

Nixon Likely to Testify

Lawyer Says His Condition Is Improving

By George Lardner Jr.
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Former President Nixon's lawyer said yesterday that Mr. Nixon's health is improving rapidly and that he should be well enough to testify at the Watergate cover-up trial after all.

"The prognosis is very good at the moment," Mr. Nixon's chief lawyer, Herbert J. Miller Jr., reported yesterday afternoon at a hearing before U.S. District Court Judge John J. Sirica. The hearing capped a busy day at the cover-up trial that brought the first public playing of a Watergate tape recording.

Sirica made plain, in turn, that he wants the ex-President on the witness stand before the trial is completed.

"Nobody, including this court, wants to do anything to injure Mr. Nixon's recovery," Sirica said at the hearing after yesterday's regular trial session. "But it would be helpful to the defendants and the government if he progresses to the point where it would not injure his health for him to make an appearance here in open court."

Miller asked for three weeks before making what he said he expects will be a final medical report to the court clearing the way for Mr. Nixon's return to Washington as a private citizen under subpoena.

If the former President's doctors signal their approval, "of course, he'll come," Miller told newsmen after the hearing.

COVER-UP, From A1

He indicated that he would raise the issue of executive privilege—if Mr. Nixon takes the stand—only in response to specific inquiries that he and Mr.

Nixon might deem out of bounds.

Sirica told Miller to come back in three weeks and said that he would appoint a panel of medical experts to examine Mr. Nixon in San Clemente, Calif., unless he is well enough by then.

The judge said he wanted to avoid written interrogatories or an oral deposition of the former President if at all possible. Watergate special prosecutors took the same position and added

that they could hold off their questioning of Mr. Nixon until lawyers for defendant John D. Ehrlichman need him on the witness stand in presenting their defense. As a result, Mr. Nixon will not be needed for a month or more.

"The law is that Mr. Nixon is required to be here if he has relevant evidence to give," chief trial prosecutor James F. Neal told the court. "The government wants to make it perfectly clear, if I may use that term, that we do oppose his oral deposition unless he is unable to be here physically."

The President's lawyers had moved to quash the subpoenas served on him, one from Watergate prosecutors and one from former White House aide Ehrlichman, but Miller said yesterday that he would not press the issue unless Mr. Nixon's testimony was needed right away.

Miller said Mr. Nixon, who is recuperating at his San Clemente estate from a recurrence of phlebitis that caused a lung clot, is still too ill to travel without risk, but the lawyer called the reports that Mr. Nixon might be incapacitated for three to six months "absolutely untrue."

"I would expect that within the next three weeks to a month if the current prognosis holds, we would no longer wish to raise the health issue," Miller told the court.

Sirica asked prosecutors and defense lawyers in the meantime to nominate some cardiovascular specialists and experts in internal medicine for his consideration—so he can be ready to move in case Mr. Nixon should seem to be taking a turn for the worse.

"Let's hope his health has improved sufficiently," Sirica asked.

Ehrlichman's lawyer, William S. Frates, who earlier this week accused Mr. Nixon of manipulating and lying to Ehrlichman about the Watergate cover-up "to save his own skin," said he hoped

so, too.

"We don't want to hurt this man," Frates said yesterday.

Speaking for Mr. Nixon, Miller asked the judge to supply him with the government's transcripts of all the White House tape recordings it plans to introduce during the long trial, "so I can sit down with my client and take steps to insure that his testimony is accurate."

Prosecutor Neal pointed out that only the five defendants at the trial—former White House chief of staff H.R. Haldeman, former White House domestic adviser Ehrlichman, former Attorney General John N. Mitchell, former assistant attorney general Robert C. Mardian, and Nixon re-election campaign lawyer Kenneth Wells Parkinson—are entitled to the transcripts in advance unless Sirica makes an exception. The former President is an undicted co-conspirator in the case, along with at least 18 other individuals.

The judge told Miller to file a formal motion for the transcripts. "Then I'll consider it," he said.

The tapes played incourt yesterday were largely twice-told tales, one involving Mr. Nixon and the other conversation between former White House special counsel Charles W. Colson and convicted Watergate burglar E. Howard Hunt Jr., but they still made for compelling theater.

The judge, jurors, defendants, lawyers, newsmen, spectators and government witness John W. Dean III all donned individual \$60 headsets for the premiere.

The first playback was of a conversation in the Oval Office on Sept. 15, 1972, between Mr. Nixon, Haldeman and Dean, then-White House counsel and now the prosecution's star witness at the trial. A meeting took place just hours after the original Watergate indictments of seven men had been returned for the bugging and break-in at Democratic National Committee headquarters here.

Mr. Nixon was in high spirits, congratulating Dean for his skill with which he had put his "fingers in the dikes," plotting strategy to stifle congressional hearings, promising to "get back" at those who had given the White House trouble about the Watergate scandal, including The Washington Post.

But for the moment, Mr. Nixon said of the Watergate scandal, "Basically the damned thing is just one of

those unfortunate things and we're trying to cut our losses."

Haldeman reassured him. "It has been kept away from the White House almost completely and from the President totally," Mr. Nixon's chief of staff said.

Since then, Haldeman and the other four defendants have been accused of conspiring to block the original

Watergate investigation. All but Mardian have been indicted for obstructing justice as well. Haldeman, Ehrlichman and Mitchell are also standing trial on charges of lying to various investigators of the scandal. And Mr. Nixon was forced to resign.

It appears to have been the farthest thing from the President's mind that September day in 1972 as he looked forward confidently to his re-election. The courtroom audience laughed as room audience laughed as Mr. Nixon took time out for a phone call from Clark MacGregor, then his campaign director, and told him in a droll voice:

"Don't bug anybody without asking me. okay?"

Turning to "those who tried to do us in," the President said in slow emphatic tones that he wanted the most comprehensive notes kept on such enemies so that the power of the government could be turned against them when the time was right.

"That's an exciting prospect," Dean replied in a deadpan voice.

The White House-edited transcript of the same conversation, released last spring, had Dean saying "what an exciting prospect." Listening to the playback yesterday as he sat on the witness stand, Dean, serving a 1 1/2 to 4-year prison term, covered his face at that point, apparently hiding a grin.

Sirica approved the use of transcripts prepared by Watergate prosecutors as a listening aid for the jurors after overruling a final round of defense objections yesterday morning. Some portions were listed as "unintelligible" and the tapes heard yesterday seemed to bear out that notation where it occurred.

There were, however, several obvious mistakes in the White House transcripts of the two recordings that were made public. At one point in the Nixon tape, for example, the word "not" was left out of a remark by Dean.

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Maureen Dean leaves courthouse where husband John W. Dean III is government witness.

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