

Court Medical Panel to Examine Nixon

Sirica to Name Three Doctors

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U.S. District Court Judge John J. Sirica decided yesterday to order an independent medical examination of former President Nixon to determine whether he can testify in the Watergate cover-up case.

Acting at the request of former White House aide John D. Ehrlichman, Sirica said he plans to name a panel of three "outstanding doctors" next week.

The ruling came on the heels of a report by Mr. Nixon's lawyers that the former President will not be able to undertake "any activity requiring substantial mental or physical effort" for the next two to three months.

The cover-up trial of Mr. Nixon's former top aides and campaign advisers is not expected to last that long. Sirica has been hoping to obtain at least a depos-

ition from the ailing former President that could be videotaped in California and then shown to the jurors at the conspiracy trial here.

The court-appointed medical panel, Sirica indicated, will include two cardiovascular experts and a prominent authority on internal medicine who will also inspect the records at the Long Beach, Calif., hospital where Mr. Nixon is a patient.

The cover-up trial itself ended for the week in a tumultuous "quiz show" over one little word on the White House tape recording that forced Mr. Nixon's resignation on Aug. 9.

Lawyers for former White House chief of staff H. R. Haldeman demanded the showdown, which Sirica un-

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pired with increasing disdain.

The inconclusive game centered on the question of whether Haldeman had used the word "Gemstone"—the secret code name for a plan that encompassed the Watergate break-in and bugging of Democratic National Committee headquarters here—in discussing the incident with the President a few days later.

Chief trial prosecutor James F. Neal said he didn't think it mattered whether Haldeman had said "Gemstone, Clemstone, Dovestone . . . or even Gallstones." He said it was plain that Haldeman and the President were talking about the political espionage plan that Watergate spy G. Gordon Liddy had been assigned to carry out.

Sirica said at one point that he, too, thought Haldeman's lawyers were making "a mountain out of a molehill," but he let them go ahead after sending the jurors back to their motel for the weekend.

The debate, which lasted a full hour, involved a June 23, 1972, White House meeting at which the President approved an attempt to use the Central Intelligence Agency to restrict the original Watergate investigation.

Haldeman's chief lawyer, John J. Wilson, insisted that the meeting had "nothing to do with Watergate."

He maintained that all the President and Haldeman were trying to do was avoid the political "embarrassment" they faced if the FBI tracked down the telltale Nixon campaign checks that one of the Watergate burglars had cashed earlier in 1972.

One of those checks represented a laundered campaign donation from Minnesota businessman Dwayne Andreas, who was nominally a supporter of Sen. Hubert H. Humphrey's Democratic presidential ambitions. Wilson contended that this was the only thing that Haldeman was trying to keep secret. But the defense lawyer conceded, in effect, that the theory would be hard to sustain if his client had mentioned the word "Gemstone."

Prosecutor Neal said he found the defense strategy boggling no matter what Haldeman had said. "I'm just lost again in this Alice in Wonderland atmosphere," Neal told the court.

Wilson, however, won permission to call former White House aide Alexander P. Butterfield—who had verified the government's transcript of the June 23 tape—for a test of what Butterfield could hear without a transcript in front of him. The 73-year-old defense law-

yer admitted at one point that Haldeman had used the word "stone," but argued that the syllable in front of it was simply "unintelligible."

Neal complained that it would be "truly, truly unfair" to expect Butterfield to come up with a definitive account by simply sitting on the witness stand with a headset and listening to the contested segment of the tape as Wilson proposed.

"Perhaps we can just agree to change the name of the plan from 'Gemstone' to 'Dovestone,'" the prosecutor said. Neal said he wouldn't swear to what the full word was, but it clearly ended with "stone."

Wilson didn't disagree—at that point. But by the end of the mini-hearing, he was claiming that the entire

word should be rated as "unintelligible." Butterfield missed it completely until he reviewed the tape once again with a prosecution transcript in front of him.

According to the transcript, Mr. Nixon began talking at one point about Watergate spy E. Howard Hunt Jr. and how detrimental it would be "to have this thing go any further."

The two men then began talking about former Attorney General John N. Mitchell, at the time head of the Nixon re-election campaign, and the five telltale campaign checks. Four were drawn on a Mexico City bank and reflected contributions from Texas donors. The fifth represented a \$25,000 donation from Andreas although the check itself had been signed by the Nixon campaign's Midwestern finance chairman, Kenneth Dahlberg. The prosecution transcripts showed this exchange:

Mr. Nixon: ". . . well, what the hell, did Mitchell know about this thing to any much of a degree?"

