

# Judge Blocks Turnover of Nixon Tapes

By Timothy S. Robinson  
Washington Post Staff Writer

A federal judge yesterday temporarily blocked the government from implementing a controversial agreement that gives former President Nixon ownership and control of tapes and documents from his administration.

At the same time, the ruling by U.S. District Court Judge Charles B. Richey specifically allows Mr. Nixon access to the materials "for the sole purpose of preparing to testify in the Watergate criminal trial."

Judge Richey said the ruling is a temporary one pending full legal arguments and a decision on the main issues in two suits concerning the agreement:

- What materials are covered by the term "presidential" papers;

- Who owns those papers—the government or the President;

- Who has the authority to assert any claims of executive privilege on them—the current President or the man who was President during the time the papers were produced.

The ruling came after a four-hour hearing in which a member of the Watergate Special Prosecution Force disclosed that new subpoenas for materials from the Nixon presidency are being drawn up for two ongoing investigations by Watergate grand juries into alleged criminal conduct.

The prosecutor, Peter Krendler, would not say what the new materials are needed for. But sources said that at least one of the grand juries involved is hearing evidence concerning alleged campaign contribution violations by top Nixon fund-raisers.

Judge Richey made it clear that his ruling should not prevent turning over materials in response "to a validly issued subpoena in any civil or criminal case" or to producing such materials for the Watergate cover-up trial that is now going on.

Richey's order allowing Mr. Nixon access to the materials blocks the originals from being shipped to California for

the former President's use, but allows him to have the materials copied "if he is unable physically" to come to Washington to examine them.

Mr. Nixon's attorneys filed suit last Thursday to force the government to comply with the terms of the tapes agreement, and asked that the White House be immediately barred from examining and releasing the documents.

Early yesterday, meanwhile, a group of historians, political scientists and journalists filed a suit asking that the tapes agreement be ruled illegal. Judge Richey granted a motion consolidating the suit filed yesterday with the one

See CUSTODY, A15, Col. 5

## CUSTODY, From A1

filed by Mr. Nixon "since there are common questions of law and fact."

Richey is also handling a suit filed by convicted Watergate burglar James W. McCord Jr. seeking to invalidate both the tapes agreement and President Ford's pardon of Mr. Noxn.

Mr. Nixon's attorney, Herbert J. Miller, argued during the hearing on the two suits that claims that the materials could be destroyed upon Mr. Nixon's death were "absolutely false."

He said that he had clarified General Services Administrator Arthur F. Sampson to the agreement in a letter to specify that the documents would remain intact for at least three years and tapes would remain intact for at least five years, even in the event of Mr. Nixon's death.

Miller said the former Presi-

dent's suit seeking enforcement of the subpoenas was filed "in good faith" and not an attempt to hinder access to White House documents by investigators.

The problem, Miller said, comes when the White House itself attempts to comply with subpoenas by searching through documents from the Nixon years. "In the White House today, I don't know who has access," Miller said. "When they start going through those records, they have breached the presidential privilege."

He said that former President Nixon "has a duty, obligation and a right as a former President to decide whether to invoke the privilege" on documents from his administration and that the current administration does not have that authority over Mr. Nixon's documents.

When Mr. Nixon was President, "many great and impor-

tant decisions were made. He did not spend full time worrying about Watergate," Miller added.

Robert Herzstein, an attorney representing the Reporters Committee for Freedom of the Press, the American Historical Association and the American Political Science Association, said that the implementation of the tapes agreement would cause irreparable injury "to future generations. It seems strange that a private citizen should have final control" over such materials, Herzstein said.

Justice Department attorney Jeffrey Axelrod argued that there was no need for an order of any kind being granted about the agreement at this time, since the public interest is being protected by the White House's cooperation with ongoing Watergate investigations.

He said the reporters, historians and political scientists

were not being directly harmed by the situation that now exists and that Mr. Nixon was not being harmed immediately because "no one is denying him access at this time."

Judge Richey, calling the case "unique in the annals of American jurisprudence," said that the public interest would be served best by "preserving the status quo" while the question of ownership of presidential materials is being resolved. He issued the three-page opinion outlining his order later yesterday.

The tapes agreement, which is being questioned in Congress as well as in the courts, gives the former President the final approval over access to tapes and documents from his administration.

It gives him all literary rights to the materials, and requires that they be shipped to California, near his San Clemente home.