

Haldeman challenged by panel on version of contents of tapes; Nixon alone to decide on access

President Alone to Decide On Giving Access to Tapes

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PRESIDENT'S GOAL

Aide Says Nixon Will Judge Who Can Help Him Learn Facts

By R. W. APPLE JR.
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WASHINGTON, July 31—The White House said today that President Nixon, acting alone, would decide who should be given access to the tape recordings of his conversations about the Watergate case.

Mr. Nixon made his decisions, said the 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 yesterday 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 several weeks after he left the Government's employ.

Dozens of Questions

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

Mr. 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 giving some persons access while denying it to others.

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

But his lawyer, Prof. Charles Alan Wright of the University of Texas, said at a news briefing last Thursday:

"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 non-confidential document as to which you have a constitutional privilege."

One of the documents that Mr. Nixon agreed to turn over to Mr. Cox, while rejecting his subpoena demanding others,

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was a memorandum that had lost its confidentiality when the White House gave it earlier to the Federal Bureau of Investigation.

Mr. Haldeman testified that he took to his home earlier this month the tape of Mr. Nixon's meeting on Sept. 15, 1972, with John W. Dean 3d, ousted White House counsel, and listened to it there. At the time, Mr. Haldeman was a private citizen, having resigned from the White House on April 30.

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

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

During the news briefing, the question of fairness was also raised repeatedly. Over a period of weeks, Mr. Warren and his superior, Ronald L. Ziegler, the press secretary, have asserted that all former White House employes 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, Mr. Warren was asked, could Mr. Nixon justify permitting Mr. Haldeman to listen to tapes of two meetings between Mr. Nixon and Mr. Dean and then deny the same right to Mr. Dean and others? He replied only that the decision was Mr. Nixon's alone. He refused to amplify.

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

On Capitol Hill, Senator Lowell P. Weicker, Jr., Republican of Connecticut, said at the hearings that it was "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.

The Senator 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 that he and the American people had been the impression that nobody but the President would hear the tapes.

Mr. Warren, who had led some reporters to infer the same thing by his comment last week that the President had listened to the tapes "alone," said that two persons other than Mr. Nixon and Mr. Haldeman had also listened to the tapes. He identified them as J. Fred Buzhardt, a special White House counsel for Watergate matters, and Steve Bull, a special assistant who had responsibilities for scheduling and the flow of paperwork.

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