

U.S. Judge Delays Accord On Nixon Tapes and Data

Orders All Material Held at White House —Former President Is Given Access Only for Preparation of Testimony

Times

BY ANTHONY RIPLEY

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WASHINGTON, Oct. 21 — Nixon resigned as President. A Federal judge ordered a delay today in carrying out the agreement on White House tape recordings and papers between the Ford Administration and former President Richard M. Nixon.

Judge Charles R. Richey of Federal District Court issued a temporary restraining order barring Ford Administration officials from effectuating the terms and conditions of the agreement entered into by Richard M. Nixon and Arthur B. Sampson on or about Sept. 6, 1974.

Mr. Sampson, who is head of the General Services Administration, had agreed to give Mr. Nixon control of the White House materials last Aug. 7, two days before Mr.

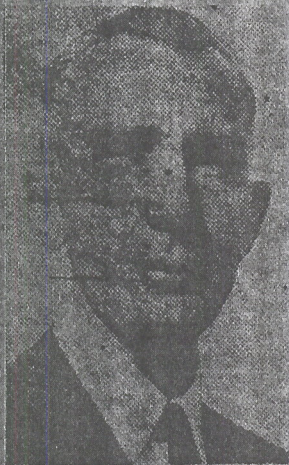
Nixon resigned as President. The judge ordered that all the materials be held at the White House and that only papers or tapes sought by subpoena be released.

In addition, Judge Richey ordered that the former President be given access to the material "for the sole purpose of preparing to testify in the Watergate [cover-up] criminal trial." If Mr. Nixon is unable to come to Washington to review the material, the judge said, "he shall be allowed to make copies."

Almost immediately after the tapes agreement was announced, the White House began to back off. Lawyers from the Justice Department's Civil Division argued that the agreement was not "self-executing."

This meant that, as long as the White House took no action to begin turning cartons of documents over to Mr. Nixon, the agreement had no force. The White House kept the material and, in effect, temporarily suspended the agreement.

Congress reacted strongly to the agreements, too. A bill by Senators Gaylord Nelson of Wisconsin and Sam J. Ervin Jr. of North Carolina, both Democrats, passed the Senate overwhelmingly. The bill is now before a House subcommittee. It provides for taking "protective custody" of the tapes and papers, making them available



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Judge Charles R. Richey

Continued on Page 29, Column 1

Continued From Page 1, Col. 3

to the special prosecutor and providing for eventual public access.

During arguments before the judge today, Mr. Nixon's lawyer disclosed that the "death clause" in the agreement signed with the G.S.A. had been suspended for five years. This section of the agreement provided for destroying tape recordings made in the former President's offices in the event of his death.

Herbert J. Miller Jr., Mr. Nixon's lawyer, told the court that he had written Mr. Sampson, saying that "it is our interpretation" of the agreement that there was "a five-year period of nondestruction no matter who dies."

The judge's ruling came as Leon Jaworski, the special Watergate prosecutor, was preparing subpoenas for additional material from the Nixon Administration. Mr. Jaworski had not been consulted on the agreement between the Ford Administration and Mr. Nixon.

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Henry S. Ruth Jr., the deputy special prosecutor, began negotiations with the White House and Mr. Miller soon after the agreement was announced by President Ford on Sept. 8.

Those negotiations broke down and Mr. Miller went to Federal District Court in an attempt to force the Government to live up to the Nixon-Sampson agreement.

Mr. Miller had asked for a temporary restraining order so that no papers would be released without subpoena and that Mr. Nixon's rights would be protected.

New Suit Filed

A conflicting order was sought today by a group of journalists, historians and political scientists. The group filed suit attempting to set aside the entire agreement and to make sure the papers were held in Washington and not transferred to San Clemente, where Mr. Nixon lives.

That suit was filed just before Judge Richey began his hearing today. It was brought by the Reporters Committee for Freedom of the Press, the American Political Science Association and eight individuals.

The Nixon-Sampson agreement had given the former President "all legal and equitable title to the materials" under the Presidential Libraries Act, but the three organizations challenged that title.

"Congress surely did not intend to give a former President who resigns in the face of imminent impeachment a license

to carry off on a wholesale basis, vast stores of papers and materials prepared or received by the executive branch in the course of discharging its public responsibilities," the suit said.

Historical Purposes

The suit spoke of the dangers of possible destruction or alteration of the materials, and of a need for the materials for historical and journalistic purposes. The suit also said the papers were "prepared on Government time, by Government employees, in the discharge of their public duties."

Judge Richey joined the reporters' committee suit and the Nixon suit together and considered requests from both sides for restraining orders.

Mr. Miller told the judge that he had heard "ad nauseam" that the tapes might be destroyed if Mr. Nixon died.

"All of this talk is absolutely not true," he said. "The whole intent was that the documents and tapes not be destroyed for five years."

Robert E. Herzstein, arguing for the reporters' committee, said its primary mission was to "seek the preservation of these documents as public documents."

Prosecutor's Goal

Peter K. Kriendler, counsel for the special prosecutor's office, said the office's only function was to seek "evidence relevant to our ongoing prosecutions" and not material for issuing a final report.

When Mr. Kriendler noted that terms of the agreement barred the special prosecutor's ability to secure more tapes and documents, Mr. Miller replied that he was willing to amend the agreement to provide those materials.

William A. Dobrovir, a lawyer representing Jack Anderson, the columnist, told the court that Mr. Anderson had been seeking access to the materials since last month under the Freedom of Information Act and had been denied access by the G.S.A. He moved to intervene in the action before the court, and Judge Richey set a hearing for Nov. 4 on the matter.