

5 Dec 74 (1)

Nixon (deposition) - Sirica denies the motion of Ehrlichman, Haldeman and Mitchell to delay the trial until they can take his deposition "commencing on Jan. 6, 1975." In the same ruling Sirica grants Nixon's motion to quash the subpoena (4 Sep 74) for his appearance and testimony. See text of ruling for his reasons.

From ruling: "Mr. Nixon himself has been named by the grand jury as an unindicted co-conspirator in this case. Thus, he has been accused, in effect, of being an accomplice of the defendants. Certainly (if he were called) his testimony would be subject to the instruction to the jury that it should be received with caution and scrutinized with care."

Ruling points out that "It is possible that complications in Mr. Nixon's recovery could occur, thus further postponing the opportunity for taking his deposition. Also, the witness would have to be allowed some time to review, with his attorney, his voluminous records so as to prepare to testify. And the very restricted schedule set down by the medical panel [for] taking the deposition would make the process a very lengthy one indeed."

NYT: Mr. Nixon's attorney, Herbert J. Miller, filed a response with Judge Sirica today contesting Mr. Ehrlichman's motion to take Mr. Nixon's deposition - ... saying that Mr. Nixon would not in fact have been ready to take a deposition by Jan. 6. Mr. Miller agreed that, as the court-appointed panel of doctors had said last week after examining Mr. Nixon ..., 'Mr. Nixon may be able healthwise to give a deposition on Jan. 6.' However, Mr. Miller said, Mr. Nixon needed a 'substantial' amount of time to 'prepare for the interrogation.'

Story says that while Nixon's pardon protects him from prosecution for ^{any} crimes committed while in office, it does not protect him from prosecution for subsequent crimes, and that Miller seemed to be suggesting that Nixon "would have to be careful to testify in absolute accuracy to avoid a possible perjury charge."

"The Miller response also contended that Mr. Nixon's attorneys had been able to do little preparation so far because the 'shipment of Mr. Nixon's records to California' has been 'embargoed.'"

NYT 6 Dec 74, Lesley Oelsner; text of Sirica ruling

(2)

5 Dec 74 (2)

Tapes (public broadcast) - U.S. District Court Judge Gerhard A. Gesell rules that WH tapes introduced as evidence in the cover-up trial are public property and can be reproduced for broadcasting. Suit to obtain access to the tapes had been filed by NBC, ABC, CBS, Radio-Television News Directors Association, and WarnerCommunications, Inc. Lawyers for Nixon had entered the only formal objection; Gesell points out that the five defendants in the case, the prosecutor and Judge Sirica have not objected to release of the tapes.

In his opinion, Gesell says, "[The] privilege of the public to inspect and obtain copies of all court records . . . is of long standing in this jurisdiction and reaches far back into our common law and traditions. The law must be applied and the fact the evidence is in aural form is of no special consequence. The tape exhibits are in evidence and have therefore come into the public domain and the public should have the opportunity to hear them."

In (accompanying?) memorandum Gesell says, "Former President Nixon . . . has no right to prevent normal access to these public documents which have already been released in full text. His words cannot be retrieved; they are public property and his opposition is accordingly rejected."

WXP 6 Dec 74, Timothy S. Robinson

SFC 6 Dec 74 [AP]