

# SIRICA HINTS JURY

## WON'T HEAR NIXON

DEC 3 1974

Suggests He'll Let Cover-Up Case Be Decided Without Awaiting Testimony

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WASHINGTON, Dec. 2

Judge John J. Sirica strongly suggested today that he intended to let the Watergate cover-up case go to the jury without waiting to get testimony from former President Richard M. Nixon.

A court-appointed panel of doctors estimated last Friday that Mr. Nixon would not be physically able to testify at the trial until Feb. 16 at the earliest, and that he would not even be able to give testimony in the form of a deposition at his home until Jan. 6.

This afternoon, during a discussion about court hours, Judge Sirica said that he intended to extend the court day until 6 P.M.

"We're going to try to finish this case by Christmas," he said.

Judge Sirica gave no other comment on the matter. He is not expected to rule formally until Wednesday, after the lawyers in the case have had time

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to submit memorandums on the question.

Mr. Nixon is under subpoena by John D. Ehrlichman, his former domestic affairs adviser who is one of the five defendants at the trial. This morning, Mr. Ehrlichman's chief counsel, William S. Frates, asked Judge Sirica to send the jurors home for Christmas and bring them back after a deposition was taken.

Judge Sirica at first seemed sympathetic to Mr. Frates's request, and asked the other lawyers to submit their views.

### To Speed Up Trial

This afternoon, however, in a conference at the judge's bench, he told the lawyers that if he denied Mr. Frates's motion, he would probably extend the court hours and hold Saturday sessions in an effort to speed up the case.

It was just after this conference that he made his remark, in the jury's presence, about Christmas.

There were a number of other developments at the trial.

H. R. Haldeman, testifying in his own defense in his second day on the witness stand, denied that he had ever "knowingly entered" into a conspiracy to obstruct justice in the Watergate affair, that he had ever intended to enter a conspiracy, and that he had ever intended to obstruct justice.

The former White House chief of staff also denied the three perjury counts against him. As he described the allegedly perjurious statements to the jury, they were accurate to the best of his "recollection" at the time he made them—though not, he conceded, totally accurate in view of the facts as he now understands and recalls them.

Mr. Haldeman made these denials under questioning by his chief attorney, John J. Wilson.

### Several Concessions

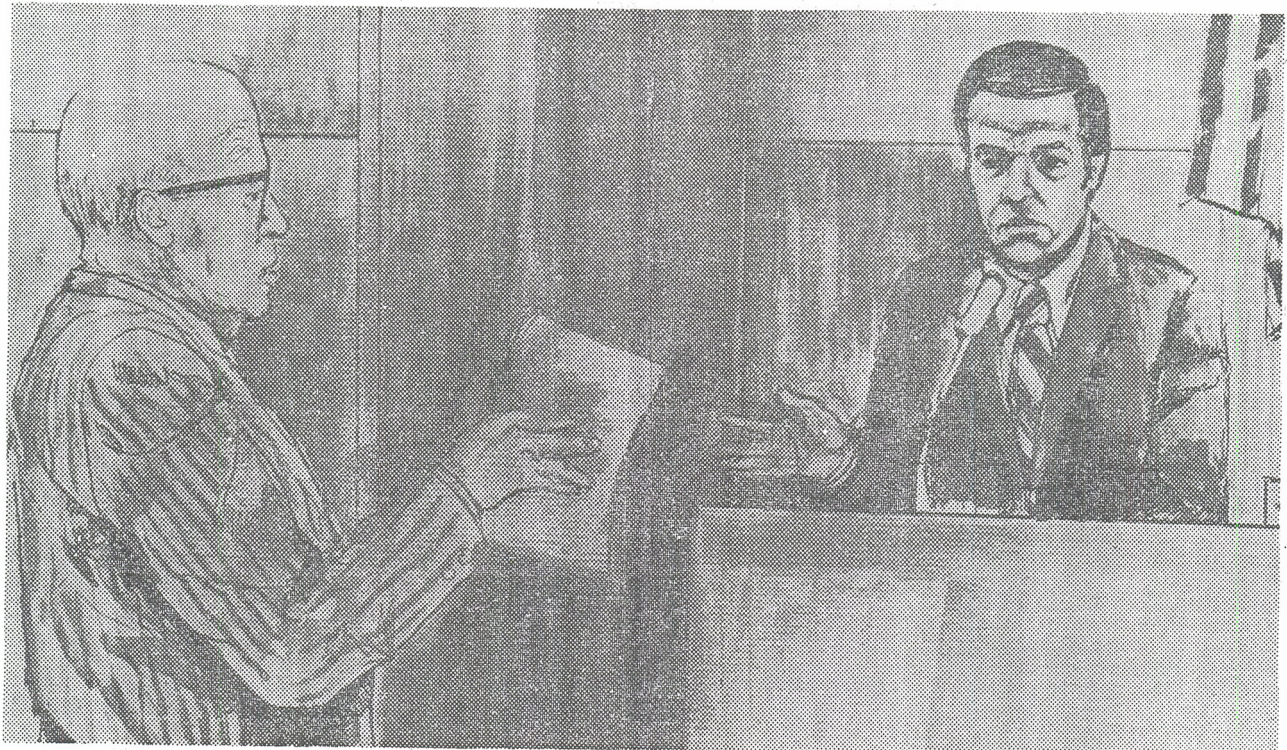
Later, Richard Ben-Veniste, an assistant special prosecutor, elicited several concessions from Mr. Haldeman in an attempt to shake his account.

