

## Uncertainty Over the Watergate Trial Increased by Change in Nixon's Health

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Special to The New York Times

WASHINGTON, Oct. 31—The latest turn in the health of former President Richard M. Nixon has added new elements of uncertainty to the Watergate cover-up trial.

It has raised the possibility that Mr. Nixon may not be well enough for months, or perhaps ever, to testify as a witness.

That possibility in turn has raised the question of how the presiding judge, John J. Sirica, will proceed—whether he will continue with the trial, whether he will delay it at some point to determine the status of Mr. Nixon's health, whether he may eventually give the jury instructions about Mr. Nixon's absence or whether he may dismiss any of the charges.

Lawyers familiar with the case suggested a number of possible courses today, including moving the trial out to California at some point to take Mr. Nixon's testimony there.

They noted that no decision need be made at this point.

Two of the defendants, John D. Ehrlichman and H. R. Haldeman, have contended in written motions that they need Mr. Nixon's testimony to establish their defenses.

### Blame Put on Nixon

Mr. Ehrlichman has a subpoena outstanding against Mr. Nixon; his opening statement to the jury, presented by William S. Frates, one of his attorneys, placed the blame for the cover-up—and for Mr. Ehrlichman's own disputed actions—squarely on Mr. Nixon.

The special Watergate prosecution is not pressing its own subpoena against Mr. Nixon, but it has taken the position that Judge Sirica should not grant Mr. Nixon's motions to quash either of the subpoenas against him.

The problems that Mr. Nixon's health cause for the trial stem from several factors. The first is the Constitution—specifically, the Sixth Amendment guarantee that a defendant has the right "to have compulsory process" to obtain witnesses.

Another factor is the jury. During jury selection, according to the prosecution, a number of persons said they consid-

ered it unfair to prosecute the five defendants when Mr. Nixon went free because of his pardon.

It is impossible to assess the views of the jury at this point, but some observers consider it likely that at least a few of the jurors may think it unfair to prosecute the defendants if Mr. Nixon does not even show up at the trial.

### Limited Application Seen

Some lawyers suggested today that the constitutional guarantee for obtaining witnesses favorable to defendants applies only to the extent that it is possible to produce witnesses. This means that the defendant cannot get his case dismissed if the court fails to produce for him a witness it cannot produce, no matter how important that witness might have been.

On the other hand, the lawyers suggested that Judge Sirica was obligated to do whatever he could to get the testimony.

Lawyers for Mr. Haldeman and Mr. Ehrlichman have previously suggested to Judge Sirica that depositions be taken of Mr. Nixon in California, perhaps recorded on videotape that could be played at trial.

Today, attorneys knowledgeable about the trial suggested that the court had several options, including a brief delay to allow the lawyers to go out and take the depositions.

A second option, one lawyer said, is for the trial to be moved out to California at some point. This would allow cross-examination of Mr. Nixon in the presence of the jurors.

The attorney said there was a precedent for such a move.

Another lawyer who has practiced in Washington for several decades said he had never heard of such a procedure. He added, though, that it was possible for lawyers on opposing sides of a case to agree to procedures that would otherwise not be permissible.

A third option would be to delay the trial for a while to see if Mr. Nixon's health improved.

Judge Sirica does not have to do anything for some time, for the prosecution's case is still far from finished and the beginning of Mr. Ehrlichman's defense is thus some time off.

It is considered likely, moreover, that before Judge Sirica decides on such possibilities as delaying the trial to allow defense lawyers to take depositions, he will first seek to determine the state of Mr. Nixon's health.

Before the latest developments in Mr. Nixon's condition, Judge Sirica indicated he might send a panel of court-appointed doctors to examine Mr. Nixon. The lawyers have already given him names of doctors who might be used.

Another problem could arise if Mr. Nixon is still seriously ill and unable to submit to a deposition at his home when Mr. ill and unable to submit to a deposition at his home when Mr. Ehrlichman's defense begins.

In that case, one lawyer at the courthouse today said, Mr. Ehrlichman's attorney would probably ask Judge Sirica for a dismissal and, if that failed, ask him to tell the jury that Mr. Ehrlichman had not been able, because of Mr. Nixon's illness, to present some evidence.

That would raise another problem, though—the potential effect that news of Mr. Nixon's illness might have on the jury. The jurors are sequestered, and so far, according to sources familiar with the matter, news accounts about Mr. Nixon's condition have been clipped from the jurors' newspapers.

### Hearing on Nixon Testimony

LOS ANGELES, Oct. 31 (UPI)—A Federal judge ruled yesterday the Mr. Nixon's illness would not halt a hearing over whether the former President should be compelled to give testimony for use in a civil suit.

United States District Court Judge William P. Gray ordered arguments in the case scheduled for Nov. 11.

Mr. Nixon's health "won't make any difference," the judge's clerk said. "He doesn't have to be in court."

At issue is whether Mr. Nixon must comply with a subpoena to give a deposition and produce documents and tape recordings concerning his role in planning for a campaign rally by the Rev. Billy Graham, the evangelist, in Charlotte, N. C., in 1971.