

Nixon's Illness At Issue

Sirica Weighs Independent Medical Exam

By George Lardner Jr.
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U.S. District Court Judge John J. Sirica indicated yesterday that he may send three doctors to California in an effort to determine whether former President Nixon can safely be ordered to testify at the Watergate cover-up trial.

Sirica said he has not made any final decision on claims that Mr. Nixon's testimony is indispensable. "This is a big 'iffy' question," he said.

Sirica hinted strongly, however, that he thinks an independent medical examination ought to be conducted to assess the former President's contentions that he is too ill to be summoned as a witness, at least for "the immediate future."

Watergate prosecutors suggested later in the day that the worries reported by Mr. Nixon's lawyers and doctors about the phlebitis condition in his left leg had been somewhat exaggerated.

The prosecutors said, for example, that Mr. Nixon could wear an elastic stocking, take his oral medication, and keep his leg up on the way to Washington. Trained nurses on call outside the courtroom, a place for Mr. Nixon to lie down, and frequent recesses during his testimony, they said, could also be provided to keep him comfortable.

Urging "an impartial, up-to-date" medical examination in any event, the prosecutors said Sirica could at least be "hesitant" to accept the former President's claims at face value.

"... Mr. Nixon is not a neutral or detached witness," they said in an eight-page memo filed with the court. "He has been formally accused of participating in the conspiracy for which the defendants are standing trial, and it would be only natural for him to seek to

avoid an obligation to testify."

The judge expressed his thoughts at the start of yesterday's session in the cover-up trial when he asked Watergate prosecutors and defense lawyers alike to start thinking

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about the expenses that might be involved.

"I haven't made up my mind," Sirica said. "But if it should develop that I feel it is necessary for former President Nixon to appear personally and testify as a witness in this case in connection with Mr. [John D.] Ehrlichman's subpoena, who's going to pay the expenses if I select three doctors to send out there and examine Mr. Nixon and go over his medical records?" No one immediately volunteered to pay.

Mr. Nixon has been subpoenaed for the trial by Watergate prosecutors, who may need his testimony on evidentiary issues, and by Ehrlichman, whose lawyers Tuesday accused Mr. Nixon of lying to the former White House aide about the cover-up "to save his own skin."

The lawyers for H. R. Haldeman have also said they plan to summon Mr. Nixon as a defense witness on Haldeman's behalf.

Sirica plans to hold a hearing late today on Mr. Nixon's request that the trial subpoenas already served on him be quashed.

In reply, Ehrlichman's attorneys called the former President's testimony "absolutely indispensable" and asked Sirica to order Mr. Nixon's deposition be taken in California just in case he should be too ill to appear in person when Ehrlichman begins presenting his defense, perhaps several months from now.

Meanwhile, the trial moved ahead with former White House counsel John W. Dean III taking the stand as the government's first witness.

Dean, who pleaded guilty to conspiring to obstruct justice in the Watergate scandal last fall, was sworn in at 11:22 a.m. for what promises to be a week on the witness stand. He wore a gray suit with a dark tie and seemed to have lost weight. He spoke nervously at first, his voice quivering at times, but soon settled down.

Chief trial prosecutor James F. Neal began by asking him his "present occupation."

"I am presently serving a prison term at Ft. Holabird,

Md." Dean replied, "for my involvement in the Watergate cover-up." Sirica sentenced him this summer to one to four years.

The questioning went swiftly as Dean picked out in the courtroom, one by one, the old associates he was testifying against: former Attorney General John N. Mitchell, 61; former White House chief of staff Haldeman, 47; former White House domestic adviser Ehrlichman, 49; former Assistant Attorney General Robert C. Mardian, 50, and Kenneth Wells Parkinson, 47, a lawyer for the Nixon re-election committee.

All have been indicted for conspiring to block the original investigation of the Watergate break-in and bugging of Democratic national headquarters here on June 17, 1972, and all but Mardian have been accused of actually obstructing justice as a result. Haldeman, Ehrlichman and Mitchell have also been charged in various counts with lying either to the FBI, the Watergate grand jury or the Senate Watergate committee.

Dean, a protege of Mitchell who first worked in the Justice Department before moving to the White House in 1970 as counsel to the President, began at the beginning, with testimony about his old mentor, Mitchell.

The 32-year-old witness told of the plans for political espionage that Watergate burglar G. Gordon Liddy, then a lawyer for the Nixon campaign, presented to Mitchell in January and then again in February of 1972, first in an elaborate \$1 million scheme and then in a scaled-down \$500,000 version.

"Was he (Liddy) fired after the first meeting?" Neal demanded.

Dean: "No sir."

"Was he fired after the second meeting?"

Dean: "No sir."

According to Watergate prosecutors, Mitchell finally approved at a meeting in Key Biscayne, Fla., on March 30, 1972, a \$250,000 plan, which called for the bugging of Democratic national headquarters here along with other spy work. But Dean knew nothing about that, indicating that he thought it had all been dropped until June 18 when he landed in San Francisco after a trip to the Far East and was hurriedly summoned from there to get back to Washington immediately. Five burglars had been caught red-handed at the Democratic National Committee offices and one of them, James W. McCord, was the security chief for the Committee for the Re-Election of the President.

