



Criminal
CYRIL SUBPOENA

FD-70 Form No. 1 (Rev. 1-57)

United States District Court
FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

vs.

JOHN M. MITCHELL, et al,

} Cr. Case No. 74-110

To RICHARD M. NIXON
Presidential Compound
San Clemente, California

YOU ARE HEREBY COMMANDED to appear in the United States District Court for
District of Columbia
at John Marshall & Constitution in the city of Washington, D. C.,
on the 9th day of September, 1974, at 9:30 o'clock A. M. to testify on
behalf of defendant John D. Ehrlichman
in the above entitled action, and to remain until called in for trial of that cause, when
called.

August 14, 1974
Andrew C. Hall
Attorney for Defendant Ehrlichman
66 W. Flagler Street
Miami, Florida 33130

JAMES F. DAVEY,
Clerk
By *M. J. ...*
Deputy Clerk

Former aide Ehrlichman and the Nixon subpoena: A break in the ranks?

Closing In on Elba West

It was supposed to be "a private time" for Richard Nixon. Hidden behind the fences of San Clemente, surrounded by a diminished retinue, the former President was said to be reading, relaxing, doing a bit of paper work and occasionally taking a dip at the well-guarded beach of a nearby Marine base. But Nixon's retreat from the cares of Washington and Watergate was not even a week old when it was interrupted by a jolt from the outside world—a subpoena ordering him to appear as a witness in the impending Watergate cover-up trial of former White House domestic counselor John Ehrlichman and five other men.* The subpoena marked the start of a grim new era for Nixon. For, as a source close to defendant Ehrlichman put it: "It is now every man for himself."

Last week's subpoena also stepped up the pressure on Watergate special prosecutor Leon Jaworski to make a decision about prosecuting Nixon in connection with Watergate and other matters. A delay in the cover-up trial seemed likely—if only to give all parties a chance to sift through transcripts of the 55 taped conversations made available by last month's historic Supreme Court ruling—and that would give Jaworski some breathing time. But the pressures for prosecution were apparently mounting: from Jaworski's own staff, from the Watergate grand jury and from the prestigious American Bar Association. Indeed, when the special prosecutor's office objected last week

*Former Attorney General John Mitchell, ex-White House chief of staff H.R. (Bob) Haldeman, onetime Haldeman aide Gordon Strachan and two former officials of the Committee to Re-elect the President, Robert Mardian and Kenneth Parkinson.

to the hasty return of about 1,000 more White House tapes to Mr. Nixon's custody, many observers took it as a strong indication that more of those tapes might be sought as evidence in legal proceedings against the former President.

Ehrlichman's attempt to get Nixon as a defense witness was not totally unexpected; the former White House aide tried something similar during his trial in the Ellsberg break-in case earlier this year, but settled for the President's answers to written interrogatories. Early last week, however, Ehrlichman assured a Seattle TV reporter that he found it "hard to imagine" anyone now putting the former President through the rigors of the witness stand ("I think that's carrying things beyond the line of necessity"); three days later his lawyers had the subpoena issued. It went via air mail—along with \$302 in travel expenses (not even enough for round trip fare)—to Los Angeles, where U.S. Marshal Gaylord Campbell would serve it on Nixon personally at his home in exile.

Why the change of heart by Ehrlichman? NEWSWEEK has learned that after reading the transcript of the June 23, 1972, tapes, which sealed the fate of Nixon's Presidency, Ehrlichman now feels "completely duped" by his onetime boss. He maintains that he did not know for nearly a year that Mitchell was involved in the break-in plot, and he feels the tapes show Nixon and Haldeman concocting a cover-up at least partly at his expense. "Needless to say, some people think the President turned his back on the men who were biting the bullet for him," said a source close to

8-19-74
Newsweek

Ehrlichman, adding for emphasis that Ehrlichman now believes "the President walked off and left him."

Nixon could attempt to quash the subpoena, perhaps by claiming that the principle of Executive privilege still covers his Presidential conversations. That argument might buy time, but ultimately it would probably be rejected for the same reasons cited by the Supreme Court in its ruling last month in the White House tapes case—that Executive privilege does not apply to evidence of criminal action. In the end, Nixon might have only the Fifth Amendment to fall back on if he wanted to avoid questions. And even that constitutional defense against self-incrimination might not be available if he received some form of immunity from prosecution.

