

The Witness Was 'Unavailable'

JUDGE JOHN J. SIRICA'S RULING that former President Nixon need not testify or make a deposition in the Washington Watergate coverup trial because he is "simply unavailable" undoubtedly was a great relief to Mr. Nixon. Not many good legal breaks have come his way since his pardon just three months ago.

To a man who has lately been described as "just very weak" and who finds it tiring even to speak, it cannot have seemed a cheerful prospect to look forward to a visit from lawyers for John Ehrlichman, H.R. Haldeman and John N. Mitchell seeking answers to questions that would shift criminal blame from their clients to him. Judge Sirica has spared Mr. Nixon that on the very good ground that it would be wholly unwarranted to stop the trial until he is physically available to give his witness.

ANYHOW, THE JUDGE ADDED, the specific testimony the defendants want from their former boss is "not indispensable or necessary to prevent a failure of justice."

It must have taken courage for Sirica to allow Nixon to avoid the "compulsory process" which the Constitution says Ehrlichman, Haldeman and Mitchell, as defendants in a criminal case, are entitled to — and no doubt they will press this constitutional point if they should go up on appeal. But the Constitution also guarantees a "speedy" trial, and with this one under way, its jury sequestered, the case coming to its climax, Judge Sirica had no real choice but to keep going.

Those who long to see the former President turning on a spit in a courtroom will be disappointed, but we do not think those truly looking for justice will be. The tapes the jury has been listening to must surely be the best evidence of what Messrs. Ehrlichman, Haldeman and Mitchell would have liked to extract from their ailing superior.