

Court Set to Hear Nixon Discussion Of Sirica 'Problem'

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WASHINGTON, Oct. 20—

Sometime tomorrow morning John W. Dean 3d will step back into the witness box in Judge John J. Sirica's crowded courtroom.

Mr. Dean will identify a reel of tape. A technician will turn on the recording system. The voice of Richard M. Nixon, recorded 19 months earlier, will be heard discussing the problems threatening the Watergate cover-up, including—if the entire tape is played as scheduled—the problem of Judge Sirica, who, the then-President feared may be about to try to unravel the cover-up.

The Watergate cover-up conspiracy trial, which will go into its second week of testimony tomorrow, will thus be proceeding on three levels.

The first is the trial of the five defendants in the case, two of whom, John D. Ehrlichman and H. R. Haldeman, will also be heard on the tape scheduled to be played tomorrow.

The second is the quasi-trial of the former President. Mr. Nixon was pardoned by President Ford for any crimes he may have committed during his

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Administration, but as Leon Jaworski, the special prosecutor, said in a television interview today, the story of Mr. Nixon's involvement in the cover-up is expected to unfold at the trial.

The third level is the attempt by the defense counsel to "build a record," as they call it, for appeal, should appeals be necessary.

Most of the defense counsel sought unsuccessfully this summer to have Judge Sirica removed from the cover-up case on the ground that his prior involvement in Watergate litigation, as the presiding judge in the trial of the original Watergate defendants, made him partial to the prosecution.

Since the trial began on Oct. 1, defense lawyers have repeatedly indicated that they are amassing what they consider to be errors by Judge Sirica in his handling of the case.

Last Friday Judge Sirica allowed the jury to hear another White House tape recording in which he, Judge Sirica, was mentioned. Thomas C. Green, one of the defense lawyers for Robert C. Mardian, saw that action as yet another error and moved for a mistrial.

Similar Motions Expected

Judge Sirica denied the motion. But tomorrow, assuming that the prosecution carries out its plan to play the full tape in question—the tape of Mr. Nixon's conversation on the afternoon of March 21, 1973, with Mr. Dean, Mr. Ehrlichman and Mr. Haldeman—similar motions can be expected.

The contents of that conversation have already been disclosed, first by Mr. Nixon in the collection of edited White House transcripts he made pub-

lic last April, and subsequently in the more detailed transcripts released by the House Judiciary Committee.

The conversation centered on ways to cope with upcoming hearings of the Senate Watergate committee and with other problems such as the increasing demands of some of the original Watergate defendants for money—allegedly, for "hush money" in return for their continued silence about the facts surrounding the break-in on June 17, 1972 at the Democratic National offices in the Watergate complex here.

The topic of Judge Sirica arose because he was then about to sentence the original Watergate defendants.

"What will, will prompt a new problem will be Sirica giving a speech from the bench on Friday when he sentences," Mr. Dean says, according to the Judiciary Committee transcript.

"Yeah," Mr. Nixon replies.

Prediction on Sentencing

"I think he will charge that there are higher-ups involved in this case," Mr. Dean says next. Later, he also suggests that Judge Sirica will give the defendants long sentences to be reduced later should the defendants decide to cooperate with the grand jury—a fairly accurate prediction, as it turned out.

Last week's proceedings showed all three levels of the case. There was the prosecution's opening statement, the testimony by Mr. Dean, the former White House counsel, and several tapes, all offered to the jury as part of the prosecution's basic conspiracy charge against Mr. Haldeman, Mr. Nixon's chief of staff; Mr. Ehrlichman, Mr. Nixon's chief domestic adviser; Mr. Mardian, an official of the Committee for the

re-election of the President, and the two other defendants, John N. Mitchell, former Attorney General, and Kenneth W. Parkinson, a lawyer for the re-election committee.

On the second level, regarding Mr. Nixon, there was the opening statement on behalf of Mr. Ehrlichman, in which his lawyer, William S. Frates, told the jury he intended to prove that Mr. Nixon had "deceived" and used Mr. Ehrlichman.

Then, out of the presence of the jury, there was the statement by Mr. Nixon's attorney, Herbert J. Miller, that the former President's health was improving and that he might thus not have to seek to quash subpoenas calling for his presence at the trial.

Talk of 'Record' of Case

And then, as the transcripts of the proceedings in open court as well as in the bench conferences show, there was the constant talk, by Judge Sirica as well as by the defense counsel, of the "record" of the case.

Judge Sirica said at one point during the week that the lawyers should address their objections to him, rather than to one another, so that "we will get a better record."

At another point, one of Mr. Haldeman's attorneys, John J. Wilson, remarked that he was putting one of Judge Sirica's rulings "in my error bag, which is getting bigger and bigger."

Judge Sirica responded "If this case gets to the Court of Appeals and if I committed error, I am sure the Court of Appeals will correct it at the proper time. I do what I think is right. I don't have one eye on the Court of Appeals when I make a decision."

It is common practice for defense attorneys to try to

build records for appeal. As one lawyer familiar with the case put it, "Not all errors are reversible." As another said, "The defendants are entitled to a fair trial, not a perfect trial."

Last week's proceedings, the first week following jury selection, showed other patterns and problem areas, for both sides, as well.

Among them is the abundance of evidence in the hands of the prosecution—"a whole lot of evidence," as Richard Ben-Veniste, the assistant special prosecutor, told the jury in his opening statement.

The prosecution has stronger evidence than is seen in many criminal cases, thanks to the White House tape recordings. But the massive volume of names, dates and facts in the case is a potential problem for the prosecution because the

jury may find it hard to keep them straight.

The prosecution is dealing with this by building its case in chronological fashion and then repeating it.

As for problems facing the defense, in addition to those posed by prosecution's mass of evidence, last week's session indicated the following: The broad conspiracy laws, which William G. Hundley, one of Mr. Mitchell's lawyers, said at one point "unfortunately are very very liberal"; Judge Sirica's repetition to the jury of the law; the constant linking together in the testimony of the names of the various defendants defenses.

Yet another problem, indicated in the opening statements, is the fact that several of the defendants may seek to blame one or another of the others for the cover-up.