

SIRICA BARS DELAY IN COVER-UP TRIAL; NIXON IS EXCUSED

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Judge Cites Ex-President's Health and Questions the Value of His Evidence

NO APPEAL LIKELY NOW

Judge Asks Jurors if They Will Sit Saturdays So the Case Can End by Dec. 20

NYTimes

By LESLEY OELSNER

Special to The New York Times

WASHINGTON, Dec. 5 — United States District Judge John J. Sirica ruled today that former President Richard M. Nixon need not testify either on the witness stand or through deposition in the Watergate cover-up trial.

He cited as reasons for his decision Mr. Nixon's poor health and the type of testimony that he could be expected

Text of Sirica's ruling on Nixon is on Page 24.

to give in response to questioning by lawyers for the three defendants who have sought his testimony.

He questioned the value of any testimony that Mr. Nixon might have given and pointed out that the former President was an unindicted co-conspirator in the case.

Judge Sirica said in a six-page opinion that the other remaining testimony in the trial could be concluded "well before" Jan. 6. A court-appointed panel of doctors had said that was the earliest possible date that Mr. Nixon could give a deposition. The judge said that "complications in Mr. Nixon's recovery" could postpone that date.

Mr. Nixon is resting at his home in San Clemente, Calif., after surgery for phlebitis.

Adjournment Is Barred

"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," Judge Sirica said.

John N. Mitchell, the former

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

The other defendants in the trial are Robert C. Mardian, a former Assistant Attorney General, and Kenneth W. Parkinson, a former counsel for the Nixon re-election committee.

'Received With Caution'

Judge Sirica, whose decision denied the requests for depositions and quashed the subpoena, said 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 has been accused, in effect, of being an accomplice of the defendants.

"Certainly, his testimony would be subject to the instruction to the jury that it should be received with caution and scrutinized with care."

Judge 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 marked by several other developments in Judge Sirica's crowded courtroom on the sec-

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ond floor of the United States Courthouse.

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

And Charles W. Colson, a former Nixon aide at the White House who was originally charged in the cover-up case but resolved those charges through a negotiated guilty plea in the case involving the special White House security force known as the plumbers, gave incriminating testimony about Mr. Haldeman, Mr. Ehrlichman and Mr. Mitchell.

Mr. Colson, at the request of Mr. Ehrlichman's chief counsel, had been called as a "court witness"—the type of witness whose credibility is not "vouched for" by any of the parties in the case.

Judge Sirica's ruling appears to make it possible, if not likely, that the trial can be finished by Christmas; the target that he had often set in the past.

The judge asked the jurors to decide among themselves tonight and report back to him tomorrow whether they would be willing to sit longer in the afternoons and attend court on Saturdays as well, in an attempt to conclude the trial by Dec. 19 or 20.

Lawyers for the three defendants who sought Mr. Nixon's deposition said that they had no plans to contest Judge Sirica's ruling before the case goes to the jury for a verdict. However, it is expected that if any of the three are convicted, the judge's decision would be cited as a ground for reversal on appeal.

As a practical matter, some lawyers suggested today, there is almost no chance that the defendants can successfully challenge the decision at this point. They could ask the Court of Appeals to order Judge Sirica to delay the trial pending an opportunity to depose Mr. Nixon, but the chances of the higher court's agreeing are considered slim.

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

Thus, they could argue on appeal that Judge Sirica, in refusing to postpone the trial to allow them to get Mr. Nixon's testimony, was denying them their Sixth Amendment right.

May Be Helped

Some observers at court today suggested that the defendants might thus be helped more than they were hurt by Judge 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. the form of written answers to written interrogatories at Mr. Ehrlichman's conviction—and it was generally felt that the testimony had not helped Mr. Ehrlichman.

Mr. Ehrlichman is basing much of his defense on the contention that Mr. Nixon "deceived and misled" him about the break-in at Democratic headquarters in the Watergate complex on June 17, 1972. It is possible, however, that Mr. Nixon would have given testimony contradicting this contention.

Mr. Ehrlichman's attorney, William S. Frates, told the jury of this theory in his opening statement. Presumably, he will now be entitled to have the judge give the jury an explanation as to why Mr. Nixon is not there to testify.

Mr. Nixon's attorney, Herbert J. Miller, filed a response with Judge Sirica today contesting Mr. Ehrlichman's motion to take Mr. Nixon's deposition—the first of the defense motions filed—saying that Mr. Nixon would not in fact have been ready to take a deposition

by Jan. 6.

Mr. Miller agreed that, as the court-appointed panel of doctors had said last week after examining Mr. Nixon at Judge Sirica's request, "Mr. Nixon may be able healthwise to give a deposition on Jan. 6."

However, Mr. Miller said, Mr. Nixon needed a "substantial" amount of time to "prepare for the interrogation"

Mr. Nixon was pardoned in September by President Ford for any crimes committed during his term in office. However, this pardon does not protect Mr. Nixon from prosecution for subsequent crimes. Mr. Miller today seemed to refer to the fact that Mr. Nixon would have to be careful to testify in absolute accuracy to avoid a possible perjury charge.

The Miller response also contended that Mr. Nixon's attorneys had been able to do little preparation so far because the "shipment of Mr. Nixon's records to California" has been "embargoed."

Judge Sirica apparently wrote his opinion before receiving Mr. Miller's statement. However, his opinion does take into account the point Mr. Miller raised about Mr. Nixon's needing adequate time to prepare.

"The witness would have to be allowed some time to review, with his attorneys, his voluminous records so as to prepare to testify," Judge Sirica said.

Medical Report Cited

Judge Sirica said in his ruling that the report by the medical panel about Mr. Nixon's present unavailability "in and of itself should answer the defendants' motions."

"The court will not issue an order to take the deposition of Mr. Nixon while it appears that he is so ill that the taking of such a deposition could seriously jeopardize his health," he said.

He then reviewed the legal requirement that must be met before a deposition can be taken, or a continuance in a trial granted. He said that he was "not convinced" that the requirements had been met.

"While no one would deny that the present situation is unique in many respects," he said, "it apparently is not the kind of exceptional situation for which the extraordinary procedure of criminal case deposition was designed."

In conclusion, he said, "There has been no showing by way of a statement, affidavit or otherwise from Mr. Nixon that he would, in fact, testify along the lines the defendants have predicted."

Mr. Ehrlichman, who is serving a three-year prison term,

was called as a witness because Mr. Frates wanted to question him about one specific allegation that had been made at the trial about Mr. Ehrlichman—the allegation by John W. Dean 3d that Mr. Ehrlichman ordered Mr. Dean shortly after the Watergate break-in to tell

Dean, saying that Mr. Dean had told him of the plan to have Mr. Hunt leave the country.

But later, under questioning by Richard Ben-Veniste, prosecutor, Mr. Colson gave testimony that, if believed, incriminated Mr. Ehrlichman.

He said that in January, 1973,

Mr. Ehrlichman told him he could speak to Mr. Hunt's attorney and give him assurances of his, Mr. Colson's continued friendship for Mr. Hunt. The prosecution contends that the cover-up defendants wanted to keep Mr. Hunt from telling the truth about Watergate.