

Nixon Need Not Testify

On Coverup, Sirica Rules

**Testimony by the
Ailing Ex-President
Isn't Vital, Judge Says**

Washington

United States District Judge John J. Sirica ruled yesterday that former President Nixon need not testify either on the witness stand or through deposition in the Watergate coverup trial.

Sirica gave as reasons for his decision Mr. Nixon's poor health, and the type of testimony he could be expected to give in response to questioning by lawyers for the three defendants who have sought his testimony.

In a six-page opinion filed at midday, the judge said that the other remaining testimony in the trial could be concluded "well before" January 6, the date that the court-appointed panel of doctors has given as the earliest possible time Mr. Nixon could give a deposition. Sirica noted that "complications in Mr. Nixon's recovery" could postpone that date. "It would be unwarranted and wholly inappropriate to interrupt, adjourn or continue this trial, with the jury sequestered, until an uncertain date in the somewhat distant future," he said.

John N. Mitchell, the former attorney general; H.R. Haldeman, Mr. Nixon's former chief of staff at the White House, and John D. Ehrlichman, who was Mr. Nixon's chief domestic affairs adviser, all asked Sirica this week for permission to take Mr. Nixon's deposition in California on January 6. Ehrlichman had also subpoenaed Mr. Nixon to appear personally.

Sirica, whose decision both denied the requests for depositions and quashed the subpoena, said this of the

testimony Mr. Nixon might have given:

"The value of Mr. Nixon's testimony to the defendants should not be unrealistically overestimated. Mr. Nixon himself has been named by the grand jury as an unindicted co-conspirator in this case. Thus, he had been accused, in effect, of being an accomplice to the defendants.

"Certainly (if he were called) his testimony would be subject to the instruction to the jury that it should be received with caution and scrutinized with care."

Sirica also said that "the defendants themselves can testify about those specifics" that they had said they wanted to question Mr. Nixon about.

The decision came on the 47th day of the trial, a day

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marked by several other developments in Sirica's crowded courtroom on the second floor of the United States Courthouse.

Haldeman concluded his testimony in his own behalf, and, except for reserving the right to call a few witnesses later, rested his case. Ehrlichman began his defense.

And Charles W. Colson, a former Nixon aide at the White House who was origi-

nally charged in the coverup case but who resolved those charges through a negotiated guilty plea in the so-called plumbers case, gave incriminating testimony about Haldeman, Ehrlichman and Mitchell.

On the stand, Colson listened to a tape of a Jan. 8, 1973 conversation in which Mr. Nixon discussed plans for a publicity buildup to allow him to grant executive clemency for Watergate conspirator E. Howard Hunt.

Mr. Nixon suggested and Colson agreed in that talk that granting clemency to the original defendants other than Hunt would be more difficult. Said Colson: "I just don't give a damn if they spend the five years in jail."

Despite hearing himself on the tape, Colson said he had no recollection of the conversation.

One attorney asked "Do

you deny discussing Hunt with the President because he was the one who could hurt you?"

"I can only surmise . . ." said Colson. "I have no memory."

Colson said, however, that he wanted Mr. Nixon to help Hunt because the retired CIA agent was a close friend and devoted patriot. Colson got Hunt his first job in the White House.

Colson also testified that just days before the Watergate bugging, Mitchell offered to bug a New York hotel room where Senator Hubert H. Humphrey (Dem.-Minn.) was to meet with a major financial backer.

He said that off-hand Mitchell remark, coupled with what he later learned about the bugging of Democratic party headquarters, prompted him to urge Mr. Nixon several times in

ensuing months to force Mitchell to step forward and accept guilt for the scandal.

Called to the witness stand as a court witness so neither the prosecution nor defense would have to vouch for his credibility, Colson unexpectedly related a tale he had had with Mitchell in mid-June of 1972, shortly before five, Nixon campaign agents were arrested at Watergate.

He said he mentioned to Mitchell that Humphrey, at the time a leading contender for the Democratic presidential nomination, was scheduled to meet soon at the Waldorf-Astoria hotel in New York City with Dwayne O. Andreas, a wealthy Minneapolis businessman and a major Humphrey backer.

"His precise words were 'if you give me the room number where the meeting will be taking place, I'll tell you everything that takes place in the room,'" Colson testified that Mitchell said.

"You get the impression that Mr. Mitchell would put a bug in the room?" asked Richard Ben-Ventiste, an assistant Watergate prosecutor.

"That was the impression though I didn't take it very seriously at the time," Colson replied.

Sirica's ruling that Mr. Nixon need not testify appeared to make it likely that the long trial could be finished by Christmas the target that he had set often in the past.

Indeed, Sirica asked the jury yesterday to decide and report to him today whether they would be willing to sit later in the afternoon and attend court on Saturdays as well, in an attempt to conclude the trial by December 19 or 20.

Lawyers for the three defendants who sought Mr. Nixon's deposition said that

they had no plans to contest Sirica's ruling before the case goes to the jury for a verdict.

Some lawyers suggested there is almost no chance that the defendants could successfully challenge the decision at this point. They could theoretically ask the U.S. Court of Appeals to order Sirica to delay the trial pending an opportunity to secure depositions from Mr. Nixon, but the chances of the appellate court's agreeing are considered slim.

It is expected, however, that should the case end in convictions for any of the three, he would cite the decision as a ground for reversal.

The Sixth Amendment of the Constitution guarantees a defendant the right to "have compulsory process for obtaining witnesses in his favor," and the three defendants who sought the depositions contend that Mr. Nixon's testimony was crucial to their defense.

Some observers suggested that the defendants might thus actually be helped more than they were hurt by Sirica's ruling.

It was impossible to know, for instance, whether Mr. Nixon would have provided the helpful testimony that the defendants had predicted. Mr. Nixon supplied testimony in the form of written answers to written interrogatories at Ehrlichman's trial last summer in the plumbers case — a trial that ended in Ehrlichman's conviction — and it was generally felt that the testimony did not really help Ehrlichman.

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