

Networks Win Access To Tapes

12/6/74

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The White House tape recordings introduced as evidence in the Watergate cover-up trial are public property and can be reproduced for broadcasting, a federal judge ruled here yesterday.

The decision by U.S. District Court Judge Gerhard A. Gesell had been sought by major radio and television networks, which filed suit to get access to the tapes, and opposed by attorneys for former President Nixon.

It was the first time a federal judge has ordered release of tapes played during a criminal trial.

The actual release to broadcasters will be held up indefinitely, however, pending suggestions on how to reproduce the recordings so all members of the public can have access to them, as well as suggestions on how to avoid what Judge Gesell called "overcommercialization" of the tapes.

Under any circumstances, the tapes will not be released until the cover-up trial ends.

None of the prosecutors or defendants in the cover-up trial had objected to release of the tapes, which already have been heard by the jury as well as members of the press and public who have attended the trial during the past two months.

The only formal objection to their release came from former President Nixon, one of the major speakers on the recordings. His attorneys said the former chief executive would be embarrassed by public broadcasting of the contents, and contended that he still had a property right in the tapes.

"Former President Nixon... has no right to prevent normal access to these public documents which have already been released in full text," Judge Gesell wrote in an eight-page memorandum.

"His words cannot be retrieved; they are public property and his opposition is accordingly rejected," Gesell added.

Nixon's attorneys said late yesterday that they would have no comment on the order

until after they had reviewed it in detail.

The suit seeking release of the tapes was filed by National Broadcasting Co., American Broadcasting Co., Columbia Broadcasting System, Inc., Radio-Television News Directors Association, and Warner Communications, Inc.

Fred Graham, the legal counsel

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respondent for CBS and one of the reporters who has been attempting to secure release of the tapes for broadcasting for several weeks said that he did not consider the mechanical problem of reproducing the tapes a major obstacle.

"I'm sure that we can come up with a proposal that will be acceptable to the judge and will allow the tapes to be distributed on an equitable basis," Graham said.

In his opinion, Gesell pointed out that the federal court here as a matter of practice makes available copies of documents or photographs received into evidence, with few exceptions.

"This privilege of the public to inspect and obtain copies of all court records... is of long standing in this jurisdiction and reaches far back into our common law and traditions," Gesell said.

"The law must be applied and the fact the evidence is in aural form is of no special consequence. The tape exhibits are in evidence and have therefore come into the public domain and the public should have the opportunity to hear them," he added.

Gesell made it clear that "only portions of the tapes strictly germane to the criminal proceedings" and already played to the jury could be reproduced for broadcasting.

Gesell added that there was particular need, however, for the public to have every possible access to evidence presented during the Watergate trial.

"The courts are a branch of

government and a criminal proceeding involving officials holding high positions of public trust must peculiarly remain open for the closest scrutiny and discussion by citizens," Gesell wrote.

He said any plan formulated for reproducing the tapes should assure "fair and equitable distribution to all categories of applicants."

He gave interested parties until Jan. 3 to come up with a plan to reproduce and distribute the tapes.

Meanwhile, Gesell ordered the court clerk to reproduce a single set of the tapes, as played to the jury, pending any final order by him actually authorizing it to be released for reproduction.