

Jaworski Subpoenas Nixon To Testify on Tapes Custody

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Special Prosecutor Leon Jaworski subpoenaed former President Nixon yesterday to testify as a government witness at the Watergate cover-up trial.

Spokesmen for Jaworski refused to comment on the reason for the unexpected summons, but informed sources said that the prosecutors were forced to take the step in order to establish the authenticity and integrity of White House tapes and documents that Mr. Nixon handled.

Attorneys for the six defendants in the cover-up case refused at a closed-door ses-

sion with Watergate prosecutors Wednesday to forego Mr. Nixon's testimony on the so-called "chain of custody" issue.

"He handled a lot of those tapes," said one defense lawyer. "The prosecutors will want him to testify that he maintained custody for certain periods of time, and that he didn't alter them. We, of course, would try to establish that he did alter them. It could well be a mini-trial in itself."

Watergate prosecutors drew up the subpoena Wednesday night and turned it over to FBI agents for quick delivery. The former President is cur-

rently at his home in San Clemente, Calif., although he is expected to enter the hospital shortly for tests and treatment of phlebitis in his left leg.

FBI agents served the subpoena on Mr. Nixon personally at his San Clemente estate last night at 8:50 (EDT). Federal marshals accompanying them served two other subpoenas on the former President at the same time.

A spokesman for the U.S. marshal's office here said that one of the papers its men served on Mr. Nixon was a defense subpoena for records at the cover-up trial. The other, he said, was a "civil

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summons and complaint." Further details were not immediately available.

On paper, the Jaworski subpoena calls for Mr. Nixon's appearance in U.S. District Court Judge John J. Sirica's courtroom Oct. 1, the scheduled starting date of the trial. But as a practical matter, he would not have to show up then.

Selection of a trial jury, the first order of business, is expected to take a week or more.

It is also far from certain that Mr. Nixon will appear at all. His lawyers have already claimed, in connection with an unrelated civil suit, that he is too sick to give even a deposition.

One defense attorney in the cover-up case promised stiff opposition, however, to any prosecution effort to settle for anything less than personal examination of Mr. Nixon on the witness stand here.

Nixon's lawyers here said they would have no immediate comment on the subpoena. Should they claim that Mr. Nixon is too ill to testify, court sources suggested, Judge Sirica could appoint a doctor to examine him in California.

Watergate prosecutors would probably be willing to settle for a deposition or even an affidavit from Mr. Nixon if Judge Sirica approved it. They had asked defense lawyers Wednesday to sign a two-page stipulation that would have completely excused to the former President from identifying various tapes and documents that the prosecution wants to introduce at the cover-up trial.

But the meeting, as chief cover-up trial prosecutor James F. Neal told Judge Sirica later in the day, was "a remarkable failure."

Several defense lawyers in the cover-up case added yesterday that a deposition from Mr. Nixon would be completely unacceptable to them.

"We want him on the witness stand like any other citizen," said one of the attorneys. "The chain of custody is pretty important in crim-

inal cases. I think the judge would be taking a chance if he went ahead with an affidavit or a deposition from Nixon unless the guy is really sick. And if he's too sick, we want a continuance."

One of the defendants, former White House aide John D. Ehrlichman, has already subpoenaed Mr. Nixon as a defense witness. But Mr. Nixon's appearance in response to that summons is not likely to be required for several months, after the government presents its case.

Lawyers for Ehrlichman, former Nixon chief of staff H. R. Haldeman and former Attorney General John N. Mitchell are still seeking a trial delay from the U.S. Circuit Court of Appeals here because of the publicity stemming from President Ford's blanket pardon of Mr. Nixon on Sept. 8. In a reply filed yesterday, Jaworski maintained that Judge Sirica can grant a continuance if he finds a "substantial risk" to a fair trial through careful questioning of prospective jurors.

In his brief, Jaworski also made public an excerpt of his letter to the White House concerning the difficulties of a fair trial for Mr. Nixon if he had been indicted.

The prosecutor said "it is precisely the condemnation of Mr. Nixon, already made in the impeachment process, that would make it unfair to the defendants" in the cover-up case to have put the former President on trial with them.

In other developments, Sen. James O. Eastland (D-Miss.), chairman of the Senate Judiciary Committee, set a meeting for Sept. 27 to discuss whether new legislation is needed to guarantee a full public report from Jaworski on Mr. Nixon's involvement in any criminal activities. The special prosecutor is expected to attend the meeting.

The Senate Government Operations Committee is scheduled to meet today on a resolution by Senate Majority Leader Mike Mansfield (D-Mont.) to guarantee public access to all Nixon tapes and documents that might bear on Jaworski's investigations.