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**JAWORSKI CALLS
NIXON TO TESTIFY
IN COVER-UP CASE**

**Subpoena Sent to California
for Delivery by F.B.I. to
the Former President**

DEFENSE LAWYERS BALK

**Their Refusal to Accept the
Tapes as Genuine Spurs
Move by Prosecutor**

By **ANTHONY RIPLEY**

Special to The New York Times

WASHINGTON, Sept. 19—A second subpoena, this one obtained by Leon Jaworski, the special Watergate prosecutor, has been sent to Los Angeles for delivery to former President Richard M. Nixon commanding his appearance at the Watergate cover-up trial.

A spokesman for the special prosecutor said that the subpoena was delivered last night to the Federal Bureau of Investigation "to deliver for us." A bureau spokesman in Los Angeles said today that the subpoena had been received and that it would be served on Mr. Nixon "as conveniently and quickly as possible" at his seaside villa at San Clemente.

Mr. Jaworski's spokesman declined to discuss the role the former President might play for the prosecution. Mr. Nixon had already been subpoenaed as a defense witness.

Meeting Is Fruitless

The Jaworski subpoena was issued after a fruitless meeting between prosecution and defense lawyers yesterday.

At that meeting, defense lawyers insisted on Mr. Nixon's being called for exact identification of 33 White House tape recordings assembled for use at the Oct. 1 trial, defense sources said.

The defense could have simply agreed that the tapes were genuine but instead pressed the technical point, the sources said. The defense lawyers also refused to accept as genuine copies of the tapes and transcripts prepared by the special prosecutor's office.

The meeting, closed to the

public, was called to iron out technical problems normally settled before a trial. However, some defense lawyers have apparently dug in their heels and refused all compromises.

Their decision not to accept the tapes and transcripts without Mr. Nixon's appearance forced the prosecutor to seek

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the former President's appearance as a witness.

Mr. Jaworski has said that he plans to play the tape recordings to the jury, with jurors following on written transcripts. Mr. Nixon is to be called to testify that the recordings are genuine and have not been altered.

The special prosecutor cannot use a defense witness to establish the authenticity of his evidence. He must call his own witness and have that witness subject to cross-examination.

"I'm not going to agree on anything," one defense lawyer said. "I'm going to take a technical position on everything. I'm not going to give an inch.

"This is a hard case. These are hard guys. We can be hard, too."

James F. Neal, associate special prosecutor, was asked yesterday, in a hearing before Federal District Judge John J. Sirica, how the meeting had gone.

Mr. Neal called it "a remarkable failure."

Although such subpoenas are generally delivered by United States marshals, the F.B.I. was used this time. Mr. Jaworski's spokesman explained that the bureau had close liaison both with the special prosecutor's office and the Secret Service, which guards the former President.

John D. Ehrlichman first subpoenaed Mr. Nixon as a defense witness. That subpoena was served on Mr. Nixon last month but it is not yet known whether he will contest it. Mr. Ehrlichman, former assistant to the President for domestic affairs, is one of six former aides charged with obstruction of justice in the case.

All six are charged with conspiring to cover up the role of Nixon Administration and reelection campaign officials in the burglary of the Democratic national headquarters at the Watergate office building.

Other Subpoena Opposed

Mr. Nixon's ability and willingness to respond to such subpoenas is in question. In an unrelated civil suit, Mr. Nixon's attorneys have moved to quash a subpoena, citing his health problems and presidential privilege.

Mr. Nixon has been bothered by phlebitis, a vein inflammation, in his left leg. His daugh-

ter, Julie Nixon Eisenhower, said earlier this week that she expected him to be hospitalized.

The Presidential privilege claim relates to former President Harry S. Truman's claim of privilege in a 1953 letter to a House committee that had subpoenaed him.

Mr. Truman wrote in part, "It must be obvious to you that if the doctrine of separation of powers and the independence of the Presidency is to have any validity at all, it must be equally applicable to a President after his term of office has expired when he is sought to be examined with respect to any acts occurring while he is President."

New Motion Filed

In a motion filed in Federal District Court today with Judge Charles R. Richey in two civil suits that grew out of the same Watergate burglary, Mr. Nixon's attorneys have asked that subpoenas for four months of tape recordings be quashed. Mr. Nixon claimed executive privilege.

In the cover-up case before Judge Sirica, Mr. Ehrlichman has raised the health issue in asking for a 60-day to 90-day delay in starting the trial. Judge Sirica has yet to rule on the motion.

Mr. Nixon's attorney, Herbert J. Miller Jr., has given no indication of whether he will raise the same health and privilege issues in the criminal case. An associate in his office said he would have no comment on the latest subpoena.

Mr. Nixon's role in identifying the tapes pertains to the so-called "chain of custody" that must be established in criminal cases. It is needed to show that the tapes are accurate and have been kept without tampering.

Mr. Nixon on July 23, 1973, asserted in a letter to Senator Sam J. Ervin Jr., Democrat of the Senate Watergate committee, that "the tapes, which have been under my sole personal control, will remain so."

If Mr. Nixon is too ill to

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appear, he might be questioned at his bedside or by videotape, a technique recently used in a Federal trial in Cleveland.

Although the assertion of privilege as Mr. Truman outlined it may hold in civil cases, the use of it in the criminal cover-up case was struck down by the Supreme Court.

In a related matter, the Senate Judiciary Committee, at the urging of Senator Robert C. Byrd, Democrat of West Virginia, has invited Mr. Jaworski to appear before it on Sept. 27. Eight members of the committee have been seeking a full accounting of Mr. Nixon's role in the Watergate scandals. Mr. Jaworski has said that he can supply no such accounting under the regulations governing his office and rules governing the actions of prosecutors.