Back in his office the next morning, Dean said he immediately began piecing together what happened. He said Nixon campaign deputy director Jeb Stuart Magruder called him and warned of "serious problems" ahead.

"This whole thing is Gordon



Associated Press

Watergate defendant Kenneth W. Parkinson arrives at U.S. District Court. Frank Strickler, a defense attorney for H. R. Haldeman, was erroneously identified as Parkinson in yesterday's Washington Post.

"Liddy's fault," Dean quoted Magruder as saying. "That damn Liddy has just screwed everything up. John, I think you ought to talk to Liddy."

Dean said Ehrlichman called next, asking him to talk to then White House special counsel Charles W. Colson about E. Howard Hunt Jr., who was also subsequently convicted of the Watergate burglary but who, like Liddy, had yet to be caught. Ehrlichman also seconded Magruder's suggestion that Dean talk to Liddy, the purors were told.

"I reported to Mr. Ehrlichman quite often," Dean emphasized, "and he gave me assignments quite often. He was my superior."

In their opening statement Tuesday, Ehrlichman's attorneys had contended that Dean was really "the President's lawyer" and that Ehrlichman had little to do with him, especially about Watergate.

Dean had another story to tell. June 19, 1972, was a busy day at the White House. He found Liddy and took a walk down 17th Street with him. According to Dean, Liddy was especially worried about the five men who had been caught and blamed it all on Magruder who "pushed and pushed and pushed" because the original bugging of Democratic headquarters, on May 27, 1972, hadn't been productive enough.

"He (Liddy) had gone back in to correct that problem," Dean related, adding that Liddy swore himself to secrecy and even offered to stand still if someone wanted to shoot him.

Drily, Dean said he told Liddy he didn't think that would be necessary and then went back to the White House where he met Gordon Strachan, one of Haldeman's top deputies.

Strachan, Dean said, told him that Haldeman had ordered him that weekend after the arrests to go over files for "anything embarrassing." It was Monday now, and Dean said Strachan told him "my files are clean."

Among the documents that Strachan reported destroying, Dean said, were material that Strachan thought was the result of the first wiretap at the Democratic National Committee headquarters and a note from Haldeman telling Magruder to start spying on Sen. George McGovern (D-S.D.) instead of Sen. Edmund S. Muskie (D-Maine) whose candidacy for the Democratic presidential nomination was flagging.

It was still June 19, just around lunchtime. Dean went to Ehrlichman's office in the West Wing of the White House.

"I told Mr. Ehrlichman I thought he ought to know everything I knew," Dean related. He said he told him of the January and February meetings in then-Attorney General Mitchell's office and how he had reported them to Haldeman and bowed out of any further discussions with Haldeman's approval. Dean said he also informed Ehrlichman of the conversation he had just had with Liddy.

"He told me to find out what the Department of Justice was doing and to talk to (Attorney General Richard) Kleindienst and see what I could learn," Dean testified of the meeting with Ehrlichman.

Later that day, Dean said he met with Ehrlichman again, this time with Colson present. He said Ehrlichman wanted to know where Howard Hunt was, but neither Dean nor Colson had any idea.

"Well, I think someone ought to tell Hunt to get out of the country," Dean quoted Ehrlichman as saying. The young White House counsel said he promptly called Liddy from Ehrlichman's office and told him to pass the word and

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then rejoined the discussion with second thoughts.

Dean said he told Ehrlichman he didn't think anyone in the White House should be telling Hunt such things, and Colson strongly agreed. Ehrlichman reportedly demurred at first saying Hunt was "not a fleeing felon," but finally Dean said he relented. Dean said he called Liddy again, and found that the order had already been given, and told Liddy to "do the best you can" to countermand it.

That evening, jurors were told, Dean went to a meeting at Mitchell's apartment in the Watergate complex. Mitchell, Magruder, Mardian and another campaign deputy, Frederick C. LaRue, were already there, discussing "the public relations aspect" of the problem.

"Mr. Mitchell asked me what was happening at the White House," Dean testified. "I told him Mr. Ehrlichman had taken charge . . . determining what had happened and how to deal with it."

Q. What did Mr. Mitchell say?

A. He said "Well, isn't that wonderful?"

Prosecutor Neal tried to find out whether the former Attorney General was being as sarcastic as it sounded, but Mitchell's lawyers rushed in with objections. Dean finally testified: "He just said it in a rather off-the-cuff, expressionless manner."

Sitting at his defense table, Mitchell, who has never been known to be especially fond of Ehrlichman, couldn't keep from laughing.

The next morning, June 20, Dean said Attorney General Kleindienst, who had taken over at the Justice Department when Mitchell left to head the Nixon campaign, arrived at the White House for a meeting with Mitchell, Haldeman, Ehrlichman and Dean.

