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Court clears way on Watergate tapes

WASHINGTON (AP) — The U.S. Court of Appeals cleared the way Tuesday for broadcasting of the Nixon White House tapes played at the Watergate cover-up trial.

"The tapes played at trial are no longer confidential," the court ruled in a 2-1 decision.

The ruling also permits the sale of the tapes as phonograph records.

Included is the so-called "smoking gun" tape of June 23, 1972, when former President Richard M. Nixon ordered that the FBI's investigation of the Watergate break-in, six days earlier, be halted.

Also among the tapes played at the trial is the March 21, 1973 warning, by former Nixon counsel John Dean, that there was a cancer on the presidency.

The three television networks, the Public Broadcasting System, a news directors' organization and Warner Communications, Inc., a manufacturer of phonograph records, had asked to reproduce the tapes.

Initially, U.S. District Judge Gerhard A. Gesell had ruled that could be done, provided the applicants came up with a plan to prevent commercialization or undignified use. Later he reviewed proposals and found them unacceptable.

U.S. District Judge John J. Sirica, who

presided over the cover-up trial, then denied the applications, saying any such action had to wait until appeals were exhausted by the four men convicted in the case, John N. Mitchell, H.R. Halde- man, John D. Ehrlichman and Robert C. Mardian.

The appeals court recently upheld the convictions of all except Mardian, but all have said they would carry the appeals process to the Supreme Court.

Involved are 30 tapes played during the three-month trial. Transcripts of the tapes were published in whole or in part while the trial was in progress.

The opinion, written by Chief Judge David L. Bazelon, said that by definition the tapes no longer are confidential and that Nixon, who opposes their release, "is left to argue that it somehow would be 'unseemly' to allow tapes of White House conversations to be marketed and publicly distributed."

But, said Bazelon, "this is essentially (a question) of taste and provides a singularly weak basis for a court to interfere with the exercise of a long-established common law right ...

"In any event, in light of the strong interests underlying the common law right to inspect judicial records — interests especially important here given the national concern over Watergate, we cannot say that Judge Gesell abused his discretion ..."

The case was sent back to Sirica with instructions that a plan be formulated for orderly and equitable release of the tapes.

U.S. District Judge Robert Merhige of Virginia, who sat as a member of the appeals court panel, concurred with Bazelon. Circuit Judge George MacKinnon dissented for the same reason as Sirica did earlier — that appeals should first be exhausted.

Nixon's lawyers had argued that, since the court transcripts already are public, nothing would be served by offering the actual recordings to the public.