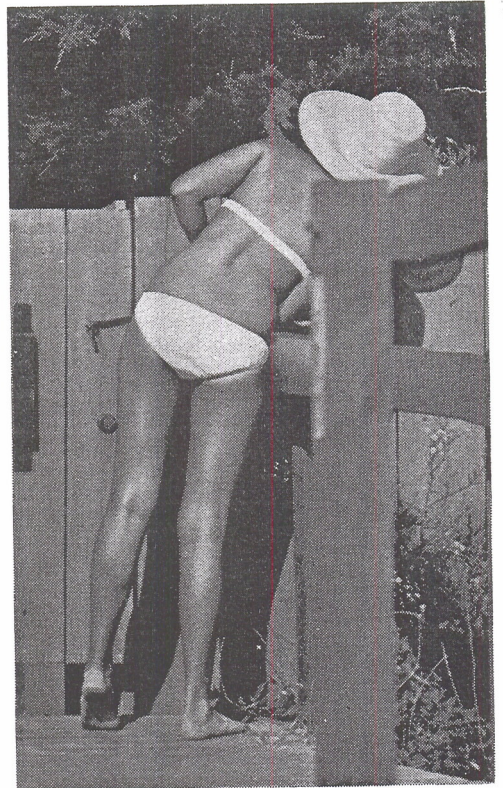
That, of course, was the big question

cution HQ. Some staffers were seriously concerned that a failure to prosecute—now that impeachment has been aborted—might permit Nixon to argue that he was innocent of all wrongdoing, a President hounded from office on partisan grounds. "Two years from now," warned one Jaworski staffer, "he may be back making speeches."

'Reasonable': Members of the Watergate grand jury also debated the issue with one another, NEWSWEEK learned. Foreman Vladimir Pregelj telephoned several of his fellow jurors and planned to hold further discussions. There seemed to be little question that the grand jury, which originally named President Nixon an unindicted co-conspirator, would seek to indict citizen Nixon now that his shield of office is gone. Some of the jurors, NEWSWEEK

Sam Ervin, whose Watergate committee helped blow the lid off the scandal, declared: "If I were faced with the decision Leon Jaworski is faced with, and if I didn't prosecute, I'd suffer from insomnia for the rest of my life."

The assembled attorneys were not eager to take up the touchy issue, despite recent criticism that Watergate had demonstrated serious ethical blind spots in their profession. In the end, the convention pointedly reaffirmed the ABA's "dedication to the principle of fair, just and impartial application and enforcement of the law regardless of the position or status of any individual alleged to have violated the law." Nixon was not mentioned by name—that might prejudice his case if it did come to trial, some lawyers thought—but the message seemed clear enough.



Spectators: Julie and David watching Ford in Washington; bikini-clad girl peering over fence at San Clemente

mark still hanging over San Clemente and the rest of the nation. With Congress and the Ford White House both trying to avoid the issue of prosecution for the former President, it remained solely Jaworski's decision. The special prosecutor was home in Texas last week, resting and "paying the light bill," but back at 1425 K Street NW in Washington, his staff was studying the options—pulling together evidence on possible charges against Nixon, information on which witnesses might be available and analyses of what impact prosecution or immunity might have on other cases.

No formal decision was expected for at least two weeks or a month, but the subject was already sparking prolonged and heated debate at the special-prose-

learned, wanted to write Jaworski a letter stating the panel's position. But they decided last week to wait "a reasonable period of time" to see what he would do.

A resolution passed unanimously by the American Bar Association in Honolulu last week may influence Jaworski—himself a former ABA president. The lawyers heard a variety of opinions on the immunity question. U.S. Attorney George Beall of Baltimore, who built the case against Spiro Agnew, saw "no substantial public purpose to be served in prosecuting" Nixon. Former Attorney General Elliot Richardson and his one-time deputy, William Ruckelshaus, among others, stressed "the strictly legal questions involved" and the public's "perception of judicial fairness." And Sen.