Kleindienst, the jurors were told, gave the group a status report on the investigation of the burglary, which the FBI was about to take over from Washington police, but got no information in return.

Q. Did you tell him of Liddy's involvement?

A. No, sir.

Q. Did Mr. Ehrlichman?

A. No, sir.

Q. Did Mr. Mitchell tell of his meetings (with Liddy) on the subject (of bugging and other political espionage)?

A. No, sir. I recall no discussion of that.

Q. Did you recall anyone imparting any information to Mr. Kleindienst?

A. No, sir.

The next order of business, Dean said, was sorting through the contents of Howard Hunt's safe at the Executive Office Building where he had worked as a member of the White House "plumbers" unit. Colson, who had been Hunt's sponsor, had warned the day before that its contents could prove "quite embarrassing," the jurors were told.

Dean said he and an aide, Fred Fielding, found, among other things, a cash box with a handgun in it, a large attache case containing electronic equipment, and a "bogus" State Department cable that had been doctored to implicate the Kennedy administration in the assassination of South Vietnamese leader Ngo Dinh Diem, and a psychological profile on Pentagon Papers defendant Daniel Ellsberg.

On Wednesday, June 21, Dean said, he told Ehrlichman what he had found. Dean said the White House adviser replied, "You can shred some of those documents and you can deep six the attache case."

Dean said he asked Ehrlichman what he meant by "deep six" and was told, "Just toss that briefcase in the (Potomac) river." The former White House counsel said he suggested that Ehrlichman do it himself. Eventually, Dean said, the more innocuous materials, including the briefcase, were turned over to FBI agents while other materials such as the bogus cable were handed to acting FBI Director L. Patrick Gray III with the warning that they were "political dynamite." Months

later, Gray destroyed what he had been given.

Under questioning by Neal, Dean acknowledged that two Hermes notebooks and a pop-up address book from Hunt's safe remained in Dean's office until after Hunt's lawyers demanded them in December of 1972 for the original Watergate trial.

Dean said he promised government prosecutors to double-check his office, but did not do so until around Jan. 20, 1973—after Hunt had already pleaded guilty.

"I took the notebooks out and destroyed them in a shredder in my office," Dean said. "I put the pop-up address book in a burn-bag."

Dean, also acknowledged that he kept this a secret until last November, after he had pleaded guilty, when he told Watergate prosecutors.

The testimony sped along until Dean began testifying about conversations with the FBI's Gray on June 22 and 23, 1972, which led in turn to White House efforts to get the CIA to block the investigation. Defense lawyers objected repeatedly that such testimony was flagrant hearsay, since Gray has not been named an unindicted co-conspirator, but Judge Sirica overruled them.

Dean talked with Gray at Ehrlichman's behest and discovered that the FBI was hot on the trail of five checks for the Nixon campaign that had been cashed by Watergate burglar Bernard Barker in Miami.

Gray had also told Dean that the FBI was inclined to think that the Watergate bugging had been "a CIA operation."

Dean said he reported all this, and more, to Mitchell on the evening of June 22 and also to Haldeman.

The next day, June 23, at Ehrlichman's instructions, Dean said he called Gray to tell him to drop a planned meeting with CIA Director Richard Helms and to meet with CIA Deputy Director Vernon Walters instead.

Later, Dean said, Gray called him back and said: "John, I'm a little confused. Helms is telling me there is

no CIA involvement [in the Watergate break-in] and Walters is telling me there is CIA involvement."

In any event, Dean said, "Gray told me that as a result of this meeting with Gen. Walters, he would hold up the [FBI's] investigation" of the checks.

Earlier in the day, Parkinson's lawyer, Jacob Stein, told the jury in an opening statement that Parkinson was simply a bit actor in the case who had been hired to defend the Nixon campaign against a Democratic lawsuit stemming from the break-in.

Parkinson, Stein said, was repeatedly assured by Mitchell and others that the campaign committee had nothing to do with the break-in. In any event, he said, Parkinson was bound as a lawyer "to keep secret what was told to him."

Watergate prosecutors have charged that Parkinson was a middleman for some hush money payments that were made to original Watergate defendants. Stein depicted him as an innocent bystander who didn't know the import of the messages he transmitted.

Stein acknowledged that Magruder told Parkinson in July of 1972 that "John Mitchell is involved in this burglary," but Mitchell denied it. Stein said Parkinson believed Mitchell and "destroyed the notes" of what Magruder had said, out of fear that they might somehow wind up in the newspapers.

The talk of a court-ordered medical examination for Mr. Nixon came with the jurors out of the room. Judge Sirica said he was concerned about the costs in light of the high price of expert witnesses these days.

Sirica explained that he still had the bill for the experts who studied the 18½-minute gap on one of Mr. Nixon's Watergate tapes very much on his mind. It came to approximately \$100,000 — with the court system footing the expense. The judge said he didn't know whether it had all been paid yet.