

Tape Turnover Is Ordered in May Day Case

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For the first time in any of the numerous civil suits involving former President Richard M. Nixon, a judge has ordered that copies of some of Nixon's White House tapes be turned over to parties in the case.

U.S. District Judge William B. Bryant said yesterday that the government must produce by next Wednesday copies of tapes of conversations between Nixon and his top aides during the May Day demonstrations in 1971. The order is expected to draw objections from Nixon's attorneys.

MATERIALS are being sought by Rep. Ronald Dellums, D-Calif., and nine persons who said they were arrested on the Capitol steps on May 5, 1971, during a demonstration there against the Vietnam war. Among the claims in their suit, filed in November 1971, is that their arrests were part of a high-level administration conspiracy to deprive them of their civil rights, a conspiracy that may be recorded on the tapes.

Bryant last Thursday ordered that the tapes be copied and given to the plaintiffs, and he set a five-day deadline for presidential counsel Philip Buchen and other Ford administration officials who have custody of Nixon's materials pending resolution of a court battle over ownership of the material.

However, at a hearing yesterday, Bryant was told by attorney Warren Kaplan, representing Dellums and the others, that "we have yet to receive any materials."

WHITE HOUSE and Justice Department attorneys replied that they had taken steps to locate the tapes but that "the matter is not entirely under our control." They explained that under an order by another District Court judge, Charles R. Richey, who is hearing the ownership issue, Nixon's attorneys must be consulted before any of the materials can be copied.

Bryant replied, "What bothers me is that the materials are under Mr. Buchen's control. . . . There should be some other proviso in that order so that other people who have subpoenaed tapes can have them. Mr. Nixon's attorneys can't just make themselves unavailable."

One of Nixon's attorneys, Raymond G. Larroca, told Bryant that he had not been informed of the judge's order of last week and had not had a chance to make any claims of presidential privilege on the tapes. "We will take a position as soon as is humanly possible," Larroca said.

BRYANT replied, "You can file what you want, but I will order that the materials be produced by (next Wednesday)."

Kaplan had told Bryant earlier that the issue of getting Nixon's approval was a "red herring."

Judge Richey didn't intend to affect other cases where there was a valid subpoena or a court order," he argued. "It would be contrary to the letter and spirit of Judge Richey's order to let Mr. Buchen stall on this subpoena. . . . There is no basis for further delay."

Larroca told Richey last week in an affidavit that there are now "27 actions pending in which the former president has been named as a defendant or has been subpoenaed as a prospective witness, or in which discovery has been sought of the former president's presidential materials by demands served upon present or former government officials other than Mr. Nixon."

ACCORDING to court sources, Bryant's order was the first in any of those cases giving access to Nixon's White House materials, which he contends are his private property.

Nixon has filed suit here in an effort to enforce a Sept. 6 agreement with the Ford administration that gave him custody of the tapes and documents. That agreement has been challenged by a number of groups and individuals, and Richey is expected to decide the issue before the end of the year.

The Ford administration had indicated it would abide by the Sept. 6 agreement until two weeks ago, when it signed a new accord giving the Watergate special prosecutor easy access to the materials and temporary control over their transfer. Richey has yet to rule on whether that new agreement is proper.

IT WAS DISCLOSED during the hearing yesterday before Bryant that administration officials had taken steps to implement the judge's order to produce copies of Nixon's tapes without waiting for objections from Nixon. An assistant to Buchen told the judge that Nixon's attorneys had been notified of the order issued last week, but Larroca replied that "I have checked my office, and no one was told."

Bryant was informed by government attorneys yesterday that a check of Nixon's White House diary had shown that during the first three days of the "May Week" demonstrations, the president was in California. However, the diary shows that on May 4 and 5 there were meetings and calls with his top aides that lasted more than nine hours. Those discussions are recorded on five reels of tape lasting about 30 hours.

Bryant was told by government attorneys that it would take considerable time to locate and copy the relevant conversations and that White House officials were busy answering requests from the special prosecutor for materials required for the current Watergate cover-up trial and other criminal investigations.