

Sirica Firm on Cover-Up Trial

Pardons Doubtful

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By Carroll Kilpatrick
Washington Post Staff Writer

President Ford has no intention of pardoning any Watergate defendant at least until after his trial has been completed, White House spokesman John W. Hushen said yesterday.

Hushen's comment came a couple of hours before the Senate approved a resolution expressing its opposition to any Watergate pardons before trial and any possible appeal by the defendant.

The double action seemed to end the possibility of any pardon actions in Watergate cases for the time being, although clemency still could be given to those who have been convicted and sentenced.

But such action seemed remote in view of the widespread criticism of Mr. Ford's pardon Sunday of former president Nixon and the statement Tuesday, later changed, that other pardon actions were "under study."

Hushen said that telegrams and mail are still running about 5 to 1 against the President's grant of a pardon to the former president.

But he said that telephone calls to the White House, numbering some 19,000 since the pardon announcement, showed a slight majority in support of the decision.

By a vote of 55 to 24, the Senate approved a resolution sponsored by majority Whip Robert C. Byrd (D-W.Va.) declaring that "hereafter" no pardons should be granted "to any individual accused of any criminal offense arising out of the presidential campaign and election of 1972 prior to the indictment and completion of trial and any appeals of such individual."

A premature pardon "would effectively

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Motions Rejected

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U.S. District Court Judge John J. Sirica refused yesterday to scuttle the Watergate cover-up trial despite defense protests that it had been irrevocably tainted by President Ford's controversial pardon of Richard M. Nixon.

Three of the defendants—former Attorney General John M. Mitchell and former White House aides H. R. (Bob) Haldeman and John D. Ehrlichman—had formally asked the court yesterday afternoon to dismiss the indictment or at least grant a prolonged trial delay because of the hubbub stirred by the pardon.

The judge told reporters after a late afternoon pre-trial conference lasting nearly two hours that he had denied all these motions.

Sirica added, however, that he had granted a one-day postponement in the trial in order to gather together a new pool of prospective jurors.

As a result the trial is now scheduled to start Oct. 1 at 9:30 a.m.

Leading a concerted defense effort to derail the trial, Mitchell had maintained in his motion that equal justice demands dismissal of the cover-up indictment now that Mr. Nixon has been "permitted to go free."

Mitchell's lawyers said it would be "particularly offensive to the American concept of equal justice" in the scandal if "one co-conspirator, Richard Nixon," should get off while "other co-conspirators who were subordinates to Mr. Nixon, and acting in his interest, on his behalf and in concert with him are required to stand trial . . ."

Haldeman and Ehrlichman added their protests later in the day with separate

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Watergate Figures' Pardons Held Unlikely Before Trial

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conceal the whole truth of what happened" in the Watergate case, the resolution said. Senate Minority Leader Hugh Scott (R-Pa.) supported the measure.

While the resolution expresses the sense of the Senate and is a clear indication to the President of congressional sentiment, it has no binding effect on him.

Sen. E. Hughes (D-Iowa), who played a part in the religious conversion of Charles W. Colson, a former Nixon aide now in prison, opposed the resolution.

"I am not willing or ready to vote for any resolution that implies to the chief executive of this land that he does not have the ... right to grant mercy to those he may deem proper to receive that mercy," Hughes said.

Following an early morning meeting of legislative leaders at the White House, Scott said there appeared to be a "unanimous feeling" in Congress that no presidential intervention should be made in pending Watergate cases.

"I don't know of any con-

gressman or senator who wants a blanket pardon at this time," Scott said. "I don't think the American people want any blanket pardons."

Mr. Ford said Wednesday that requests for pardons by Watergate figures would be considered on the same basis as requests from other persons charged or convicted of crimes.

Hushen said the President agrees with Scott that pardons should not be granted before trial.

Commenting on the earlier statements on pardons, Hushen said, "There was never any intention on our part to give the impression that Watergate defendants were about to be pardoned at any time and especially not prior to the trial."

Hushen said he was "almost certain" Mr. Ford did not talk to any members of the Nixon family about the former President's health before the pardon. The President also told him he never discussed pardon with Julie Nixon Eisenhower, Hushen said.

Mr. Ford denied as "absolutely not true" reports that he indicated to Mr. Nixon before his resignation that he

would be pardoned, Hushen said.

"There was no communication regarding a pardon for Mr. Nixon," the spokesman said.

In another action, the President appointed Harvard Law Professor Phillip E. Areeda as counsel to the President and gave Philip W. Buchen, who has the same title and is the President's former law partner, Cabinet rank.

Areeda, 44, will work with Buchen and report to the President through Buchen, Hushen said.

Buchen is one of the President's oldest and most intimate friends. When Mr. Ford became Vice President, he asked Buchen to leave his Grand Rapids, Mich., law firm and help on his staff.

Buchen did secret planning on problems the new President would face when it became apparent that Mr. Ford would almost certainly succeed to the presidency and prepared the necessary papers for granting the pardon to Mr. Nixon when the President told Buchen it was his intention to grant the pardon.

Areeda was asked to join the legal staff a week before Mr. Ford's decision to begin work on a possible pardon. Hushen said Areeda was added to be a "prime assistant to Buchen."

The President also designated William J. Baroody Jr. as assistant to the President, a title held by Alexander M. Haig Jr., Rol L. Ash, William E. Timmons, Henry A. Kissinger and Anne Armstrong.

Sirica Rejects New Moves To Scuttle Cover-up Trial

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petitions complaining primarily about all the pre-trial publicity stirred up by the Nixon pardon.

All three defendants complained that Mr. Nixon's acceptance of the pardon and his companion statement of regret of "mistakes and misjudgments" in the Watergate scandal carried the implication that he had engaged in illegal conduct—and left the impression in the public mind that his subordinates were also guilty.

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Insisting that prosecution now would be unconstitutional in light of the 14th Amendment's "equal protection" clause, Mitchell's lawyers — William G. Hundley and Plato Cacheris—said the only excuse for pardoning Mr. Nixon alone was "the arbitrary circumstance of his former position as President of the United States."

Such inequities, the lawyers

submitted, were long ago barred by a landmark 1886 decision of the Supreme Court which said in part:

"Though the law itself be fair on its face, and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

The Mitchell lawyers complained that President Ford has only compounded the problem by his announcement about the possibility of amnesty for others.

"The defendant Mitchell has been subjected to the same degree and intensity of publicity that prompted President Ford's pardoning of Richard Nixon," they said.

"The President of the United States, through his press secretary," they protested, "has now further inflamed the atmosphere by publicly agonizing over whether or not further pardons ought to be issued for all Watergate persons."

Citing the past week's publicity over the pardon, especially in The Washington Post, Ehrlichman charged that the press "has engaged in a conscious effort to shake public opinion so as to assure" that a biased jury will be chosen.

Ehrlichman also singled out a story in Thursday's editions of The Washington Post as "false and malicious." Quoting informed sources, the Post reported that both Haldeman and Ehrlichman had urgently sought a pardon during the closing days of Mr. Nixon's administration and that Haldeman's request was described by one source as threatening and by another as tantamount to blackmail.

Haldeman's lawyers pointed to the same article, among others, in contending that he could not possibly get a fair trial now.

Reporters were barred from the pre-trial conference before Judge Sirica although he said later that a transcript will be made public.

Most of the hearing was apparently devoted to an earlier complaint by Haldeman about Sirica's arrangements for picking a trial jury.