

Nixon Sues To Enforce Tapes Pact

By Timothy S. Robinson
Washington Post Staff Writer

Former President Nixon yesterday asked a federal court to force the government to live up to the terms of an agreement that gives him ownership and control of White House tapes and other presidential materials from his administration.

The agreement, which has spurred controversy on Capitol Hill and was defended again yesterday by President Ford, gives Mr. Nixon the final approval over access to the tapes and documents.

The suit, filed by Nixon attorney Herbert J. Miller in U.S. District Court here, would not affect subpoenas already issued for White House documents in five civil cases, nor would it affect any materials already subpoenaed or to be subpoenaed in the future for the Watergate cover-up trial.

At the request of the Watergate special prosecutor's office, the agreement—announced on the day the former President was pardoned—has never been put into effect.

The effect of the delay in the implementation, accord-

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ing to the suit filed by Mr. Nixon, "was to interfere with the contractual rights of former President Nixon and to inhibit the former President's ability to protect the constitutionally based privilege of confidentiality in his presidential materials and to raise other defenses or privileges available under the Constitution or laws of the United States."

In asking for a swift resolution of the suit, Mr. Nixon's attorneys said the already-issued subpoenas "illustrate the wholesale threat to the confidentiality of the presidential materials that already exists and that, given the fashionableness of such demands, may be expected to increase in the near future."

The attorneys said that they wanted to emphasize that "this is not an action to remove any of the materials beyond the reach of lawful process of a court, grand jury or any other body, nor to gain unrestricted control over the custody, preservation or location of the materials."

"Rather, this suit is an effort only to secure to Mr. Nixon the right to review the presidential materials in preparation for response to

subpoenas or other demands for production of the materials and to determine whether the constitutional privilege of presidential confidentiality should be exercised."

The lawyers asked for an immediate hearing and a temporary order enforcing the tapes agreement in the suit against GSA administrator Arthur Sampson, White House counsel Philip W. Buchen and Secret Service Director H. Stuart Knight. The materials are housed in Washington under the general custody and control of the three men.

U.S. District Court Judge June L. Green declined to hold an immediate hearing, however, in the absence of U.S. District Court Judge Charles R. Richey, who is on a speaking tour. The case has been assigned to Richey because he is hearing a challenge to the tapes agreement by convicted Watergate conspirator James W. McCord. Richey is to hold a hearing on the Nixon suit Monday.

Richey, who has handled Watergate-related civil suits, has been accused by former White House counsel John W. Dean III of making certain concessions to Republican lawyers involved in those cases. Richey has called those charges "sheer poppycock."

In addition to the McCord challenge to the agreement, there have been other attempts to question its validity. A bill is pending in Congress that would repeal the agreement and would order the government to retain custody of and protect the

presidential tapes and documents.

Although the tapes agreement was announced along with the pardon, President Ford testified yesterday before a congressional subcommittee that the agreement was not a condition of the pardon.

He said the agreement protects the tapes and documents "totally, fully, for the special prosecutor's office or for any other criminal proceedings." The negotiations leading up to the pact, he continued, "were undertaken prior to Aug. 27 because we were more or less besieged—when I say 'we', the White House—as to what to do with those documents, including tapes, and that negotiation had no relevance whatsoever to the decision on my part to pardon the President."

Much of the argument by Mr. Nixon's lawyers yesterday was based upon basic contract law: "Upon execution of the agreement, the (GSA) administrator was bound to honor the restrictions contained therein. These restrictions . . . guarantee to Mr. Nixon exclusive control over access to the materials."

Beyond that, the attorneys claimed that Mr. Nixon must have direct control over the materials because he is the only person who can place a claim of presidential privilege on the communications.

Executive privilege, the attorneys argued, "may be waived only by the President in office at the time the communication was made."

They continued:

"If unknown future occupants and staff of the White House are permitted to sift through the confidential communications of a former President and his aides, in response to subpoenas or otherwise, the expectation of privacy in such communications will be as thoroughly destroyed, and the purposes served by the privilege as effectively nullified, as if the same access were given to subsequent Congresses."

Mr. Nixon's attorneys said if those named in the suit search the materials and disclose them without Mr. Nixon's consent, it "will violate Mr. Nixon's constitutional rights in his capacity as a former President, as well as his contractual rights under the depository agreement."

The purpose of the suit is "to place control over access in the hand of the party—Mr. Nixon—to whom it lawfully belongs, and to ensure that he has the opportunity to assert such privileges and defenses as he may have with respect to those materials," they said.

As an alternative to enforcing the agreement, the attorneys also suggested that the court could immediately return all of the presidential materials to Mr. Nixon.