

WATERGATE

The Nixon Dilemma

Watergate Trial Defendant John Ehrlichman looked more chipper than he had in weeks. Asked why by a reporter, he replied: "Well, the sun is shining, it's a beautiful day." Even Ehrlichman joined in the laughter as newsmen suggested a more apt explanation: Federal Judge John J. Sirica had just revealed that Richard Nixon would not be able to testify before the trial is expected to end. Sirica's announcement was based on the findings of three court-appointed physicians who had examined Nixon, as well as the records of his ailments, in California.

It is a mark of the desperate legal gamesmanship of the defendants in the trial that they have sometimes been pleased when something they profess to want has been denied them. Ehrlichman has subpoenaed Nixon, ostensibly to get him to confirm that Ehrlichman had only carried out presidential orders during the Watergate cover-up and had been led to believe that he was acting in the interest of national security. In reality, Ehrlichman's prospects are better if a witness he contends is vital to his defense cannot appear.

The three doctors filed a report that concluded that 1) Nixon could not travel to Washington until at least Feb. 16, 2) he could not testify in a courtroom setting in California until Feb. 2, 3) he could not risk even the strain of giving a deposition in his home until Jan. 6. That posed a dilemma for Sirica, who is trying to wind up the trial by Christ-

mas. Sirica could delay the trial's conclusion until after a deposition was taken. If this is done, the doctors recommended, questioning of the former President should be restricted to two one-hour sessions a day under close medical supervision. The defense attorneys, a prosecution team and Sirica would probably fly to California. A transcript of the proceedings would then be presented to the jury.

Apart from the Nixon question, the five defendants remained in deep trouble last week as their lawyers began presenting the defense. In the roughest cross-examination of the trial to date, former Attorney General John Mitchell was pushed beyond the limits of credibility by Chief Prosecutor James Neal. Listless and looking aggrieved, Mitchell repeatedly proclaimed his inability to recall events or clung to improbable semantic distinctions.

Under Neal's attack, Mitchell insisted that seizing leaders of groups planning demonstrations against the 1972 Republican National Convention and taking them to Mexico—part of a plan presented to him by convicted Burglar G. Gordon Liddy—would not have constituted the crime of kidnaping. Mitchell called it "segregating" the disruptors. Would they have agreed to such segregation? asked the incredulous Neal. "I don't presume so," admitted Mitchell. Similarly, Mitchell argued that he had not lied when he told a grand jury that he had "no recollection" that Liddy had "confessed" his part in the burglary a few days after it occurred. Conceding that he had known Liddy had "admitted complicity" in the crime, Mitchell insisted that this did not constitute a "confession . . . in the legal sense . . ."

Some Obligation. Whenever Mitchell contended that he could not recall some cover-up act, Neal reread the testimony of other witnesses "to refresh Mr. Mitchell's recollection"—and to make the point that Mitchell was contradicting the testimony of at least six prosecution witnesses. Mitchell became especially entangled in trying to explain why he had advised that a final payment of \$75,000 be made to Burglar E. Howard Hunt while maintaining that he did not have "the slightest idea" of the payment's purpose and would never have made such a payment himself.

Mitchell's weak attempts to stone-wall Neal's questioning so concerned some defense attorneys that one of them, Jacob Stein, protested to Sirica that Mitchell's "credibility" was adversely "affecting" the other defendants. Sirica had earlier shown his dissatisfaction with Mitchell's answers. He dismissed the jury and posed questions of his own about why anyone had paid the original defendants "for support of families or anything else" unless "some wrongdoing" or "some obligation" was involved. "I can't enlighten you, your honor," Mitchell replied. "I didn't have anything to do with it."

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