

TAPE GAP DENIAL BY NIXON IS CITED

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Lawyer Says Ex-President
Disclaimed Under Oath
Any 'Responsibility'

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WASHINGTON, Sept. 22—
Former President Richard M. Nixon has denied under oath "responsibility" for the 18½-minute gap in a key White House tape recording, one of his attorneys said today.

Mr. Nixon made his denial, according to the attorney's statement, when he gave 11 hours of grand jury testimony in California last June under questioning by lawyers from the office of the special Watergate prosecutor. Until today, both Mr. Nixon's lawyers and the prosecutors have refused to disclose any of Mr. Nixon's testimony.

Mr. Nixon's attorney, Herbert J. Miller Jr., brought up the subject of the denial during oral arguments in Federal Court here over the constitutionality of a new statute that gives the Government control over Mr. Nixon's Presidential papers and tape recordings.

Challenged by Nixon

Mr. Nixon is challenging the statute as unconstitutional. He contends, among other things, that it violates the principle of separation of powers and that it provides for a "wholesale, unreasonable seizure" in violation of the Fourth Amendment.

The Justice Department is defending the statute. In a brief submitted to the court a few weeks ago, the department argued that Congress had had ample reason to conclude that

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Mr. Nixon would "not be a trustworthy custodian" of the documents, in view of such fact as the existence of the 18½-minute gap in a tape that was in Mr. Nixon's custody when he was President.

Mr. Miller, in his argument this morning, discussed the reasoning in the department's brief.

"The Government says," he told a panel of three judges, that "Mr. Nixon is untrustworthy. Mr. Nixon will distort the record. Mr. Nixon created a 18½-minute gap."

Examined Under Oath

"I submit to the court," he went on, "at least with respect to the 18½-minute gap," that the court itself had a stipulation filed last June describing the fact that Mr. Nixon had been examined under oath, "for many hours."

"I challenge the Justice Department" to show that "the matter was not gone into," Mr. Miller said, in loud and somewhat angry tones, and "that his responsibility was not in fact denied under oath."

Mr. Miller, a former Justice Department official, declined later to elaborate on his statement. The special prosecutor's office declined to comment.

Irwin Goldbloom, the attorney representing the Justice Department at today's hearing, however, responded during his turn to argue to the court: "Our papers speak for themselves, and no such allegation [that Mr. Nixon created the gap himself] is made."

What was said, he noted, was that it was "reasonable" for Congress to conclude as it did, in view of the fact that "certain unexplained gaps" occurred in the documents while they were in Mr. Nixon's custody.

Question of Relevancy

Whether a denial of responsibility by Mr. Nixon for the gap is relevant to the issue before the court is in fact open to question.

Congress was concerned in drafting the legislation with what happened while the materials were in Mr. Nixon's custody. Legally, one lawyer not a party to the case noted later, what is significant is what hap-

pened to the materials while Mr. Nixon was their custodian, and not what he personally did with them.

The 18½-minute gap appears on a tape recording of a conversation that Mr. Nixon had with H.R. Haldeman, the White House chief of staff, on June 20, 1972, three days after the break-in at the Democratic headquarters in the Watergate complex here. The break-in was discussed at the meeting, for Mr. Haldeman's notes of the conversation state that there was discussion of a public relations offensive to counteract its effects.

The conversation was included in the first subpoena issued by the Watergate prosecutor for Mr. Nixon's tapes in July, 1973. The existence of the gap was disclosed that fall, after United States District Judge John J. Sirica and then the United States Court of Appeals here ordered Mr. Nixon to comply with the subpoena.

At first the White House said that the gap appeared to have been produced by the mistaken pushing of the wrong button on a tape recorder. Subsequently a panel of experts appointed by Judge Sirica concluded that the gap had been made by a series of at least five erasures.

Cover-up Laid to Nixon

WASHINGTON, Sept. 22 (UPI)

—A lawyer accused former President Nixon today of lying to cover up existence of wire-taps during his Administration.

John H. F. Shattuck argued before United States District Judge Lewis Smith that a sworn deposition should be obtained from Mr. Nixon in a civil suit against him by Mr. Shattuck's client, Morton H. Henry A. Kissinger, whose telephone was tapped. Mr. Kissinger was President Nixon's adviser for national security affairs at the time.

In Mr. Halperin's damage suit against Mr. Nixon, Secretary of State Kissinger and other top Nixon Administration officials, Mr. Shattuck charged: "Mr. Nixon was one of the principal—if not the principal—moving forces behind the taps. He has twice publicly taken responsibility for them. He received periodic and sometimes daily reports."

*8 Sep 75

** 23, 24 Jun 75.

*Morton H. Halperin