

# Judge Issues Wounded Knee Stay, Keeps Tapes at the White House

8/16/74  
By Austin C. Wehrwein  
Special to The Washington Post

ST. PAUL, Aug. 15— U.S. District Cover Judge Fred Nichol ordered the White House today to retain tapes that may bear on the Wounded Knee trial here and not turn them over to former President Nixon.

Although the ultimate legal effect wasn't immediately clear, his order was the first challenge to claims by Mr. Nixon's legal staff that the former President owns all White House tapes but those related to Watergate matters.

Nichol signed the order at the request of William Kunstler, one of the defense attorneys.

"This is just a piece of paper to gain publicity," U.S. Attorney D. Hurd told a reporter outside court.

The order says that the White House is to "retain any

and all tape recordings presently in its possession which were made during the previous administration between March 11 and 18, and March 26 and April 2, 1973, inclusive and which pertain to events at Wounded Knee, S. D. . . ."

Today's order will be in effect until a previous Nichol order is compiled with. Two days ago, the judge ordered the White House to disclose any taped Nixon conversations on the 1973 Indian occupation of Wounded Knee led by two American Indian Movement (AIM) leaders, Dennis Banks and Russell Means, who are on trial before Nichol.

Neither order has the same legal force with respect to Mr. Nixon that a court subpoena directed to him would have.

Earl Kaplan, a Justice Department attorney from Washington attached to the prosecution, predicted that the

Ford administration would send an affidavit saying it had no knowledge of anything pertaining to Wounded Knee in the tapes.

Kaplan said that a judicial order based on "sheer speculation" about a possible reference was merely a kind of fishing expedition.

Kunstler contended the order was necessary because the defense feared the wanted tapes would disappear. Nichol discounted the vanishing theory, but said if Mr. Nixon does get them, he would have a "chance to make several million dollars and take it off his income tax."

Nichol also said the tapes are the government's because the tape recorders in the White House belong to the taxpayers.

AIM leaders Banks and Means are facing charges stemming from the 71-day occupation of the South Dakota hamlet last year. Defense attorneys have expressed hope that the Nixon tapes might contain comments favorable to Banks and Means.