

3 DOCTORS REPORT NIXON IS UNABLE TO TESTIFY NOW

Panel Says He Can't Be at
Trial Till Feb. 16 or Give
Deposition Till Jan. 6

AFFIDAVIT IS CONFIRMED

Several Alternatives Open
to Sirica — Haldeman
on Witness Stand

By LESLEY OELSNER
Special to The New York Times

WASHINGTON, Nov. 29—A court-appointed panel of three doctors reported to Judge John J. Sirica today that they did not believe that former President Richard M. Nixon would be physically able to testify at the Watergate cover-up trial before Feb. 16 and that he would not be able to testify by deposition at his home until Jan. 6.

The doctors also raised the possibility that Mr. Nixon might not be able to testify

Text of medical report
appears on Page 17.

(COVER)

even on these dates. Their estimates, they said, are "subject to modifications by unknown future medical developments," and are conditioned on Mr. Nixon's continued recovery at the present "anticipated rate."

Impact Uncertain

The impact of the report on the trial, now in its ninth week, will probably not be known for several weeks. Judge Sirica had expressed the hope that the trial would be over by Christmas.

Mr. Nixon is under subpoena by John D. Ehrlichman, once his domestic affairs adviser and now one of the five defendants on trial. Judge Sirica appointed the three doctors to make their report at the request of Mr. Ehrlichman, after Mr. Nixon's lawyers asked that the subpoena be quashed on medical grounds. Mr. Nixon has also been subpoenaed by the prosecution, which has rested its case.

The report by the doctors, who examined Mr. Nixon in California on Monday, substan-

tially confirmed the affidavit about his health that his lawyers submitted to Judge Sirica on Nov. 7.

Several Alternatives

At the trial today, as former Attorney General John N. Mitchell concluded his testimony in his own behalf and another defendant, H. R. Haldeman, the former White House chief of staff, began what may be several days on the witness stand, attorneys in the case suggested several possible alternatives.

One would be for Judge Sirica to postpone sending the case to the jury for a verdict until after a deposition had been taken. Another would be for Mr. Ehrlichman's case to be severed from those of his co-defendants. Also, Judge Sirica may decide that the case must go forward.

The Constitution guarantees a defendant the right "to have

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compulsory process for obtaining witnesses in his favor"—in other words, to have the trial judge produce, if possible, the witnesses the defendant says he needs.

The guarantee apparently applies, however, only to the extent that it is possible to obtain a witness's testimony.

Judge Sirica said this morning that he would listen to any motions on the subject this afternoon. None of the lawyers made a motion, however.

Silent on Plans

William S. Frates, Mr. Ehrlichman's chief counsel, declined to tell reporters if he might offer any motions later in the trial. He said he still considered Mr. Nixon's testimony "absolutely indispensable" to Mr. Ehrlichman's defense and that he would not contest the doctors' findings.

Mr. Frates has already said that he would be satisfied with a deposition—technically, a formal interview of a witness by lawyers in the case, the results of which can be submitted in court as evidence. He has suggested that a deposition be video-taped.

Also, Mr. Frates has indicated that he will put on a much longer case than those by the lawyers for Mr. Mitchell, Mr. Haldeman, former Assistant Attorney General Robert C. Mardian and Kenneth Wells Parkinson, who was an attorney for the Nixon re-election committee.

The doctors on the panel are Charles A. Hufnagel of the Georgetown University Hospital, Richard S. Ross of Johns Hopkins Medical School and John A. Spittell Jr. of the Mayo Clinic. Dr. Hufnagel, the panel's chairman, submitted a

two-page written report and letter to Judge Sirica, saying the conclusions were unanimous.

'Possible' by Feb. 16

The doctors said that it was "difficult to predict with accuracy" when Mr. Nixon might be able to travel to Washington "without excessive risk." They said, however, "If recovery proceeds at the anticipated rate, and there are no further complications, we would estimate that such a trip should be possible by Feb. 16, 1975." They also estimated that Mr. Nixon might be able to testify in a court in California by Feb. 2.

The doctors said that if a deposition was taken, it should be done in brief sessions—one hour in the morning and one in the afternoon each day, with rest between the sessions.

"A physician should be in attendance to monitor Mr. Nixon's condition," the report also said.

It did not explain the conclusions, but did note that the doctors had examined Mr. Nixon and his records. Mr. Nixon's lawyer, Herbert J. Miller had requested, and Judge Sirica had agreed, that the medical records be kept confidential.

