

Nixon Firm On Access To Tapes

Washington

The White House said yesterday that President Nixon alone will decide who should be given access to the tape recordings of his conversations about the Watergate case.

Mr. Nixon made his decision, according to Deputy Presidential Press Secretary Gerald L. Warren, "based on the President's judgment of who could best assist him in determining the facts of the Watergate matter without jeopardizing the confidentiality of the tapes."

The matter was raised by reporters as a result of testimony Monday by H. R. Haldeman, Mr. Nixon's former chief of staff, who told the Senate Watergate Committee that he had listened to two crucial tapes—one of them at his home more than two months after he had left the government's employ.

Of all the present and former White House aides accused of involvement in the Watergate affair, only Haldeman is known to have heard any of the tapes.

QUESTIONS

Warren was asked dozens of questions, few of which he was willing to answer. Most of them dealt with two central problems: the confidentiality of the recordings and the fairness or unfairness of

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giving some persons access while denying it to others.

Mr. Nixon has refused to honor subpoenas for certain tapes from the committee and from his special prosecutor, Archibald Cox, on the ground that the tapes are private presidential papers, protected from subpoena by executive privilege and the separation of powers.

But Mr. Nixon's lawyer, Professor Charles Alan

Wright of the University of Texas, said at a news briefing last Thursday: *26 Jul*

"It is very difficult to make any claim of privilege for material that is no longer confidential. I don't rule out the possibility that there will be some cases in which it could happen, but I can't offhand think of an example of a nonconfidential document as to which you have a Constitutional privilege."

One of the documents that Mr. Nixon agreed to turn over to Cox, while rejecting his subpoena demanding others, was a memorandum that had lost its confidentiality when the White House gave it earlier to the FBI.

Haldeman testified that in early July he had taken home and listened to the tape of Mr. Nixon's meeting on Sept. 15, 1972, with John W. Dean III, ousted White House counsel.

At the time he listened to the tape, Haldeman was a private citizen, having resigned from the White House on April 30.

TAPE

At yesterday's briefing, Warren was asked several times whether Mr. Nixon's action in giving access to the tape to Haldeman—and Haldeman's action in testifying publicly to what he recalled of its contents—did not demolish the confidentiality of the recording.

Warren repeatedly refused to answer.

But Samuel Dash, chief counsel to the Senate committee, said Mr. Nixon might have damaged his claim of confidentiality and thereby undermined his own legal position.

FAIRNESS

During the briefing, the question of fairness was also repeatedly raised. Over a period of weeks, Warren and his superior, Ronald L. Ziegler, the press secretary, have asserted that all former White House employees

were operating under the same ground rules in examining the documents.

In refusing to comply with the subpoenas, the White House argued that the tapes were presidential documents.

How then, Warren was asked, could Mr. Nixon justify permitting Haldeman to

listen to tapes of two meetings between Mr. Nixon and Dean and then deny the same right to Dean and others?

The spokesman replied only that the decision was Mr. Nixon's alone. He refused to amplify.

Robert C. McCandless, one of Dean's lawyers, said in a telephone interview that "there has been no equal treatment since the resignations on April 30, and that continues." He said that he and his client are studying possible ways of gaining access to the tapes.

Senator Lowell P. Weicker (Rep-Conn.) said during the hearings yesterday that it is "grossly unfair" to the rights of possible defendants at future Watergate trials to have one witness testify on the basis of evidence denied to all others.

Weicker also questioned

whether Mr. Nixon had been forthright when he said last Monday that the tapes had been and would remain under his "sole personal control." The senator said he and the American people had been given the impression that nobody but the President would hear the tapes.

OTHERS

Warren, who had led some reporters to the same inference by his comment last week that the President listened to the tapes "alone," said that two persons other than Mr. Nixon and Haldeman had listened to the tapes.

He identified them as J. Fred Buzhardt Jr., a special White House counsel for Watergate matters, and Steve Bull, a special assistant who had responsibilities for scheduling and the flow of paperwork.

Warren said Buzhardt had listened on June 27 to the recording of a March 20 telephone conversation between Dean and the President, at Mr. Nixon's request.

He also said that Bull had audited one tape on June 4, the same day Mr. Nixon listened to others, while Mr. Nixon was taking a break in his chores. The tape Bull listened to, Warren said, dealt with a March 14 meeting.

Warren said that he could not discuss who had participated in that meeting.

New York Times.

Ziegler, 19 Jul 73, said "the President's counsels" had not reviewed the tapes.

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