

26 Further Tapes
Cleared by Sirica

Judge Approves Use
at Trial -- Says
Nixon Might Be
Interviewed on Coast

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WASHINGTON, Nov. 7—

Judge John J. Sirica ruled today that the prosecution had provided enough proof of the authenticity of 26 additional White House tape recordings to enable it to introduce them as evidence at the Watergate cover-up trial.

The judge's ruling means that unless the defense can prove that any portions of any of the tapes are irrelevant, all 26 tapes may be played to the jury, if the prosecution wishes.

The 26 include several tapes that, on the basis of previously released transcripts, are considered to be extremely damaging to one defendant, H. R. Haldeman, and other tapes that are considered potentially damaging in various degrees to the four other defendants — John D. Ehrlichman, John N. Mitchell, Kenneth Wells Parkinson and Robert C. Mardian.

Judge Sirica made his ruling over the objections of all defense counsel after listening to the prosecution's final "foundation" testimony this morning.

In another development, a lawyer for former President Richard M. Nixon reported in an affidavit to Judge Sirica that Mr. Nixon, who has been subpoenaed as a witness, would not be able to "participate" for at least two or three months in any "activity requiring substantial mental or physical effort." Such activity would presumably include interviews in California by defense lawyers.

The Nixon lawyer, Herbert

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J. Miller, said that it would be an "indeterminable" time before the ailing former President could travel.

After getting the affidavit, Judge Sirica remarked that it was possible that lawyers might eventually interview Mr. Nixon in California and that a videotape of the interview might be played in the Federal District Court here.

Meanwhile, Judge Sirica made it clear that he was troubled by two counts in the indictment that charge Mr. Ehrlichman and Mr. Mitchell with making false statements to the Federal Bureau of Investigation. He remarked that the law on which the charges were based "is not a very popular statute," and said that, while he would not dismiss the charges now, he would consider motions for a directed verdict of acquittal on the counts after the proof was in.

James F. Neal, the chief prosecutor, said, that "I personally, as Jim Neal, human being, have serious questions" about the use of the statute in the case. He argued, though, that the grand jury had voted the indictment, that the evidence relating to these counts also related to the conspiracy and obstruction counts against the two men, and that he thus should be allowed to continue presenting his case.

The statute is held in wide disrepute because it permits a conviction for lying without re-

quiring the person who allegedly lied to have been under oath at the time. The false statement, for instance, could be made in a very informal meeting with an F.B.I. agent. The statute carries a possible five-year prison term.

One such charge against Mr. Ehrlichman, the former advisor to Mr. Nixon on domestic affairs, was thrown out by Judge Gerhard A. Gesell after Mr. Ehrlichman's conviction on it and several other charges in a separate trial last summer.

A witness presented by the prosecution today in an apparent effort to back up previous testimony against Robert C. Mardian made several concessions on cross-examination by David G. Bress, Mr. Mardian's chief counsel. The concessions appeared to blunt the prosecution's case against Mr. Mardian, a former Assistant Attorney General.

The witness, Powell Moore, a public information officer for the Committee for the Re-election of the President in 1972, said, for instance, that Mr. Mardian had in effect told him not to follow the advice of Jeb Stuart Magruder, then the committee's deputy director and now a prosecution witness, to

lie about Mr. Magruder in the Watergate affair.

In addition, the prosecution presented what Mr. Neal termed "technical evidence" on several counts in the indictment, charging various defendants with making false statements.

Stenographers Testify

Two court stenographers testified about transcripts they had prepared of testimony by Mr. Ehrlichman before the grand jury. Excerpts from the transcripts are used in the indictment as examples of testimony that the grand jury considered perjurious.

William S. Frates, one of Mr. Ehrlichman's attorneys, elicited from one of the stenographers the admission that the transcripts were subject to "substantial error."

Mr. Neal also presented into evidence for use later in the trial a videotape of appearances before the Senate Watergate committee last year by Mr. Haldeman, the former White House chief of staff.

Mr. Haldeman is charged with perjuring himself in that testimony. The prosecution is submitting the videotape because the Haldeman defense is contesting the prosecution's contention that Mr. Haldeman spoke in precisely the manner that the indictment says.

Mr. Neal did concede today, under pressure from John J. Wilson, one of Mr. Haldeman's lawyers, that the prepared text from which Mr. Haldeman read a certain statement at the hearings did not place quotation marks around the statement. The indictment does place quotation marks around it.



Associated Press

J. Fred Buzhardt Jr., former White House lawyer, on way to Watergate cover-up trial in Washington.