

# Ash Quietly Trying To Quash Subpoena In Litton Libel Suit

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Roy L. Ash, director of the Office of Management and Budget, is quietly trying to quash a subpoena to take his testimony in a sensitive libel suit involving his role in a \$43.4 million overcharge of the Air Force in the 1950s, The Washington Post learned yesterday.

Ash has been threatened with arrest if he fails to obey the subpoena. Asked about the threat in a phone interview on Oct. 3, he said, "I intend to testify . . . If the court wants me to be there, of course I'll be there."

A lawyer retained by Ash in Los Angeles has filed a motion to quash and is scheduled to argue it in Superior Court Friday.

The warning to Ash, described by a House committee last spring as "the most powerful person in the executive branch" after President Nixon, came from counsel for Noah Dietrich, former chief executive officer to billionaire recluse Howard Hughes.

Dietrich is suing Litton Industries and the chairman of the conglomerate corporation, Charles B. (Tex) Thornton. Ash was president of Litton until last year, when he quit to become director of the OMB and, later, a special assistant to the President, as well.

Ash was subpoenaed on Aug. 31 to appear in California Superior Court on Oct. 31, when the trial is scheduled to begin. In September, he initiated an exchange of letters with Dietrich's attorney, Harold Rhoden. Dietrich made the letters available to The Washington Post during an inter-

view.

"Although I have continued to maintain a house in the Los Angeles area, I spend all of my time in the Washington, D.C., area performing the duties of my governmental position," Ash wrote Rhoden on Sept. 24. "Hence I doubt that it will be possible for me to appear as a witness at trial."

Rhoden, in a caustic reply on Sept. 27, told Ash that "the entire case hinges on your credibility."

"I suggest that it will be possible for you to appear," Rhoden said. "If you refuse to obey the court order served on you, I shall be forced to obtain the issuance of a bench warrant for your arrest on a contempt citation."

## Warning Cited

The lawyer called Ash's attention to a warning in the standard printed subpoena form that disobedience to the summons may be treated as "contempt of court."

Ash, in the interview, said that Rhoden had made "intemperate comments" that "aren't necessary."

"My own words weren't as legally artful as some lawyers would like them," Ash told a reporter. He said he had not intended to indicate that he was "unwilling to appear."

On the day that Rhoden mailed his reply, Sept. 27, Angeles had "inadvertently" deposited a check for \$16 in witness fees. Ash enclosed a refund of the money, thereby reinforcing an im-

pression that he was not planning to testify.

The refund elicited a second letter from Rhoden. The witness-fee refund in no way invalidates the subpoena, the lawyer wrote Ash on Oct. 3. "A subpoena is not an invitation to dinner."

In Rhoden's earlier letter, the lawyer warned Ash of "a second consequence of your failure to appear." Quoting further from the subpoena form, the lawyer said:

"You will be liable for . . . all damages . . . resulting from your failure to attend." The first time this case was tried, it was won by the plaintiff with a jury verdict of \$6,150,000; you testified in the first trial.

"If you fail to testify this time, and if my client's case is lost, his case will be lost as a result of your failure to attend the trial and to again testify. And if this happens, you will be subject to damages in the amount of that loss resulting from your failure to attend: \$6,150,000."



ROY L. ASH

. . . under subpoena

Ash recalled in his letter to Rhoden that "I severed all connections" with Litton on taking the OMB post.

But Rhoden dismissed the severance as of "no consequence" because the libel suit concerns Ash's activities at the Hughes Aircraft Division of Hughes Tool Co. (Toolco) between 1950 and 1953, "before Litton Industries was created."

During that period, Thornton was running Hughes Aircraft, with Ash in charge of all accounting. Bitter disputes with Dietrich, who

was operating tooico, finally led to their forced departure.

Ash's Los Angeles lawyer, Felice R. Cutler, said her motion to quash rests on the assumption that the OMB chief is not a resident of the Los Angeles area.

Rhoden says Ash is a resident who owns property, pays taxes and votes there.

In a second motion, Ms. Cutler argued that earlier sworn testimony given by Ash is sufficient, and that Rhoden, in seeking new testimony, is "harrassing and oppressing" him. Rhoden said, "My answer to that is unprintable."

If the court rejects the first two motions, Ms. Cutler has a third in reserve: to quash the subpoena in exchange for her promise as an officer of the court to produce Ash in court on 48 hours' notice.

"I will not accept a promise from Roy Ash," Rhoden said in a phone interview. "I want a court order, and nothing short of a court order will suffice. I will not take Roy Ash's word—period."

The origins of the libel suit date back to 1959, when a man who participated in the founding of the Litton company, Emmett T. Steele, sued the firm and Thornton for fraud. He alleged that they had reneged on an oral contract to give him certain stock.

In 1962, Rhoden, then at-

torney for Steele, took a deposition from Dietrich in which he told of a revolt at Hughes Aircraft and several high-ranking certified public accountants who finally quit rather than go on working for Thornton and Ash.

Dietrich charged that Ash, acting for Thornton, had forced the CPAs to falsify accounting records so as to overcharge the Air Force for radar fire-control equipment. Dietrich is himself a CPA; Ash is not an accountant.

It is uncontested that after an audit by the CPA firm of Haskins & Sells, made at Dietrich's request, Hughes Aircraft refunded \$43.4 million to the Air Force.

Earlier, the Dietrich deposition in the Steele case had elicited a press release from Thornton charging that he had been "maliciously defamed." He filed a \$40 million slander suit against Dietrich.

Litton had reacted to the deposition with a letter to employees accusing Dietrich of having made "irresponsible" and "malicious" attacks. The company termed assertions that the Air Force had been overcharged "completely false."

Dietrich countered with a libel suit against Litton and Thornton in which he asked the sum of 40 cents actual damages plus \$1 million in punitive damages. In the pending suit, in contrast, he asked \$40 million.