

Prosecutors Shun Nixon

Subpoena

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Watergate prosecutors washed their hands yesterday of a state court subpoena calling for President Nixon's testimony in the California burglary trial of the White House plumbers.

The prosecutors said they would leave the burden of seeking its enforcement up to lawyers for former White House adviser John D. Ehrlichman since it was Ehrlichman's attorneys who obtained the subpoena in the first place.

Government attorneys usually support out-of-state subpoenas directed at witnesses in the District of Columbia, but a spokesman for Watergate Special Prosecutor Leon Jaworski insisted that "there is nothing extraordinary about the procedure we are following."

The next step will be the scheduling of a D.C. Superior Court hearing on the unprecedented summons. It has a fast-approaching due date, calling for Mr. Nixon's appearance at a Feb. 25 pretrial hearing in Los Angeles.

Ehrlichman's chief Washington lawyer, John J. Wilson,

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confirmed plans to appear at the hearing and "urge that the President be subpoenaed." He said he was neither surprised nor disappointed that Watergate prosecutor decided not to take on the chore themselves.

"I don't believe they mean to be arrogant about this," Wilson said. "After all, our client was the one who sought the subpoena."

It was issued in Los Angeles by state Superior Court Judge Gordon Ringer who concluded at a Jan. 30 hearing that "the Hon. Richard M. Nixon is a material witness for the defense." He ordered the President to appear both at the trial, which is scheduled to start April 15, and at the Feb. 25 hearing on a defense motion to dismiss the case.

Ehrlichman and co-defendants David Young and G. Gordon Liddy say they need the

President's testimony to support their claim that they were acting as federal agents for whatever role they might have played in the 1971 break-in at the offices of Daniel Ellsberg's Beverly Hills psychiatrist.

Asked whether written responses by Mr. Nixon to interrogatories would be acceptable, Wilson said only that "I don't think we've reached that stage yet." The White House has said that the President will respectfully refuse to testify in person.

Under the so-called Uniform Witness Act, the Superior Court hearing here is required to determine that a witness "in material and necessary" to an out-of-state proceeding, that his testimony would not cause "undue hardship" for him, and that he will not face arrest or other subpoenas if ordered to comply. Under the law, the

California subpoena "shall be prima facie evidence of all the facts stated therein."

If the Los Angeles court order is upheld, a fresh summons would be issued in Superior Court here "directing the witness to attend and testify in the court where the prosecution is pending."

Acting U.S. Attorney Earl J. Silbert received the California subpoena Tuesday after it made a meandering 10-day trip through the mails and a preliminary stop at D.C. Superior Court. Since it dealt with the Watergate investigation, Silbert sent it to Jaworski's office. They held it less than a day before announcing that it would be handed to Ehrlichman's lawyers.

Wilson said it was up to the court here to set a hearing date. Chief Superior Court Judge Harold H. Greene's office said none has been scheduled yet.