

Nixon Told to Free Files of Two Aides

5/23/74 By Timothy S. Robinson
Washington Post Staff Writer

Federal Judge Gerhard A. Gesell ordered President Nixon yesterday to release the personal White House files of John D. Ehrlichman and Charles W. Colson for their defense in the Ellsberg burglary case.

Gesell signed the subpoenas after a pretrial hearing in his U.S. District Courtroom over the releynance of the documents to their defense. The subpoenas were served on White House special counsel J. Fred Buzhardt Jr. and ordered the President or his subordinates to turn over various files and documents by Friday at 2 p.m.

Defense attorneys said the subpoenaed documents will help them prove there was a legitimate concern by Colson and Ehrlichman over Ellsberg's access to documents other than the Pentagon Papers, and would aid them in proving that the two former White House aides thought they were acting in the interest of national security at the President's specific direction. Judge Gesell hasn't ruled yet on how large a role the issue of national security may play in the defendants' defense.

Informed sources said yes-

terday that the White House so far has not provided Colson and Ehrlichman access to certain documents. These sources have indicated that the President may invoke a claim of executive privilege on some of the requested documents.

While yesterday's subpoenas contain no requests for access to presidential tapes, persons familiar with the case said such tapes will be requested in forthcoming subpoenas.

If such tapes or other documents are found by Judge Gesell to be relevant to the defense of anyone charged in the case and are not produced, it could mark the end of the case, the judge said yesterday.

"If the court rules that material is relevant to the case and it is not produced, the prosecution ends," Judge Gesell said during pretrial hearings on defense attempts to gain access to documents in the hands of the government.

Gesell then instructed defense attorneys to narrow the scope of the subpoenas they planned to issue before presenting them to him for his signature so that each

See SUBPOENA, A21, Col. 1

SUBPOENA, From A1

specific item could be shown as relevant to the defense.

Any defense move to gain access to White House documents could set up a confrontation with the President over executive privilege that could end in the two defendants being freed without a trial. In any criminal case, a defendant is entitled to access to evidence he could use to prove his innocence. If that evidence is believed to exist and it is withheld by the government, a judge may order the defendant freed.

Gesell later signed two of the subpoenas, but refused one presented by Ehrlichman's attorneys for access to the complete files of the White House investigative unit known as the "plumbers" on the basis that the subpoena was too broad.

The subpoena that Gesell signed on Ehrlichman's behalf asked for production of "The personal papers of John D. Ehrlichman from January 1971 through and including April 30, 1973, consisting of his handwriting notes on yellow legal-size pads bound in red-brown fiber board covers. Said personal notes are in the possession, custody or control of the office of the President of the United States of America."

Ehrlichman resigned as domestic affairs adviser from the White House on April 30, 1973, amidst new Watergate revelations concerning him and then-White House aide H. R. (Bob) Haldeman. He said he was told by President Nixon to set up a White House unit to investigate leaks of classified information in June, 1971.

The Colson subpoena directed toward the President asked for:

- Colson's handwritten notes on conversations with President Nixon from June 14, 1971 to Sept. 15, 1971 from the organization of

the plumbers unit until just after the Ellsberg burglary). Colson's subpoena said those notes are kept in a separate file called "presidential notes."

- A 10-page "damage assessment" that had been submitted to the Supreme Court in connection with the Pentagon Papers case. That document, which was not described further in the subpoena, is kept in Colson's "Pentagon Papers" file, according to the subpoena.

- A typewritten memorandum of a June 16, 1971, meeting between Colson, President Nixon, then-foreign affairs adviser Dr. Henry Kissinger, Mel Stephens and John O'Neill. The latter two persons were White House aides who worked with Colson, particularly in the area of veterans' affairs.

- A document described as "a June, 1971, option paper from Colson to Haldeman dealing with Dr. Ellsberg and the Pentagon Papers, and the cover memorandum thereto, contained in Defendant Colson's 'Pentagon Papers' file."

None of the attorneys for the other three remaining defendants, former White House aide G. Gordon Liddy and Miamians Bernard L. Barker and Eugenio Martinez, have yet filed pretrial subpoenas for the judge to enforce with his signature.

All five men are charged with conspiring to violate the civil rights of Dr. Lewis Fielding, who was Pentagon Papers codefendant Daniel Ellsberg's psychiatrist, by breaking into his Los Angeles office.

In other Ellsberg burglary-related actions yesterday, Judge Gesell denied a defense motion to transfer the case to Florida, the home state of Barker and Martinez, and to hold separate trials for any of the defendants.