

Nixon Tapes Must Be Kept 3 Years for Use in Court

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By R. W. APPLE Jr. SEP 9 1974

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WASHINGTON, Sept. 8 — Richard M. Nixon and the Ford Administration have reached an agreement under which the former President will ultimately be permitted to destroy the White House tape recordings that led to his downfall.

The agreement, announced

today by the White House, also provides that all of Mr. Nixon's Presidential papers and tapes will be preserved for three years for possible use in court cases arising out of the Watergate scandals.

Mr. Nixon signed the agreement in San Clemente, Calif., on Friday; it was countersigned yesterday by Arthur F. Sampson, head of the General Services Administration.

Philip W. Buchen, counsel for President Ford, said at a White House briefing this afternoon that Mr. Ford instructed him about 10 days ago to resolve the controversy over the White House files so the Administration would not find itself "enmeshed for a long time" in jurisdictional disputes.

Although Mr. Buchen denied

Continued on Page 26, Column 1

Continued From Page 1, Col. 7

that the agreement was a condition for granting a Presidential pardon to Mr. Nixon, he said the agreement had been worked out by Benton L. Becker, a Washington lawyer acting as a liaison man, at the same time Mr. Becker informed the former President of the pardon plans.

In general, the agreement upholds Mr. Nixon's right to the documents—a right reiterated in an accompanying legal opinion from Attorney General William B. Saxbe—while providing a number of safeguards because of the unprecedented circumstances of Mr. Nixon's departure.

Mr. Buchen acknowledged that historians might well protest against the destruction of the tapes—as they have when other former Presidents have been found to have "sanitized" their files—but he asserted that the tapes probably "should not have been made in the first place."

Tapes Built Up Case

In most instances, the recordings, made through microphones secreted in the Oval Office and elsewhere, took place without the knowledge of those talking to Mr. Nixon. Much of the case built against him by the House Judiciary Committee was based on recorded Watergate conversations.

Mr. Saxbe said in his opinion that if documents or tapes were subpoenaed in connection with Watergate or other legal proceedings, they "must be produced" by the Government.

"Of course," he continued, "both the former President and the Government can seek modification of such subpoenas and orders, and can challenge their validity on constitutional or other grounds."

In the agreement, Mr. Nixon stipulates that in the event of a subpoena, the Government official to whom it is directed "shall immediately notify me so that I may respond thereto

and, if appropriate, assert any defense or privilege that I may have."

Mr. Buchen said in response to questions at the briefing that if the former President should fail to respond to any subpoena, he would be "subject to the consequences." The pardon, Mr. Buchen commented, applied only to past acts.

Were in Dispute

The disposition of the papers has been a controversial question from the moment Mr. Nixon left the White House.

On Aug. 14, two of Mr. Nixon's lawyers who had remained at the White House, James D. St. Clair and J. Fred Buzhardt Jr., advised Mr. Ford that the documents were Mr. Nixon's property and should

be returned to his control.

They gave the impression that their decision had been cleared with Leon Jaworski, the Watergate special prosecutor, but Mr. Ford discovered the next day that Mr. Jaworski had merely been told of the decision, not asked for his view.

The upshot was that Mr. St. Clair and Mr. Buzhardt left the White House more abruptly than expected. Mr. Buchen was named counsel on Aug. 15, and on Aug. 16 the White House announced that the documents and recordings would be held by the Ford Administration until the tangled legal issues could be sorted out.

That task was undertaken by Mr. Buchen in consultations with Mr. Jaworski, Mr. Saxbe,

the attorneys for Watergate defendants and, through Mr. Secker, the former President.

Will Transfer Files

Under the agreement, Mr. Nixon will transfer to the General Services Administration for safekeeping all of his files. They will be kept at a Government facility at Laguna Niguel, Calif., not far from Mr. Nixon's oceanside villa.

The files will be maintained under a joint custody system, with two keys required to gain access to them. One key will be in Mr. Nixon's possession; officials of the General Services Administration will have the other and duplicates of it. But the former President retains title to the materials, including

For three years, Mr. Nixon agrees not to withdraw any

original materials from the files, unless they are subpoenaed, but he retains the right to control access to the documents.

The White House tapes are covered by special provisions. Mr. Nixon promises to leave them on deposit, intact, until Sept. 1, 1979. After that date, the administrator of the G.S.A. agrees to destroy any tapes that Mr. Nixon asks him to.

Others to Be Destroyed

All remaining tapes, the agreement specifies, "shall be destroyed at the time of my death or on Sept. 1, 1984, whichever event shall first occur."

Although Mr. Nixon is given the right to copy all other materials, he is not entitled to

copy tapes "unless there is mutual agreement" between him and the Government. This provision is apparently designed to guard against tape erasure.

Mr. Nixon said in the agreement that he wanted the tapes destroyed "to guard against the possibility of the tapes being used to injure, embarrass or harass any persons and properly to safeguard the interests of the United States."

Ultimately, he said, he plans to donate "a substantial portion" of his papers to the nation. Presumably they would be housed in a Presidential library, although planning for the projected Nixon library has been held up by the involvement of many of its planners in the Watergate litigation.

TEXT OF AGREEMENT
FILED 8 SEP 74



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IN THE SWING: Betty Ford and Emil Hess dance at fund-raising ball for a hospital in Birmingham. Though the band had not yet begun to play, Mrs. Ford and Mr. Hess began to dance. Her trip to Alabama was her first official trip as First Lady.