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Nixon, Under Oath, Denied

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Former President Nixon has denied under oath that he caused an 18½-minute gap in a White House tape of an Oval Office meeting three days after the Watergate break-in, his attorney said yesterday.

The attorney, Herbert J. Miller, made the disclosure in arguments before three federal judges who are hearing the former President's challenge to the constitutionality of a congressional statute that gives the federal government ownership and control of documents and tapes from the Nixon administration.

The government argued, however, that when Congress passed the law it was acting against a background of refusals by Nixon to turn over tapes for legitimate criminal investigations, that there were "unexplained gaps and distortions" in the ones that were turned over under court order, and that Congress has the "right to set history straight." Therefore, the law is constitutional, said Justice Depart-

ment attorney Irwin Goldbloom.

Miller had accused the government of questioning Nixon's character by raising such arguments.

"They say Mr. Nixon is untrustworthy, Mr. Nixon will distort the record, Mr. Nixon created an 18½-minute gap," Miller said. He added that Nixon had been questioned about that very gap on the June 20, 1972, tape by the special prosecutor's office, in an extraordinary appearance before prosecutors and two Watergate grand jury members in June.

"Let them (the Justice Department) challenge that his (Nixon's) responsibility (for the tape gap) was denied under oath," Miller said.

Other persons familiar with Nixon's grand jury testimony said he was questioned in detail on the possible causes for the gap and was unable to provide any explanation for it.

Miller claimed that the government is using the accusations of Nixon's untrustworthiness to justify a "wholesale

rummaging" of 42 million pages of documents and nearly 900 tape recordings from his five and one-half years in office.

"This is a wholesale seizure . . . in violation of the Fourth Amendment to the Constitution," Miller told U.S. Circuit Court Judges Carl McGowan and Edward A. Tamm and U.S. District Court Judge Aubrey E. Robinson Jr.

The arguments before the three judges was the latest in a series of court appearances by attorneys for Nixon and the government in a year-long battle over the custody and control of materials from his administration.

Nixon first filed a suit in an attempt to force the government to carry out a controversial agreement between him and the Ford administration that gave custody and control of the materials to the former President.

A temporary restraining order in effect in that case for the past year has blocked shipment of any of the materials to Nixon in California, but has

allowed the special prosecutor's office access to certain materials for its investigations.

After Congress passed the legislation last December giving the government control over the Nixon administration material and the right to decide what portions would be made public, Nixon challenged the constitutionality of that statute.

The legislation said one guideline for making portions of the material public would be "the need to provide the public with the full truth . . . of the abuses of power popularly identified under the general term 'Watergate'."

"That statute encompasses all the material" of the Nixon years and not just Watergate-related materials, Miller claimed yesterday. "The President also is an individual and as such has private thoughts."

Miller said a President from whose term such materials originate should make the final decision on what can and cannot be made public.

"By seizing these papers,

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the Congress has violated his rights to privacy and intruded on his rights under the First Amendment to free speech," he added.

Meanwhile yesterday, in another federal courtroom here, another lawyer representing Nixon was attempting to block the former President's deposition in a wiretap suit filed by a former National Security Council aide.

Attorneys for the NSC aide, Morton Halperin, said Nixon must be questioned in the suit because only he can provide answers to inquiries about the reasons for the wiretaps and the decisions to continue them. In his suit Halperin claims the so-called national security taps were illegal.

Attorney William G. Hundley, representing Nixon in the wiretap case, said that forcing a former President to answer such questions runs the risk of "undermining" the office of the presidency.

U.S. District Judge John Lewis Smith Jr. said he would rule later on the request for Nixon's deposition.



Nixon attorney Herbert J. Miller talks to reporters as he leaves District Court.

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