clair said that the Presi-
 dent had to be "consistent"
 in all of his responses in the
 Watergate case, and Mr. Nix-
 on has consistently resisted at-
 tempts to subpoena his testi-
 mony or any tapes or docu-
 ments in his possession.

Mr. Dalton also quoted Mr.
 St. Clair as saying, however,
 that Mr. Nixon might be more
 amenable to answering inter-
 rogatories which are written
 questions submitted by the de-
 fense.

Nixon Speech Recalled

As a result, Mr. Dalton went
 to court this morning and
 asked Judge Ringer to subpoe-
 na President Nixon, both for
 the hearing on Feb. 25 and
 the trial itself, which is due
 to start in April. As an alter-
 native, the lawyer asked that
 the President be ordered to
 answer interrogatories.

The Ehrlichman defense
 team backed up its argument
 by submitting a copy of the
 President's speech of last May
 22. On that occasion the Presi-
 dent described how he had es-
 tablished the "plumbers" fol-
 lowing the publication of the
 Pentagon papers in The New
 York Times and articles in
 other publications saying that
 Dr. Ellsberg had been the
 source of those top-secret doc-
 uments about United States
 involvement in Vietnam.

After reviewing the speech
 Judge Ringer declared: "The
 court is persuaded that the Hon.
 Richard M. Nixon is a material
 witness for the defense." The
 question, he added, was how
 best to secure his testimony.

Mr. Dalton rose and said that
 the judge had "no discretion in
 the matter, and had to issue
 the subpoena. When Stephen
 Trott, the Deputy District At-
 torney prosecuting the case,
 agreed with the defense, Judge
 Ringer made his historic ruling:
 "The court will issue and
 sign a properly prepared certi-
 ficate commanding the President,
 the Hon. Richard M. Nixon, to
 testify before this court."

Burr Case Cited

As a precedent Judge Ringer
 cited the famous case of United
 States v. Burr, in which Chief
 Justice John Marshall upheld
 the validity of a subpoena to
 President Thomas Jefferson.
 Since Mr. Nixon is not in

California, the "certificate" is-
 sued by Judge Ringer will be
 forwarded to Washington. There
 the appropriate court will actu-
 ally issue the subpoena.

The President's lawyers will
 have the opportunity to claim
 executive privilege, hardship or
 any other reason why Mr.
 Nixon should not be compelled
 to come here to testify. The
 judge will then have the power
 to quash or alter the order
 issued today.

The defense team received a
 blow when a fourth defendant
 in the case, Egil Krogh Jr.,
 pleaded guilty last month to
 violating the civil rights of Dr.
 Fielding. Mr. Krogh was co-
 leader of the plumbers, along
 with Mr. Young, and when he
 was sentenced last week, he re-
 iterated his contention that Mr.
 Ehrlichman had given "the unit
 authority to engage in covert
 activity" to obtain information
 against Dr. Ellsberg.

Security Justification Scares

"The precise nature of that
 authority and the extent to
 which it covered the break-in,"
 he added, "are matters that will
 be the subject of testimony in
 the prosecution pending in Cali-
 fornia and that may be involved
 in a prosecution in the District
 of Columbia." But Mr. Krogh
 strongly attacked a major theme
 in the defense's case—that the
 break-in was justified on the
 grounds of national security.

"However national security is
 defined," Mr. Krogh said, "I
 now see that none of the poten-
 tial uses of the sought informa-
 tion could justify the invasion
 of the rights of the individuals
 that the break-in necessitated."

It is still uncertain what de-
 fendants will actually go to
 trial here, and when it will be-
 gin. Mr. Young has asked that
 his case be dismissed on the
 ground that information he
 provided to prosecutors in
 Washington—where he was
 granted immunity from prose-
 cution—has been used by prose-
 cutors against him here. Law-
 yers give him a good chance of
 winning that dismissal.

Reports from Washington
 also indicate that Mr. Ehrlich-
 man has been discussing a pos-
 sible deal with Federal prose-
 cutors that would probably in-
 volve the dropping of the
 charges against him here.

There is also a possibility
 that a Federal grand jury in
 Washington could hand up
 further indictments against the
 three defendants as well as
 other former White House
 aides.