

# NIXON BIDS COURT QUASH SUBPOENAS

OCT 4 1974

## Sirica Declines to Act Now on Ex-President's Move to Avoid Testifying at Trial NYTimes

By LESLEY OELSNER

Special to The New York Times

WASHINGTON, Oct. 3—Former President Richard M. Nixon asked Federal District Judge John J. Sirica today to quash the subpoenas commanding his appearance as a witness at the Watergate cover-up trial.

Mr. Nixon made his request in two written motions filed by his attorneys at the United States Courthouse here as jury selection in the trial went into its third day.

Judge Sirica immediately placed the motions under seal and said later that they would remain under seal until he decided "what action I'll take, if any."

The judge said that the papers would also continue to be sealed until a jury was selected and sequestered, which, he said, he expected to do by "early next week."

Five prospective jurors were cleared today in the second stage of questioning by Judge Sirica and will thus become eligible for the final stage, in which they will be seated on the jury unless challenged by lawyers in the case.

In another development, the special prosecutor issued tonight a statement in which he said that comments in a memorandum the prosecution filed in court yesterday, regarding an alleged additional co-conspirator

Continued on Page 14, Column 1

in the case, did not mean that it had "named" a co-conspirator.

Although unidentified in the legal memorandum yesterday, the person referred to was identified by sources in the case as Richard A. Moore, a 60-year-old lawyer who was special counsel to Mr. Nixon at the White House.

Mr. Moore's attorney has denied that Mr. Moore had been named an unindicted co-conspirator, as had been reported in The New York Times and elsewhere on the basis of the court filing by the prosecution yesterday.

The prosecution said, for its part, tonight that "it is not cor-

rect that the Government has named an unindicted co-conspirator" in addition to those, including Mr. Nixon, who were previously identified.

What happened, according to sources familiar with the matter, was that the prosecution informed the court and the defense on Monday that it might seek to name Mr. Moore as a co-conspirator at the trial, thus enabling it to take advantage of a legal rule that would make it easier than otherwise to admit prior statements by Mr. Moore.

In its court papers yesterday it used the phrase "will seek to prove" in describing its plans regarding the already named alleged coconspirators as well as the additional, unnamed person. The prosecution said tonight, however, that this phrase was "not meant to predict" the Government's action at trial with any "positiveness."

### Faces Two Subpoenas

Mr. Nixon has been subpoenaed by both the special Watergate prosecution and also by John D. Ehrlichman, once Mr. Nixon's chief domestic affairs adviser and now one of the five former White House and Nixon campaign aides on trial on charges of plotting to obstruct justice.

Mr. Nixon filed a motion to quash each subpoena, and the motion related to the prosecution subpoena was accompanied by an affidavit from his attorney, Herbert J. Miller, who is also Mr. Moore's attorney. The motions are believed to be based on the former President's illness.

One person connected with the case said he had heard that "national security" had also been cited as a reason, but this could not be confirmed.

Judge Sirica has several options. He could appoint a panel of doctors to examine Mr. Nixon; he could either grant or deny the motions immediately; or he could wait for a response from the prosecution and from Mr. Ehrlichman's lawyers, William S. Frates and Andrew C. Hall.

The Ehrlichman subpoena is considered the more troublesome of the two, in terms of Mr. Nixon's prospects for having the subpoena quashed. The prosecution subpoenaed Mr. Nixon only as a precaution, lest the Court decide that Mr. Nixon's testimony was necessary to establish the admissibility of the 33 White House tape recordings that the prosecution wants to introduce as evidence.

### Document Under Seal

Mr. Ehrlichman filed a document with the court last Friday to support his contention that Mr. Nixon's testimony was necessary to his defense. In the document, which is under seal, Mr. Ehrlichman reportedly described conversations with Mr. Nixon in such a way as to shift responsibility to the President.

Each of the other defendants in the case had at least some type of relationship to Mr. Nixon. John N. Mitchell was his Attorney General, H. R. Haldeman was his chief of staff at the White House, Robert C. Mar-dian was the political coordinator of the Committee for the Re-election of the President, and Kenneth W. Parkinson was the attorney for the committee.

Thus, at least some of the others are also expected to try to call Mr. Nixon as a witness.

The proceedings at the trial today were the second stage of jury selection — the more detailed questioning, with only lawyers present, of those prospective jurors who survived the preliminary screening-out yesterday and the day before.

Judge Sirica, briefing reporters late this afternoon, said that "we're starting to pick up" but that "we're trying to do a thorough job on it," and as a result each juror was asked many questions.

He said that many of his questions involved the effects of pretrial publicity, adding, "The ones I asked knew something about the case," having read or heard about it.

The judge, who looked somewhat weary and admitted he was "tired, a little tired," said that he might decide tomorrow on the number of "peremptory" challenges the lawyers would get—the challenges with which they can bar a person from the jury without giving a reason.

The number of peremptories will determine the number of prospective jurors, such as the five cleared today, who must be assembled for the final pool.

### Court Curb Revised

Judge Sirica is proceeding with obvious caution in his attempt to pick a jury. He has, for instance, given the prospective jurors a stern warning that they must answer questions truthfully or face possible contempt citations and even jail. He has conducted for more of the questioning of prospective jurors in closed sessions than is usual.

He has also asked reporters, through a court official, not to talk to the defendants and their

families in full view of the prospective jurors. He sent this message after a number of reporters chatted amiably and at length with Mrs. Ehrlichman in court yesterday. The judge presumably intended to limit the personal impressions that jurors might form of the defendants.

Today Judge Sirica announced that he would modify an order imposed last spring curbing comments by prospective witnesses. Under the modification, witnesses would be released from the order after their appearance in court.

But the judge also informed the broadcast media today that he had decided against a proposal to provide radio and television stations with copies of tape recordings as they were introduced as evidence at the trial.

In a letter to Fred P. Graham of CBS News, who requested the tapes on behalf of CBS, NBC and ABC, Judge Sirica cited, and enclosed, a memorandum from the chief judge of the Federal District Court,

George L. Hart Jr., reporting a consensus of the judges against the proposal.

"The most troublesome aspect of this proposal in many ways is that there would be played on the electronic media precise reproduction of what occurred in court when the tape was played," Judge Hart said. "In a sense, if we allow replay of what occurred in court, it will be very difficult to explain why we will not let a tape recorder be used by a court reporter to replay the entire proceedings."

Judge Sirica also said in his letter to Mr. Graham that he had not yet decided whether the prosecution would be allowed to provide jurors with transcripts it had prepared of the tapes it planned to submit. The prosecution has indicated that it wants the transcripts used not as evidence but only as aids to the jurors while they are listening to the tapes, but the defense is opposing even this use of transcripts.

17 SEP