

# The Coverup Trial--Nixon Subpoenaed

Washington

Former President Nixon was subpoenaed yesterday by lawyers for former White House aide John D. Ehrlichman to testify in the Watergate coverup conspiracy trial.

The subpoena was filed here with the U.S. District Court yesterday morning and is expected to be served on the former President at his San Clemente residence in the next few days.

It is the first legal paper involving Watergate aimed at Mr. Nixon since he became a private citizen and unable to claim the privilege of the presidency to avoid testifying in court.

There was no immediate response from San Clemente, where Mr. Nixon now resides. He could either honor the subpoena voluntarily and agree to testify or attempt to quash it.

The subpoena ordered Mr. Nixon to be in U.S. District Court here on September 9, the date on which the coverup trial is supposed to begin.

However, it appeared likely yesterday that the starting date will be delayed. Ehrlichman and two other defendants have asked for a postponement. Yesterday afternoon the Watergate prosecutor's office, in a response to those motions, agreed that a "reasonable continuance" should be granted.

The subpoena was addressed to Richard M. Nixon at the "Presidential Compound, San Clemente, California."

Accompanying it was a check for \$302 to provide for Mr. Nixon's travel expenses and a \$20 daily witness fee.

There was no immediate explanation of what testimony Ehrlichman's lawyers hoped to obtain from Mr. Nixon. The attorney who signed the subpoena, Andrew C. Hall, declined during a telephone interview

from Miami to explain what he hopes to produce in court. He cited Judge John J. Sirica's gag rule that prohibits discussion of evidence be-

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fore its presentation in court.

It has been speculated that Ehrlichman's lawyers would like to extract evidence showing that whatever their client did was at the President's command after the coverup of the 1972 Watergate break-in was underway.

Some lawyers have asserted, however, that a defendant's contention that he committed a crime under orders is no legal defense. There is a possibility that such evidence might be of mitigating value in any future sentencing of one who is found guilty.

The subpoena was mailed to Los Angeles and is expected to be served in a few days by Gaylor Campbell, a U.S. marshal.

Campbell said it would be served on Mr. Nixon personally, not on an aide or attorney.

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Ehrlichman already has been sentenced to 20 months to five years on federal criminal charges arising out of the break-in at the office of Daniel Ellsberg's psychiatrist.

In that case, he contended he had acted under presidential orders and his lawyers also sought to subpoena from the President handwritten notes made by Ehrlichman on ten conversations with Mr. Nixon. The White House refused and ultimately a compromise was reached. Mr. Nixon voluntarily submitted answers to written questions.

The September 9 trial date for Ehrlichman and five other defendants now seems likely to be postponed. Ehrlichman and two others had contended that a delay was necessary because, among

other things, excessive publicity accompanying Mr. Nixon's battle of the tapes and resignation made a fair trial impossible.

And yesterday a fourth defendant, former Assistant Attorney General Robert C. Mardian, also asked for a continuance.

The special Watergate prosecution force originally had opposed motions to postpone the trial. But in a response, filed yesterday afternoon, it contended that new circumstances justify a "reasonable continuance."

The new circumstances are the 55 subpoenaed tapes that have been turned over to Sirica by order of the Supreme Court. Sirica is now reviewing those tapes and turning them over piecemeal to the prosecutors.

Sirica will decide whether to grant a postponement after a hearing Monday.

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