Mr. Haldeman conceded that he refrained from telling a Watergate grand jury in the spring of 1973 about the existence of the White House taping system, even though he had been asked if there were any records "on the face of the earth" that might help remind him of various events and conversations.

Mr. Haldeman said that he had been under orders by President Nixon not to disclose the taping system.

He answered many of Mr. Ben-Veniste's questions by saying that he had "no recol-





The New York Times/Jacqueline Von Honts

H. R. Haldeman, testifying in his own defense, is given papers to inspect by John J. Wilson, his counsel, at trial

lection" or that he could not "recall." And, in response to one question, he conceded that he might have made a "slip" and an "error of overamplification" in his testimony at the trial last Friday.

In another development, attorneys for John W. Dean 3d, the prosecution's chief witness, filed a motion asking for a "substantial reduction" in the one-to-four-year prison term that Judge Sirica gave him.

#### Cites Cooperation

Mr. Dean, once Mr. Nixon's counsel at the White House and subsequently his chief accuser, pleaded guilty last year to one count of conspiracy to obstruct justice in the Watergate affair in an arrangement under which he agreed to testify for the prosecution. The motion submitted today said he was entitled to a reduction because of his "unprecedented cooperation" with the prosecution and other authorities that investigated Watergate.

The motion was accompanied by a letter of support from Samuel Dash, former counsel to the Senate Watergate committee. Mr. Dash said that the existence of the White House taping system—disclosed at the Senate Watergate hearings by Alexander P. Butterfield, a former White House aide—might never have come out if it had not been for a "clue" by Mr. Dean that there might be at least one White House tape.

This morning, in yet another development in a long and tiring day, Judge Sirica gave his

strongest warning to date that lawyers in the trial faced possible incarceration, on contempt charges, if they continued their bickering. The warning came after repeated arguing between Mr. Wilson and Mr. Ben-Veniste.

#### Often Tangle

Mr. Wilson is 73 years old, a long-time resident of Washington. Mr. Ben-Veniste is 31, a product of New York City and of New York schools and universities. They have tangled often at the trial, with Mr. Wilson sometimes calling Mr. Ben-Veniste a "youngster" and telling him, "Sit down until I finish" and Mr. Ben-Veniste as often as not retorting that Mr. Wilson had not researched the law and that he had no precedents to support his point.

This morning, court had barely started before they were at it.

Mr. Wilson was questioning Mr. Haldeman; Mr. Ben-Veniste rose to object; Mr. Wilson objected to the objections.

Mr. Ben-Veniste argued that he could not see the relevance of what Mr. Wilson was asking.

"If Mr. Ben-Veniste would sit down for five minutes, he'd learn the relevance," Mr. Wilson said.

There were a few more such exchanges. Finally, Judge Sirica called a halt, saying, "I think both of you have had too much experience to have these asides."

His voice became sterner. "You know," he said, "we used to have a judge in this court-

house." A lawyer would do something one time, he said, and the judge would call a halt.

#### 'Little Jail Cell'

"You do it again," Judge Sirica went on, "you'll be on your way to the little jail cell behind my courtroom."

