

Watergate Cover-Up Trial Begins Tomorrow as

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WASHINGTON, Sept. 29—The case of the Watergate cover-up goes to trial Tuesday morning, two years and three months after the cover-up began and nearly two months after it caused the final collapse of the Nixon Presidency.

It will go to trial in United States District Court with either five or six defendants, depending on how Judge John J. Sirica rules on a pending motion. Among the defendants are John N. Mitchell, the former Attorney General; H. R. Halderman, the former White House chief of staff, and John D. Ehrlichman, the former White House adviser on domestic matters.

Not a defendant but tied inextricably to the case is Richard M. Nixon, though he was pardoned by President Ford on Sept. 8 before any possible charges were lodged against him.

Nixon's Links to Case

The former President is tied to much of the evidence, to the defendants, who worked for him either at the White House or at the Committee for the Re-election of the President, and even to the major legal issue presented by the trial, whether an impartial jury can be impaneled in the wake of massive publicity.

It is uncertain, however, whether he will appear in court to testify, despite subpoenas from both the prosecution and defense because of illness.

The other defendants in the case are Robert C. Mardian, a former Assistant Attorney General and political coordinator for the Committee for the Re-election of the President; Kenneth W. Parkinson, a lawyer for the committee, and Gordon C. Strachan, a former aide to Mr. Halderman.

The prosecution has asked, however, that Mr. Strachan's case be served so that he can be given a pretrial hearing on whether the Government had made any improper use of testimony that Mr. Strachan gave in return for grants of immunity on that motion tomorrow.

Tapes to Be Played

More than 30 of Mr. Nixon's White House tape recordings will be played in public for the first time at the trial. And the admitted participants in the cover-up will be cross-examined for the first time in a courtroom.

President Ford's pardon of Mr. Nixon was widely criticized, among other reasons, on the ground that it was unfair to let the chief go free but prosecute the subordinates. Some of the defendants are expected to try to make this point, and one question is whether the jury will accept or be influenced by this reasoning.

If Mr. Nixon does testify, he will be the star witness. And,

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Uncertainty Exists Over Later

according to some of the lawyers familiar with the case, he is one of the few major figures whose testimony cannot be forecast.

His failure to appear could also affect the trial.

Mr. Ehrlichman has subpoenaed Mr. Nixon as a defense witness and other defendants are also expected to call Mr. Nixon. The Sixth Amendment guarantees that a defendant may have "compulsory process for obtaining witnesses in his favor"; hence, Judge Sirica would normally be obliged either to use his power to bring Mr. Nixon to court or, assuming Mr. Nixon would be a witness helpful to Mr. Ehrlichman, dismiss the charges.

Illness Could Be Bar

But if Mr. Nixon is still ill when his presence is needed—if he is confined to bed, say—the court clearly cannot produce him. The constitutional provision might apply only to the extent that the court would be required to try to get his testimony in some other form, such as a deposition taken at bedside.

Leon Jaworski, the special Watergate prosecutor, has also subpoenaed Mr. Nixon. But Mr. Jaworski, who will be represented in court by a team led by James F. Neal, who once prosecuted James R. Hoffa, apparently does not want Mr. Nixon's testimony to build his case.

According to legal observers familiar with the matter, Mr. Jaworski merely wanted to be prepared in case Judge Sirica ruled that the former President's testimony was necessary

to establish the admissibility of the tape recordings as evidence. The prosecution issued the subpoena after the defense refused to make an agreement with the prosecution regarding the tapes' admissibility.

It is possible that Judge Sirica would insist that Mr. Nixon testify about the tapes—about the chain of custody, for instance—before he admitted the tapes into evidence. But many lawyers here consider it highly unlikely that the judge would require this testimony if it were clear that Mr. Nixon was too sick to come.

Probably, the lawyers suggest, the judge would accept testimony from various other sources such as Secret Service

agents who guarded the tapes at the White House.

Judge Sirica will hold a closed hearing tomorrow on the accuracy of the transcripts the special prosecution has prepared of the tapes it wants to submit at the trial. The question of the admissibility of the transcripts, and of the tapes, will come up later, during the trial.

The judge's second-floor courtroom at the United States Courthouse here is already being prepared for the playing of the tapes. There will be earphones for everyone in the small room—the 12 jurors and the six alternate jurors, the prosecution team and the defendants, almost all of whom

have at least two lawyers. Filling 108 seats "behind the rail" and also equipped with earphones will be newsmen, the defendants' families and the public.

But the admissibility of the tapes and transcripts is not automatic. The defendants are expected to challenge each submission by the prosecution, and the Government's lawyers will have to make an adequate showing of such factors as relevance and genuineness of the tapes.

All six defendants are charged with a single count of conspiracy, the basic charge of the case—that they plotted to obstruct the investigation of June 17, 1972, break-in at the

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Appearance by Nixon

Democratic national headquarters at the Watergate complex here, to give false testimony and to defraud the authorities, in order to conceal the identities of persons who either knew about or were responsible for the burglary.

Other Charges

All the defendants but Mr. Mardian are also charged with one count each of obstruction of justice; beyond that, Mr. Mitchell, Mr. Haldeman, Mr. Ehrlichman and Mr. Strachan are charged with at least one count each of perjury.

Each defendant will have a separate defense and, unlike defendants in many other conspiracy cases, will be seated at a separate table. It is not known

how their defense strategies will differ, but it is expected that they will reflect the difference in the defendants' relationships with Mr. Nixon.

Mr. Haldeman, for instance, will probably try to show that various things he did were done legitimately in his role as Mr. Nixon's chief of staff; Mr. Parkinson, whose relationship with Mr. Nixon was minimal, will probably stress that fact.

Lawyers familiar with the case suggest that as the trial progresses, more and more "in-fighting" between the defendants, as one put it, will become evident.

These lawyers also suggest that a major defense tactic will be merely to sit back and wait

for either the judge or the prosecution to make errors that could form a basis for appeal, should the trial end in conviction.

Long Trial Foreseen

The prosecution, it is generally believed, has a fairly strong case—much of it, in fact, is already public knowledge, following the Senate Watergate hearings and the impeachment proceedings. It will, however, be a long trial, lasting three to five months, with ample time for the court to make what are called "reversible errors."

"They'll have to walk a tight-rope, for five months," one person involved in the proceedings said last week of the prosecutors.

To some observers, the trickiest part of the case, in legal terms, will come at the beginning, during the jury selection, which begins Tuesday morning. The publicity about former President Nixon in recent months—first about impeachment, then about resignation, and then the pardon—can be viewed as publicity about the cover-up and hence publicity that could prejudice potential jurors.

The question will be whether this publicity makes it impossible to pick a fair jury. And even after Judge Sirica impanels a jury, assuming he does, and the trial is held, that question can still be raised, on appeal if need be.