

Drop Nixon As Witness, Sirica Asked

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Former President Nixon's lawyers asked yesterday that the subpoenas calling for his testimony at the Watergate cover-up trial be quashed.

U.S. District Court Judge John J. Sirica is not expected to make a decision on the motions until a trial jury has been chosen and sequestered.

Mr. Nixon is undergoing treatment in a California hospital for a phlebitis condition that has caused blood clots in his left leg and right lung. His doctor, heart specialist John C. Lungren, said earlier this week that he was out of danger but would not be well enough to travel for at least a month and perhaps longer.

The former President's Washington lawyers, Herbert J. Miller Jr. and Raymond G. Larroca, asked that Mr. Nixon be excused from testifying in papers submitted to Sirica that were promptly placed under seal.

Mr. Nixon has been subpoenaed to testify by Watergate special prosecutors and by lawyers for former White House aide John D. Ehrlichman.

Special Prosecutor Leon Jaworski has suggested that Sirica appoint his own team of medical experts to examine the former President as the next step. If Mr. Nixon is still

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too ill to appear at the trial, Jaworski has proposed that depositions could be taken.

Defense lawyers in the cover-up conspiracy case, however, have said they intend to press for Mr. Nixon's testimony on the witness stand here. Ehrlichman's attorneys contend that the former President's appearance is indispensable to his defense and, in a sealed report filed with Sirica last week, reportedly elaborated on the President's role in the alleged cover-up in an effort to prove their point.

The selection of a jury began to bog down yesterday morning when closed-door

questioning of the first two prospective jurors, who came in one at a time, gobbled up almost two hours. Both were excused for cause, one of them for "hypertension," according to court clerk James F. Davey.

In an effort to speed up the process, Sirica abandoned plans for individual questioning of all 144 prospective jurors who had passed preliminary screening, and instead started calling them to his courtroom in groups of 12.

According to Davey, the judge was asking "detailed" questions about the prospective jurors' exposure to Watergate publicity.

Sirica yesterday also ruled out any prospect that the public at large might hear Mr. Nixon's subpoenaed Watergate tape recording, which stand at the heart of the prosecution's case.

Correspondents for the three major television networks, CBS, NBC and ABC, had asked Sirica last month to release copies of any tape recordings after they have been admitted into evidence so that the conversations could be broadcast.

Chief U.S. District Judge George L. Hart Jr., to whom Sirica referred the request, said in a memo to Sirica made public yesterday, "We have staunchly opposed, as you know any broadcasting of court proceedings. 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 used by a court reporter to replay the entire proceedings."

Hart said all other judges with whom he consulted felt the same way. Although the decision was left to Sirica, he, too, agreed.

Hart said it was his understanding that transcripts of the tapes would be exhibited at the trial and made available to the press.

In his own letter, however, Sirica said he has not yet decided what to do about the transcripts. Watergate prosecutors have prepared them and want to offer them, not as evidence but simply as "aids to the jury" in listening to the tapes as the trial progresses. Defense lawyers have asked that transcripts be banned.

Sirica also said that he intends to ease slightly the gag order he handed down last March 1 and permit statements to the press by trial witnesses once they have completed their testimony and

have been excused by the court.

In another development, Watergate prosecutors backed away from their firmly worded declaration earlier this week that "newly discovered evidence" had turned up another conspirator in the cover-up and that they would seek to prove this at the trial.

According to informed sources, the prosecutors told defense lawyers at a secret hearing before Sirica Monday that they were inclined to name White House aide Richard A. Moore as a co-conspirator, but that they did not yet have sufficient evidence in hand.

On Tuesday, however, in a memo submitted to Sirica, the prosecutors said that there was "one addition" to the list of individuals "whom the government will seek to prove were co-conspirators." They said the step was "necessitated by newly discovered evidence and disclosed to the court and defendants yesterday (Monday)."

Once the memo was made public, word quickly leaked out that the suspect was Moore, who testified at the Senate Watergate committee's hearings in 1973 and disagreed with former White House counsel John W. Dean III on a number of points.

Yesterday, however, Miller, who is Moore's lawyer as well as Mr. Nixon's, issued a statement declaring that Moore "has not been named an unindicted co-conspirator either by the grand jury or the special prosecutor."

"On the basis of all the information available to me, I do not believe he will be named, or should be," Miller added. "He has testified voluntarily and fully in the past and stands ready to do so again if requested."

Asked whether they were sticking by their memo, a spokesman for Jaworski's office said he did not want to go beyond it. "However," he said, "no filing at this time is meant to predict actions at the time of trial or foreclose any decisions as the trial progresses."

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