Haldeman: "I think so. I don't think he knew the details, but I think he knew."

Mr. Nixon: "He didn't know how it was going to be handled, though, with Dahlberg and the Texans and so forth. Well, who was the asshole that did? (unintelligible) Is it Liddy? Is that the fellow? He must be a little nuts."

Haldeman: "He is."

Mr. Nixon: "I mean he just isn't well screwed on, is he? Isn't that the problem?"

Haldeman: "No, but he

was under pressure, apparently, to get more information and as he got more pressure, he pushed the people harder to move harder on . . ."

Mr. Nixon: "Pressure from Mitchell?"

Haldeman: "Apparently."

Mr. Nixon: "Oh, Mitchell—Mitchell was at the point that you made on this, that exactly what I need from you is on the . . ."

Haldeman: "Gemstone, yeah."

Mr. Nixon: "All right, fine, I understand it all. We won't second-guess Mitchell and the rest. Thank God it wasn't [White House special counsel Charles M. Colson.]"

Prosecutor Neal read all that out in the courtroom. "If that isn't talking about the Liddy plan," he exclaimed. "I'm a monkey's uncle."

Wilson interrupted. "Then you just became a monkey's uncle," he told Neal.

The judge was not amused. Sternly he lectured the lawyers not to interrupt each other and to address the court when they had something to say.

"I will not tolerate it again," he warned. "I will never allow my courtroom to be taken away from me."

Finally Butterfield was called to the stand. Wilson asked him to listen to the contested segment as he sat on the witness stand and simultaneously blurt out what he was hearing. The prosecutors protested, but Sirica said Wilson could try it his way first, even though he thought Wilson was "making a mountain out of a molehill."

Butterfield gamely tried a few words and then gave up. He said his own voice was getting in the way. "My talking is blanking out the words" on the tape, he told the judge.

Assistant Watergate Special Prosecutor Richard Ben-Veniste suggested that the procedure was absurd to begin with. "This is some kind

of quiz show that Mr. Wilson has developed here," Ben-Veniste said sarcastically.

The judge seemed inclined to agree. He told Butterfield to move over to the tape recording machine in the courtroom, operate the controls himself, and write down what he could hear while the rest of the audience waited in suspense. Headsets were not distributed.

Wilson protested that Sir-

ica was, "limiting my cross-examination," but the judge's patience was running out. He told Wilson he could watch over Butterfield's shoulder as the witness jotted down the dialogues.

"I don't want to watch him," Wilson huffed.

The judge shrugged. Butterfield spent about 10 minutes at the machine, moved back to the witness stand, and then back to the machine again for a final check of his notes. Once more Wilson complained, saying he wanted Butterfield's on-the-spot version first.

"I beg you, sir, that we may get it in its virgin state," the baldish lawyer told the judge.

"You can beg all you want," Sirica replied, sending Butterfield back to the machine. He made no changes. He also did not hear the word "Gemstone."

Wilson glowed, a look of triumph on his face. Finally, at the prosecution's request, Butterfield went back to the machine again, this time with a transcript in hand, for one last review. That done, he finally testified that he had heard the word with the assistance the transcript had given him.

"I must say I didn't hear it that way," Butterfield volunteered about his first effort. "I heard Haldeman say, 'Yeah, that's right, yeah.'"

Delighted, Wilson called out loudly to the witness as he stepped down from the stand: "Mr. Butterfield, thank you for coming back."

Butterfield didn't hear him.

"What's that?" he asked in an exit line that drew the biggest laugh of the day.

Prosecutor Ben-Veniste denounced the whole exercise and said it ought to be or "Beat the Clock." He labeled "Name That Tape" maintained that Butterfield's hurried interpretation could hardly be compared with the prosecution's laboriously prepared transcripts. At the least, Ben-Veniste argued, the jurors should be offered a transcript that contains "Gemstone" as the prosecution's version and "unintelligible" as Haldeman's.

Ehrlichman's attorney, William S. Frates, said, however, that he thought the testimony was at least "a dramatic illustration" of "the suggestiveness" of the

transcripts in general.

Judge Sirica said the use of transcripts had been approved time and again by the federal courts. He also observed that he thought he heard Haldeman say "Gemstone" on reviewing the tape himself last weekend. In any event, he said, the jurors would be the final arbiter.

The session ended, however, without any clear indication of what the transcript to be handed to the jury will finally say. Sirica seemed inclined to keep "Gemstone" in it, but he left the bench without announcing any decision.