"Now I mean it," he said. "I'm going to try this case the way I think it should be tried. I have the authority to do something about it."

As usual, the day's proceedings were marked by a mixture of good and bad humor. The good humor—with spectators and lawyers laughing aloud and Judge Sirica barely suppressing a grin—came during a brief appearance by a long-time friend of the Haldeman family, a middle-aged woman from Los Angeles named Lucy Gild Toberman.

Mrs. Toberman was called as a "character witness"—the type of witness who, according to legal terminology, testifies about a defendant's reputation in the community for "truth and veracity."

Frank Strickler, one of Mr. Haldeman's attorneys, questioned Mrs. Toberman first.

#### Fun For Lawyers

He posed a traditional question in the procedure for character witnesses—whether Mrs. Toberman knew many people who knew Mr. Haldeman.

"We have hundreds of friends in common," she replied.

Some of the lawyers in the case—particularly defense law-

yers, who have often called character witnesses in other cases—began to smile.

"Did you discuss Mr. Haldeman's reputation for truth and veracity with those hundreds?" Mr. Strickler asked.

"I have discussed his reputation for truth and veracity with hundreds of people," Mrs. Toberman said firmly. "His reputation is above reproach."

There was some laughter in the spectator section.

Mr. Ben-Veniste rose to cross-examine Mrs. Toberman. Did her estimate of Mr. Haldeman's reputation apply to the last two years, he asked.

"Absolutely," she replied. "I just made a list on the airplane of people I've talked to in the last few weeks. It's 300 people,



who think he's completely honest."

Mr. Ben-Veniste smiled. "Three hundred people in the last two weeks?" he asked.

"You want to see the list?"

Mrs. Toberman shot back.

At that, most of the people in the courtroom began to laugh. Mr. Ben-Veniste shook his head, smiling, and said, "I believe you have such a list."

#### She Read Tapes

He tried to question Mrs. Toberman about her reaction to some of the things Mr. Haldeman was disclosed to have done, but Mr. Strickler objected and Judge Sirica sustained the objection.

Then Mr. Ben-Veniste asked whether she had read the transcripts of the White House tapes, in which Mr. Haldeman was a major participant. Judge Sirica again said she need not answer, but this time Mrs. Toberman insisted.

"Can't I answer that?" she demanded.

Judge Sirica smiled and said she could.

"I've read all the tapes I could get my hands on," she said. "And so have these many hundreds of friends of Mr. Haldeman, and they don't believe for one minute he has been untruthful. We think his veracity is above reproach."

The question of whether Mr. Nixon would appear at the trial has been one of the main issues since it began Oct. 1.

Mr. Nixon was named an unindicted co-conspirator in the case last March by the grand jury that returned the indictment. The grand jury had reportedly wanted to indict Mr. Nixon, but he was President at the time and the special prosecutor then, Leon Jaworski, told the jury that there were serious legal questions about the indictability of an incumbent president.

Then, last September, after

Mr. Nixon resigned, President Ford pardoned him.

Mr. Nixon was subpoenaed as a witness at the trial by both Mr. Ehrlichman and the special prosecution.

The special prosecution issued its subpoena only as a safety measure, lest Judge Sirica rule that Mr. Nixon's testimony was necessary to establish the admissibility of the White House tape recordings and, now that the tapes have been admitted, is not pressing the subpoena.

Mr. Ehrlichman, however, is pressing his subpoena. Attorneys for Mr. Haldeman have said—and repeated the point today—that they also want to take Mr. Nixon's testimony.

Mr. Ehrlichman's defense is based in large part on the argument that Mr. Nixon deceived him. In a motion filed today, Mr. Frates again said that the former President's testimony was indispensable to Mr. Ehrlichman's defense.

#### 'Key and Central Witness'

"The Government has contended and the evidence now shows," he said, "that Mr. Nixon was at the heart of the activity which the Government now seeks to contend is a violation of the laws of the United States. Certainly, Mr. Ehrlichman should be allowed the opportunity to establish that he is not guilty of any violation of the laws of the United States by using the testimony of this key and central witness on the issues of the cause."

Mr. Frates suggested this morning that the remaining testimony in the case might take until Christmas to complete, and that the jury could then be sent home for a few days—a procedure that, according to some lawyers, is sometimes followed in long trials such as antitrust cases. Then, he said, he could get the deposition and report back to the jury.