Mr. Mitchell testified briefly under cross-examination by Jacob A. Stein, a lawyer for Mr. Parkinson. Mr. Parkinson was hired by the Nixon campaign committee after the break-in at Democratic headquarters in the Watergate complex on June 17, 1972, to handle legal problems arising from the burglary.

Reported No Connection

Mr. Stein elicited from Mr. Mitchell the testimony that he had told Mr. Parkinson that there was no connection between the committee and the break-in.

Mr. Mitchell's lawyers rested their case when he left the stand. It had been a brief defense, consisting largely of Mr. Mitchell's testimony. A number of lawyers in the case have suggested privately that the long and often tense cross-examination by the chief prosecutor, James P. Neal, on Wednesday had probably hurt Mr. Mitchell's prospects.

Mr. Haldeman followed him to the stand. Like Mr. Mitchell, he appeared confident. He spoke in a more eager manner, leaning forward and speaking close to the microphone, in contrast to Mr. Mitchell, who had leaned back in his chair and occasionally swiveled the chair from side to side.

Mr. Haldeman's wife was in the courtroom, watching her husband intently and sometimes taking notes on what he said.

Much of Mr. Haldeman's testimony, given in response to questions by his chief counsel, John J. Wilson, was a repetition of his testimony before the Senate Watergate committee in

1973.

There was, however, one major difference—his testimony

about the meeting on June 23, 1972, six days after the break-in, in which he discussed with officials of the Central Intelligence Agency an on-going Federal Bureau of Investigation inquiry into Watergate.

At the Senate hearings, he said that the meeting had been prompted by two things: the F.B.I.'s request to John W. Dear 3d, the President's counsel, for "guidance," and "a concern at the White House that activities which had been in no way related to Watergate or to the 1972 political campaign, and which were in the area of national security, would be compromised in the process of the Watergate investigation and the attendant publicity and political furor."

Last August, in the move that precipitated his resignation from the Presidency, Mr. Nixon released transcripts of three tape-recorded conversations between him and Mr. Haldeman on June 23.

The transcripts and the tapes that were played at the trial show Mr. Nixon and Mr. Haldeman discussing the political problems that might result from the F.B.I.'s investigation. The agency had begun an inquiry into money found on the burglars that might lead to bank checks contributed to the campaign committee.

Quotes Dean on Mitchell

Today Mr. Haldeman testified that Mr. Dean had told him early on the 23d about the checks. He said that Mr. Dean told him that Mr. Mitchell had suggested and Mr. Dean agreed that the F.B.I. be asked not to pursue its investigation to the point of "embarrassing" the donors.

Mr. Wilson has said that the Haldeman defense believes the concern about the checks was to prevent embarrassment to the contributors, of whom one was a friend of Senator Hubert H. Humphrey of Minnesota, a Democrat.

The prosecution contends that the concern was based on a fear that a tracing of the checks would prove the connection between the break-in and the re-election committee.

Mr. Haldeman testified that, as the jury had heard, he told Mr. Nixon on the 23d about the checks and about Mr. Mitchell's and Mr. Dean's feeling that the F.B.I. inquiry could be curtailed.

He went on to testify that, as the jury had also heard, Mr. Nixon had then "raised other problems, regarding the C.I.A." Mr. Nixon did this, according to Mr. Haldeman, after

Picture of Haldeman pasted on reverse side of story by Lawrence K. Altman.

he told the President about another factor Mr. Dean had mentioned earlier, that the F.B.I. thought the C.I.A. might have been involved in the break-in.

Mr. Haldeman said that Mr. Nixon then gave him "general instructions" regarding that "area"—the instructions regarding what Mr. Haldeman was to tell C.I.A. officials about what those officials should tell the F.B.I. about the need to halt the inquiry.

Mr. Haldeman also described the meeting he and Mr. Ehrlichman had later that day with Lieut. Gen. Vernon A. Walters, the deputy director of the C.I.A., and Richard C. Helms, director of Central Intelligence.

General Walters has testified that Mr. Haldeman directed him to tell the acting director of the F.B.I., L. Patrick Gray 3d, that from a Mexican bank account—might jeopardize C.I.A. activities in Mexico. He also said that Mr. Haldeman had told him that the F.B.I. inquiry was leading to "important people."

Mr. Haldeman conceded that he had testified incorrectly before two Congressional committees about this meeting, in that he had said that Mexico had not been discussed.

However, he contradicted other aspects of the account General Walters gave at the trial—he said, for instance, that he had not "ordered" General Walters to speak to Mr. Gray, only "asked" him to. And he made no mention of telling General Walters about the "important people" involved.

Mr. Haldeman contradicted other prosecution witnesses as well. He will return to the stand Monday.

—James H. Hurt