

Nixon Tapes Access Gained By Prosecutor

By Stephen Isaces
Washington Post Staff Writer

The Watergate special prosecutor has for the first time won voluntary access to tape recordings made in the Nixon White House, it was learned yesterday.

Until last Friday, the only tapes the special prosecutor's office had obtained were those it demanded for trial purposes through law suits and other court actions.

On Friday, copies of two tape recordings were turned over to the prosecutor's office by former President Nixon's attorney, Herbert J. Miller Jr.

"These are not for a trial," said a spokesman for the Special Prosecution Force. "They're for an ongoing criminal investigation, and they do indicate the beginning of us getting access to evidence we've been trying to get since August."

"A lot of people" he said, "believe we've had access for months. But that's not so. But if this procedure continues to be followed, we'll be satisfied

... "We've worked something out that looks too be a voluntary arrangement ... and we're now confident we'll get everything we need."

The arrangement worked out is for Miller to review tapes the prosecutor asks to hear, after reviewing the tapes, he then turns them over to the special prosecutor.

Until recently, the special prosecutor's office had obtained 54 tapes and 700 pages of documents for use in trials.

Recently, it got two more tapes for use in a trial, and then another two for use in the trial of former Secretary of the Treasury John B. Connally.

According to the special prosecutor's office and the White House, Miller has not himself had direct access to the original tapes. The tapes he hears are duplicates, prepared by the Secret Service with all three of the interested parties (White House, Millar and special prosecutor) observing.

"The White House," said spokesman Larry Speakes, "reviews them for national security material we may wish to omit."

While access to the original tape recordings has been sharply limited, an order by U.S. District Court Judge Charles R. Richey has allowed some former and current White House aides to get access to documents that had been in their files.

As with the tapes, direct control of files is prohibited, and Secret Service agents accompany people to their own files. Original documents may not be removed from the building.

If a particular document is

wanted, it is copied by General Services Administration archivists at the Executive Office Building adjoining the White House.

Most of the fewer than 10 persons who have been in to look at the files have done so at the request of the special prosecutor's office, in search of documents for investigative purposes, according to the special prosecutor's spokesman.

Among the former Nixon aides who have asked White House Counsel Philip W. Buchen for access to their files are counsel John W. Dean III, domestic adviser John D. Ehrlichman; chief of staff H. R. Haldeman, economic aide Peter M. Flanigan, special counsel Charles W. Colson, counselor Bryce N. Harlow, Domestic Council director Kenneth R. Cole Jr., and deputy counsel Henry C. Cashen.

The sealing off of files was so complete that, at one point the National Security Council and Council on Economic Advisers could not see their own files. They since have been able to copy files they have needed for ongoing work.

Meanwhile, a three-judge federal panel heard arguments from attorneys involved in civil lawsuits over the tapes. The main issue in the suits at this point is whether the three judges — Richey, and Circuit Court Judges Carl McGowan and Edward A. Tamm — should rule on the constitutionality of a statute passed by Congress in December giving custody of the tapes to the government.

Richey has already ruled that former President Nixon does not own the tapes and cannot claim executive privilege on them, but his ruling has been stayed pending action by the three-judge panel.

The special prosecutor's office, the Justice Department (representing the White House at this point), and Miller want arguments on the act's constitutionality heard now, without Richey's ruling taking effect.

However, attorneys for three groups and individuals seeking access to the tapes asked that Richey's ruling be allowed to take effect while hearings on the constitutionality of the statute are under way.