

Ford Names Ex-Partner as Legal Counsel

Nixon Facing A Subpoena

By William Chapman
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Former President Nixon was subpoenaed yesterday by lawyers for his former White House aide, John D. Ehrlichman, to testify in the Watergate cover-up conspiracy trial of Ehrlichman and five other defendants.

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 estate in San Clemente, Calif., 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 response yesterday 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 Sept. 9, the date on which the cover-up trial is supposed to begin.

However, it appeared more likely yesterday that the starting date will be delayed. Ehrlichman and two other defendants have asked for a postponement. Yesterday afternoon the Watergate prosecutors' 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." It declares:

"You are hereby commanded to appear in the United States District Court for the District of Columbia . . . 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 . . ."

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 before its presentation in court.

He also declined to say whether Ehrlichman had personally approved the subpoena but emphasized, "I am only concerned about one man," Ehrlichman.

See SUBPOENA, A10, Col. 1

SUBPOENA, From A1

It has been speculated that Ehrlichman's lawyers would like to extract evidence showing whatever he did was at the President's command after the cover-up of the 1972 Watergate break-in was under way.

Some lawyers have asserted, however, that 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 yesterday to Los Angeles and is expected to be served in a few days by Gaylord Campbell, U.S. marshal for the Central District of California, which has jurisdiction over San Clemente.

Campbell said it would be served on Mr. Nixon personally, not on an aide or attorney, "under the law I've got to hand it to him personally," he said.

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

conviction.

In that case, he contended he had acted under presidential orders and his lawyers also sought to subpoena from the President Ehrlichman's handwritten notes on 10 conversations with Mr. Nixon. The White House refused and ultimately a compromise was reached. Mr. Nixon voluntarily submitted answers to written questions.

The Sept. 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.

"It seems only fair that the defendants be afforded a reasonable opportunity to listen to the tapes, verify the accuracy of the government's transcripts, and integrate this new material into their trial strategy," the prosecutors said. Because that process is time-consuming, the defendants should be granted a reasonable delay, they added.

The prosecutors suggested that Sirica no longer needs to consider the publicity issue as grounds for delaying the trial.

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