

Nixon Subpoena Pushed

By Eugene L. Meyer
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A lawyer for former presidential assistant John D. Ehrlichman said yesterday he "would certainly consider" subpoenaing the President to testify in the forthcoming federal trial here stemming from the 1971 burglary of the office of Daniel Ellsberg's psychiatrist.

The lawyer, Frank H. Strickler, made the comment shortly after filing papers in District of Columbia Superior Court contending that it would not be an "undue hardship" for Mr. Nixon to appear at the California trial of the White House "plumbers" in the Ellsberg case.

The White House has resisted the efforts of Ehrlichman and co-defendants G. Gordon Liddy and David Young to subpoena Mr. Nixon to testify in the California case. The White House position is that such presidential testimony would be an "undue

hardship" on Mr. Nixon and would open the floodgates to subpoenas from other state courts, leaving the nation leaderless.

"President Nixon enjoys, and indulges, ample time for leisure from his official duties—often spent very near the Los Angeles courthouse," the defendants' brief said, referring to the Western White House at San Clemente.

"For example," the brief said, "the White House has announced that he may attend on March 16 the opening of the 'Grand Ole Opry' in Nashville, Tenn. . . . Moreover, his attendance at social functions, such as the wedding of his physician, and at Republican Party political gatherings unconnected with his official duties, is sufficiently of record

"There is no 'undue hardship' in the offing—only a choice between leisure and the demands of due process," the brief said.

"It seems," said a separate

brief filed in behalf of Liddy, "that the President is fully capable of conducting the nation's affairs while he is away from the capital.

"On Lincoln's Birthday, the President absented himself from Washington, D.C.; to go to Miami, Fla., where, among other things, he found time to dedicate a hospital addition. A few days later, he also found time to attend an Honor American Day Rally in Huntsville, Ala.

"During his sojourn away from the capital, the nation did not disintegrate," the brief said.

Mr. Nixon's attendance "as a witness at a criminal trial to give material evidence for a period of approximately two days will not deprive the country of his leadership any more than did his trips to Miami and Huntsville," the brief said, adding that San Clemente is but "a short distance by helicopter" from the Los Angeles courthouse.

The question of whether Mr. Nixon should appear at a pre-trial hearing March 25 and at the California trial in April is, through an interstate compact governing subpoenas, before D.C. Superior Court Chief Judge Harold H. Greene. Greene has set a March 15 hearing on the matter.

If Greene were to issue the subpoena, the defense lawyers argued it would not, as the White House contends, set a precedent for all 50 states. The reason, they say, is that the D.C. Superior court, a creature of Congress whose judges are presidentially appointed, is legally a federal court.

In the wake of Thursday's federal indictments, the future of the California case is uncertain. Los Angeles prosecutors are scheduled to meet here Monday with Watergate Special Prosecutor Leon Jaworski to discuss problems arising from the dual indictments.