

# Nixon Is Unlikely to Testify

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Former President Nixon may not be able to testify in the Watergate cover-up trial—even by deposition—for two to three months, his lawyer indicated yesterday.

The former President's chief Washington lawyer, Herbert J. Miller Jr., said in an affidavit that Mr. Nixon is so weak that he cannot undertake "any activity requiring substantial mental or physical effort" in the months ahead without seriously endangering his health.

The prediction, if it stands, could mean that Mr. Nixon's sworn testimony in the Watergate scandals will never be secured. U.S. District Court

Judge John J. Sirica has said he hopes to conclude the cover-up trial by Christmas-time—less than two months from now.

Doctors reported in Long Beach, Calif., yesterday that Mr. Nixon continues to improve from a series of medical complications that brought him to the brink of death 10 days ago. But he remains weak.

In his report to Judge Sirica, Miller said Mr. Nixon is expected to remain in the hospital for another 10 days to two weeks.

Beyond that, Miller added: "Because of the patient's weakened condition, it is expected that the earliest time he could participate without a

serious danger to his health in any activity requiring substantial mental or physical effort would be two to three months."

The report was even more pessimistic about the prospect of Mr. Nixon's ever coming to Washington to testify at the cover-up trial in person.

"It will be an indeterminate time before he has recovered sufficiently to travel any significant distance," Miller said, even if "no new complications" develop.

Sirica took no immediate ac-

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*Pneumonia responds to treatment.* A4

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tion on the report beyond telling the lawyers at the cover-up trial here yesterday morning that he had just received it and had not had a chance to study it.

The judge said at the time that he has been thinking of ordering a deposition of the former President that could be recorded on videotape and shown at the trial.

Turning to other tapes at yesterday's session, Sirica overruled a final round of protests from defense lawyers and ordered 26 recordings of Mr. Nixon's Watergate conversations admitted into evidence.

Chief trial prosecutor James F. Neal said the government plans to start playing them in the courtroom Monday, beginning with the June 23, 1972, conversations that finally forced Mr. Nixon to resign from office.

The June 23 tapes involve three meetings between the former President and his chief of staff, H. R. (Bob) Haldeman about an effort to use the Central Intelligence Agency to block the original Watergate investigation.

Haldeman's lawyers, John J. Wilson and Frank H. Strickler, tried to head off introductions of the tapes with a series of protests. They even claimed, for the first time, that the surreptitious recording of the conversations by Secret Service agents violated federal law.

Strickler acknowledged that the law permits intercepting conversations if at least one of the participants consents. But he maintained that the blanket consent implied when Mr. Nixon ordered his own offices bugged was not good enough. The defense lawyer insisted that the law requires a separate consent "to the taping of each and every conversation."

Judge Sirica expressed surprise at the suggestion and said he couldn't accept it.

"These tapes are being offered to prove, or to attempt to prove, an alleged conspiracy," the judge told Strickler. "They were made at the direction of the President."

Watergate prosecutors pointed out that Haldeman himself, at last year's hearings of the tapes before Sirica, said Mr. Nixon had ordered the secret taping system installed "for historical purposes."

In light of that, Assistant Special Prosecutor Richard Ben-Veniste said he was "startled" to hear the Haldeman lawyers claim, as they did, that there wasn't enough evidence to show Mr. Nixon had assented to the recordings. Prosecutor Neal said later in the day that the argument was just one of those presented during the day that had him pinching himself.

"It's been like Alice in Won-

derland in here," Neal told the judge at one point.

Sirica finally held that the prosecutors had laid "a sufficient foundation" — through the submission of Mr. Nixon's daily diaries and the testimony of Secret Service agents, former White House aide Alexander P. Butterfield and others — to admit the 26 tapes.

The judge said, however, that he would still entertain defense objections to individual segments of the recordings and to disputed sections of the transcripts that Watergate prosecutors have prepared.

Yesterday's testimony, which brought even Watergate grand jury stenographers to the stand, was largely dry and academic, but it was enlivened by one witness' account of Watergate spy G. Gordon Liddy's reactions to the June 17, 1972, arrests at Democratic national headquarters here.

The witness, Powell Moore, a former press spokesman for the Committee for the Re-Election of the President, recalled vividly how he heard Liddy begin to report the fiasco in a long-distance phone call to Nixon campaign deputy director Jeb Stuart Magruder.

Moore said Liddy placed the call to Magruder, who was in California, sometime before noon Washington time and then went through an elaborate "routine" that apparently didn't sink in.

At first, Moore testified, Liddy said enigmatically: "Jeb, this is your Washington office calling. This is your home base, Jeb . . . Do you recognize my voice, Jeb?"

There was apparently little reaction at the other end of the line. Liddy gave up. "Finally, he said, 'Jeb, this is Gordon Liddy,'" Moore recounted, setting off a loud burst of laughter.

According to Moore, Liddy had Magruder call him back on a pay phone and they began talking about getting one of the arrested men, Nixon re-election campaign security chief James W. McCord Jr., out of jail with the help of Attorney General Richard G. Kleindienst. "The purpose was to obtain the release of Mr. McCord before his identity became known," Moore testified. McCord had been arrested under an alias that had not been yet detected.

As soon as he heard the chatter about getting Kleindienst's help, Moore said he warned Liddy to "make sure they had [former Attorney General John N.] Mitchell's approval before they did something as foolish as that."