

# New Rules Could Aid Disclosure

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New federal rules of criminal procedure will strengthen demands by seven Watergate cover-up defendants for access to President Nixon's tapes of their conversations before their trial starts Sept. 9.

The rules, promulgated Monday by the Supreme Court in an 8-to-1 vote, will take effect in all U.S. courts on July 1 unless Congress moves before that time to delay or disapprove them.

Under the old rules, the trial judge had more discretion on whether to grant a defendant's demand for turnover of any of his statements concerning the case in the hands of the government.

The new rules, however, say that the prosecution "shall" permit a defendant to inspect and copy "any relevant written or recorded statements made by the defendant . . . within the possession, custody or control of the government. . . ."

This presumably would include the White House tapes.

This would go beyond the existing requirement that the prosecutor must provide a defendant with any material that would tend to clear him of the charges, or material that could be used in cross-examining a government witness.

Refusal to comply with the defendants' request could lead to court orders compelling the government to make the material available, according to the rules.

The proposed rules also allow a judge to reject a demand for such materials "upon a sufficient showing" by the prosecutor based on a written statement submitted to the judge alone.

In another departure from tradition, the new rules would allow the prosecutor to inspect documents and other material belonging to the defendant before it is used as part of the defense case in a

criminal trial.

Under the new rules, H.R. Haldeman, John D. Ehrlichman and other former White House aides could insist, as a matter of right, that they be provided with copies of White House tapes recording their Watergate conversations with Mr. Nixon in advance of the trial.

If the President did not provide all the tapes to them, they could seek to bar Watergate Special Prosecutor Leon A. Jaworski from introducing any tapes into evidence at their conspiracy trial.

In his latest subpoena served on President Nixon, Jaworski has asked that tapes of 64 conversations be turned over to him for examination.

Frank H. Strickler, attorney for Haldeman, already has asked for turnover of any material held by Congress, the executive departments or the judicial branch of government that might establish his client's innocence.

If the judge rejects that request, Strickler said, he will be "back in court on July 1" when the new rules take effect to apply for all of Haldeman's recorded statements relating to Watergate.

In another proposed change with Watergate implications, the new rules provide for a formal system for "plea bargaining" between defendants and prosecutors.

Unlike the highly publicized case involving former Vice President Spiro T. Agnew last October, the new rules provide that the judge may not participate in the negotiations on a plea.

Agnew pleaded no contest to a single charge of federal income tax evasion, resigned his office and was fined, then placed on probation without a jail term.

The arrangement was worked out by lawyers for Agnew, former Attorney General Elliot L. Richardson and U.S. District Court Judge Walter E. Hoffman on the day before Agnew's dramatic departure from the vice presidency.

The new rules provide that judges "shall not participate in any such discussions" between a defendant and a prosecutor about exchanging a lighter sentence or dismissal of some charges for a plea of guilty or not contest.

The rules also require that the terms of the agreement must be disclosed in open court at the time a plea is offered.

In the past, plea bargaining has been done on an informal basis, often with great secrecy. Several Watergate figures, including former White House counsel John W. Dean III and presidential attorney Herbert W. Kalmbach Jr., have pleaded guilty in return for reduction of charges.