The lawyers were not the only ones drawn against their will into the Watergate fallout last week; even President Ford found himself more deeply enmeshed in the question of Nixon's future than he had wished. Actually, NEWSWEEK was told, Ford's closest advisers—in a meeting on the eve of resignation—considered working out a plan to grant Nixon immunity. But the idea was quickly shot down by White House chief of staff Alexander Haig, who reportedly feared that "if the President felt he was being baited by a deal, he might change his mind." After that, Ford and his crew simply wanted to wash their hands of all Watergate affairs, and that attitude apparently led them to accept without question a controversial opinion by hold-

over Nixon counsel Fred Buzhardt and departing lawyer James St. Clair on the disposition of all the White House tapes that had not been subpoenaed.

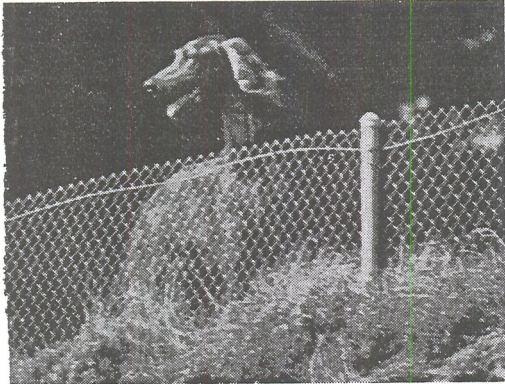
Citing the longstanding tradition that allows ex-Presidents to take their personal papers with them when they leave the White House, Buzhardt and St. Clair decided that the unsubpoenaed tapes could be shipped to San Clemente. It turned out that the precedent was debatable, however, and that although Jaworski's office had been informed of the decision, the prosecutor's approval had not been sought. Embarrassed, the White House reversed its public

If the tapes were staying put, however, nearly everything else that belonged to Nixon was being packed off to California under the watchful eye of daughter Julie Eisenhower and secretary Rose Mary Woods. Julie and husband David Eisenhower also dropped some clues last week about Watergate's final impact on the Nixon family. Julie was quoted by New York Times columnist William Safire as saying her father's "life is ruined." David told the Philadelphia Inquirer that he was "ambivalent" about Nixon's innocence but that resignation was "a relief" for the family.

Trappings: Julie and David, indeed, seemed happy to shake their Secret Service shadows. The trappings of power also disappeared from San Clemente in large measure. The Western White House mess was closed and secretaries took turns making tuna sandwiches for the shrunken staff of ten. Press secretary Ron Ziegler's gold Cadillac convertible was replaced by a modest Dodge Dart. And the glistening beach below the Nixon compound was open again to surfers and bikinied strollers, some of whom peered curiously over the fence. Most telling of all was the difficulty Nixon's men had getting calls returned by their successors at the White House.

Ziegler and the other aides kept up the familiar curtain of hostile secrecy,

would be before the isolation ended completely and Nixon was forced back to Washington to confront head-on the legacy of legal snarls spawned by the Watergate scandal.



Lester Sloan—Newsweek

Nixon pet King Timahoe peers out . . .



AP

. . . as bathers stroll along the reopened beach below the home in exile

stance and agreed to hold on to the tapes pending an agreement with Jaworski. Buzhardt, who is still recovering from a recent heart attack, suddenly found himself replaced as chief White House counsel by Philip Buchen, 58, Ford's former law partner. "I guess we all agreed that we were running into a buzz saw on these tapes," said one Ford aide last week, "and that if we were going to have considered opinions, we had to get someone who can work harder and faster than Fred Buzhardt, who is a very exhausted man."

August 26, 1974

but it was learned that Nixon had been visited by friends and financial supporters C.G. (Bebe) Rebozo and Robert Abplanalp and that he, Mrs. Nixon and Tricia and Eddie Cox had driven to the beach at Camp Pendleton. Speechwriter Raymond Price also showed up at the compound last week, feeding rumors that some public remarks were planned.

Nobody was pretending that Richard Nixon was happy with his self-imposed exile at San Clemente, despite all the swims and strolls and leisure time. And it was anybody's guess how long it