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Nixon to Get Leftover Tapes; Minority Report Is Critical

Challenge Eyed

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All of former President Nixon's tape recordings not under subpoena and not considered relevant to the Watergate inquiry have been declared his personal property and set aside for disposition as he wishes, the White House announced yesterday.

White House press secretary J. F. terHorst said the decision was made by the former President's legal counsel after consultation with the Justice Department and the Special Watergate Prosecution Force.

However, sources on the Watergate prosecution staff said they were not consulted in advance and were merely informed of a decision made by White House special counsel James D. St. Clair, who resigned yesterday.

One source said Watergate prosecutors had objected to the ruling but have made no decision yet on whether they might try in some way to contest it. TerHorst said Mr. Ford concurred with the decision but did not take part in it.

TerHorst told reporters, "The tapes not subpoenaed and not relevant to the Watergate inquiry belong to the [former] President." That also applies to some 26 filing cabinets full of Mr. Nixon's

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documents stored in a basement vault at the Executive Office Building.

According to Secret Service records, there are 950 reels containing thousands of tape-recorded conversations kept in its possession since the recording system was installed in early 1971.

Sixty-four of the conversations were subpoenaed by Watergate prosecutors for use in the trial this fall of the former President's aides. Fifty-five of them have been turned over to U.S. District Court Judge John J. Sirica, who is screening them for claims of executive privilege before turning them over to the prosecutors. St. Clair said eight other recordings never existed and one could not be found.

All of the remaining tapes and documents were still being held by the Secret Service yesterday awaiting word from

the former President, who is at his home in California.

The decision aroused concern yesterday afternoon at the Watergate prosecutors' office but no one was prepared to say what might be done about it.

"It is all tied up with the overall question involving the former President," said one staff member, referring to the still pending issue of whether or not Mr. Nixon will be charged with criminal violations connected with Watergate. That decision is up to the chief prosecutor, Leon Jaworski, who reportedly is still undecided.

It was speculated that some of the tapes and memoranda not subpoenaed for the forthcoming trial might be of use in any potential prosecution of Mr. Nixon.

Furthermore, it was said, some of the tapes now placed under Mr. Nixon's personal control might be relevant to other matters which the Watergate prosecution force is still investigating. Among them are allegations of illegal campaign contributions and the International Telephone and Telegraph case.

There is now no court order in force that would prevent destruction of any of the tapes and documents. Any legal effort to avert their destruction and preserve them for use in a legal proceeding probably would take the form of asking for a new subpoena. That decision, too, would be up to Jaworski, sources said.

Meanwhile, St. Clair, who had defended the President in court and before the House Judiciary Committee's impeachment inquiry, officially resigned his White House position yesterday and flew back to Boston, where he is a member of a prominent law firm.

He told a reporter in Boston that he plans a two-week vacation, but declined to make any comment about his relationship with Mr. Nixon or President Ford. He had been on the White House payroll at \$42,500 a year since last January.

Other members of the legal staff that labored in Mr. Nixon's defense before he resigned also were cleaning out their offices yesterday and returning to their old jobs.

TerHorst said that J. Fred Buzhardt, who also had argued Mr. Nixon's case in court for several months, is still at the White House with his title of legal counsel.

Meanwhile, Judge Sirica yesterday ordered four more tape recorded conversations turned over to the Watergate prosecutors.

Sirica said in his order that each recording "contains material of an admissible and relevant character." In so doing, he overruled several claims of executive privilege raised by the former President's counsel.

Attorneys for H. R. (Bob) Haldeman, who once was Mr. Nixon's chief of staff at the White House, filed a motion yesterday asking that the date of the trial, now set for Sept. 9, be delayed because of "unprecedented publicity" given the case in the past few weeks.

The motion cited heavy publicity given to the impeachment inquiry, the Supreme Court's decision ordering that the tapes be given to Judge Sirica, and Mr. Nixon's release of three transcripts of conversations with Haldeman on June 23, 1972.

Similar motions for a delay in the cover-up trial already had been filed by lawyers for former Attorney General John N. Mitchell and former White House aide John D. Ehrlichman.

Sirica is scheduled to hear arguments on requests for a delay on Monday. The Watergate prosecution force is to file its response today to the defendants request for a postponement.