

SIRICA WILL SEND DOCTORS TO NIXON

Wants Them to Determine if Ex-President Can Give Testimony for Trial

By LESLEY OELSNER
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WASHINGTON, Nov. 8.—Federal Judge John J. Sirica said today that he would appoint a panel of three leading doctors to examine Richard M. Nixon to determine whether the former President would be able to provide testimony for the Watergate cover-up trial.

Judge Sirica acted one day after Mr. Nixon's attorney gave the judge an affidavit saying that Mr. Nixon would not be able to "participate" for at least two or three months in any "activity requiring substantial mental or physical effort." Presumably, this was meant to include interviews in California with lawyers in the case. The affidavit also said that it was "indeterminable" when Mr. Nixon would be able to travel.

Mr. Nixon's attorney, Herbert J. Miller, based his affi-

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dat on the opinions of Mr. Nixon's longtime physician, Dr. John C. Lungren.

Judge Sirica said this morning that he hoped to meet with one doctor over the weekend to work out details of how the team would proceed.

"I'd like to do it by next week if I can," he said.

Mr. Miller's law concern had no comment this afternoon on the judge's announcement. In California, Dr. Lungren also declined to comment.

Mr. Nixon is undergoing treatment at Memorial Medical Center in Long Beach, Calif., for phlebitis and various complications that developed after surgery.

According to a number of lawyers, Judge Sirica's action is well within the discretion permitted judges in such situations.

Mr. Nixon is under subpoena to appear at the trial and has asked that the subpoenas be quashed on the ground of his ill health. If he refuses to be examined by the court's doctors, the lawyers suggested, Judge Sirica will be entitled to deny the motions to quash and then, if Mr. Nixon fails to comply

with the subpoenas, to cite him for contempt.

Mr. Nixon was subpoenaed by the special Watergate prosecution and by John D. Ehrlichman, Mr. Nixon's chief domestic affairs adviser at the White House and one of the five defendants in the trial. The prosecution is not pressing its subpoena, but Mr. Ehrlichman is pressing his, and a second defendant—H. R. Haldeman, once Mr. Nixon's chief of staff at the White House—has said that he also plans to subpoena the former President.

Judge Sirica had postponed any action on the subpoenas pending developments in Mr. Nixon's medical condition, but he had received from the lawyers names of doctors who would be willing to go to California to examine Mr. Nixon.

Formal Request Made

At the start of court this morning, Mr. Ehrlichman's chief counsel, William S. Frates, formally asked Judge Sirica to appoint some of those doctors.

"I would like to make it clear, Your Honor, I do not question Mr. Miller's affidavit or Dr. Lungren's statements or anything like that," he said.

But, he went on, Mr. Nixon's testimony is "indispensable" to Mr. Ehrlichman's defense.

An examination by court-appointed doctors, he said, would "clarify the whole situation."

Judge Sirica asked whether the prosecution had any comment.

James F. Neal, who had previously filed a motion suggesting that doctors be appointed and citing Dr. Lungren's long association with and "loyalty" to Mr. Nixon, gave the prosecution's response.

"We don't concede Mr. Nixon as being necessary and viable" to the prosecution's case, he said.

"We don't even concede he is necessary in any defendant's case," he added. "However, we have no objection to any procedure whatsoever" to verify Mr. Nixon's medical status.

Judge Sirica then issued his ruling, granting Mr. Frates's

motion. He said that the panel would probably include at least one cardiovascular specialist and one specialist in internal medicine.

Court-ordered medical examinations are quite common. Especially examinations of defendants. But courts have also ordered examinations of witnesses.

Law Dean's View

Abraham S. Goldstein, dean of the Yale Law School, explained rationale of this in a phone interview today.

"The Government and the nation are entitled to every man's testimony," he said, so, "if you start with that assumption," and some one seeks to have a subpoena quashed on the basis of illness, "you're obligated to pursue him" on that point.

In the case of a court-or-

dered examination of Mr. Nixon, Dean Goldstein said, "I think it's quite the proper thing to do, quite common."

Judge Sirica held court for only half a day today because of the growing fatigue of almost everyone involved in the case. The judge himself appeared exhausted, his eyes red and his face strained.

There were several other developments today.

The prosecution filed a memorandum opposing the requests made earlier this week for mistrials and severance by two of the defendants, John N. Mitchell, the former Attorney General, and Kenneth Wells Parkinson, a lawyer who was hired by the Committee for the re-election of the President to handle the legal problems resulting from the Watergate break-in of June 17, 1972.

Both defendants based their requests on the Government's disclosure Monday that one of its possible witnesses, William O. Bittman, had withheld and

lied about a crucial memorandum drafted by E. Howard Hunt Jr., one of the seven original Watergate defendants.

Mr. Mitchell and Mr. Parkinson had contended that the belated disclosure prejudiced their cases because they had been acting on the assumption that Mr. Bittman was standing by his original account denying the existence of the memorandum. They also implied that the prosecution could have turned up the memorandum earlier.

The prosecution, in its memorandum today, denied both contentions.

The prosecution also presented testimony today by Powell Moore, a public information officer for the re-election committee, in an attempt to bolster two charges against Mr. Mitchell and Mr. Ehrlichman, that they lied to the F.B.I. when they told F.B.I. agents in July, 1972, that all they knew about the Watergate break-in was what they had read in the newspapers.

Mr. Moore testified that it was part of his job to read the "major newspapers." He said that during the time in question, he read no articles in the newspapers about such things as the participation in the break-in by G. Gordon Liddy, another of the original defendants, or the meetings in Mr. Mitchell's office at which intelligence gathering plans had been disclosed.

Under cross-examination by William G. Hundley, one of Mr. Mitchell's attorneys, and Mr. Frates, Mr. Moore agreed that there were a number of news articles in July, 1972, suggesting that both the White House and the re-election campaign committee were responsible for the break-in, and that there were many newspapers that he did not read.

Each of the day was taken up

by a somewhat bizarre proceeding in which Mr. Haldeman's lawyers sought to show that a crucial White House tape recording from June 23, 1972, did not necessarily record Mr. Haldeman as saying the word "gemstone"—the name of the illegal intelligence gathering plan that led to the break-in.

The prosecution's transcript of the tape does record Mr. Haldeman as saying "gemstone," and John J. Wilson, one of Mr. Haldeman's attorneys, was arguing that the jury should not be given the prosecution's transcript when the tape is played.

Mr. Wilson called Alexander P. Butterfield back to the witness stand today and, out of the presence of the jury, asked him whether he could hear the word gemstone on the tape. As it turned out, Mr. Butterfield could not.

Mr. Butterfield is a former Nixon White House aide, and the prosecution used him earlier this week to verify 26 tape recordings that the prosecution intends to present as evidence. Yesterday, Judge Sirica ruled that the tapes were admissible, but said that he was postponing any ruling on whether the jury could use the transcripts.

Mr. Wilson wanted Mr. Butterfield to listen to the tape on earphones and then repeat out loud what he had heard. Mr. Butterfield tried this. He began to listen, blurted out one word, and then said that it was impossible to do what Mr. Wilson wanted.

As soon as he started speaking, he said, his own voice blotted out what he was hearing on the tape.

* VALUABLE ?

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