

Nixon Rebuffed On Tapes

Accord Gives Prosecutor First Access

By Timothy S. Robinson
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President Ford has approved a new agreement tapes and documents from that gives first access to all tapes and documents from the Nixon administration to the Watergate special prosecutor's office for use in criminal cases.

If approved by a federal judge before whom the whole question of access of presidential papers is pending, the new agreement would supersede one announced by President Ford in September that gave the final custody and control of the documents to Mr. Nixon. The former President's attorneys are expected to oppose the new agreement and fight instead for implementation of the September arrangement.

The new agreement was reached over the weekend between attorneys for the White House, Justice Department and special prosecutor's office and disclosed in court papers filed yesterday in U.S. District Court here.

A hearing on the proposed new agreement probably will be held later this week before U.S. District Court Judge Charles R. Richey, attorneys in the case said.

The White House said Mr. Ford had determined:

"The due administration of justice and the public interest require that the special prosecutor have prompt and effective use of those presidential materials of the Nixon administration now located in the White House complex that are relevant and important to ongoing criminal investigations and prosecutions within the special prosecutor's jurisdiction."

Under the new agreement, the prosecutor's office would inform the current White House counsel of the specific materials needed. The prose-

cutor then would have to limit the search to:

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- Files, which because of their titles, may contain documents relevant to specified investigations and prosecutions.

- Only that portion of the file covering the time period relevant to the request.

However, if a file is not arranged chronologically or by subject, the prosecutors could examine it "to determine whether the file contains relevant materials."

The special prosecutor could make copies only of tapes and documents that are relevant to investigators or prosecutions within his jurisdiction, and the current White House council could review the documents or tapes to determine if their release could harm national security.

In other words, whether national security was a factor would be determined in the future by the incumbent President.

Under the original agreement announced by Mr. Ford, the special prosecutors could get access to tapes and documents from the Nixon Years

only through use of subpoena and by allowing Mr. Nixon to raise any claims of privilege.

The only role Mr. Nixon or his attorneys would have under the new agreement is being present during the searches through the materials, and receiving copies of tapes or documents of which the special prosecutor is allowed to have copies.

In a joint legal brief filed by the White House and the special prosecutor's office, the argument that Mr. Nixon could still claim executive privilege on documents from his administration was rejected altogether.

"This privilege, by its nature, cannot be exercised to bar voluntary dissemination by an incumbent President of materials prepared in the executive office of the President to other departments of the executive branch for legitimate governmental purposes . . .

"Here, President Ford has determined that the public interest requires that presidential materials relevant to the ongoing investigations and

prosecutions by the special prosecutor be made available for use in those investigations and prosecutions. The questions for this court is whether Mr. Nixon, with no official duties or accountability to the electorate, now can override that determination," prosecutors and White House lawyers said.

Mr. Nixon's attorneys argued in legal briefs filed yesterday that the papers and materials of a presidency are the property of the President during whose term of office they are produced, "to be disposed of by him as he wishes after his term in office."

They said their argument is supported by historical tradition, judicial decisions, congressional recognition and policy considerations and should not be rejected by the courts in this case "simply on a feeling that the rule is outdated or unwise."

5 Urge Court to Bar Delivery of Tapes

Rep. John Brademas (D-Ind.)

and four other legislators filed a brief in U.S. District Court here yesterday urging the court to continue to prevent delivery of tapes and papers to former President Nixon until Congress has an opportunity to complete work on protective custody legislation.

The legislation, passed by the Senate Oct. 4, is now pending before a House Administration subcommittee Brademas heads. He said the subcommittee will meet Nov. 19 to consider the measure.

Brademas was joined in the brief by the author of the legislation, Sen. Gaylord Nelson (D-Wis.); Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Senate Government Operations Committee and of the now defunct special Watergate investigating committee; Sen. Jacob K. Javits (R-N.Y.), and Rep. Wayne L. Hays (D-Ohio), chairman of the House Administration Committee.