

Concession Urged on Subpoena

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Special Prosecutor Leon Jaworski urged a federal judge yesterday not to enforce a pretrial subpoena he had signed on behalf of Ellsberg break-in defendants John D. Ehrlichman and Charles W. Colson for portions of their White house files.

Instead, Jaworski said that U.S. District Judge Gerhard A. Gesell should accept a suggestion made Thursday by President Nixon that the two former White House aides review the subpoenaed material with their defense attorneys and narrow down the subpoenas to only those portions that are specifically relevant to their defense.

Gesell has said that a White House refusal to turn over subpoenaed documents could result in dismissal of charges against the Ellsberg defendants, and in a tense confrontation with presidential attorney James St. Clair last Friday indicated that dismissal was a distinct possibility if the the President failed to honor the two current subpoenas.

However, in a 21-page legal brief filed yesterday, the special prosecutor's office said that such a dismissal would be premature at this stage of the subpoena process. In addition, the special prosecutor's office listed several alternatives far short of dismissal that Judge Gesell could consider as legal debate on the subpoena unfolds.

"... We believe it appropriate for the court to decline to enforce these subpoenas as presently drawn and to insist upon the detailed showing ... based upon a more precise description by the defendants of what privileged items, if any, may actually be material and important to their defense," Jaworski said.

St. Clair had said in a le-

gal brief filed Thursday that the President would allow Colson and Ehrlichman's attorneys to "share access" to the two aides' White House files. Previously, only Colson and Ehrlichman themselves had been given access to those files.

However, the President would then be able to decide what files would be actually turned over to the defendants and only then would the special prosecutor be given access to the same material, St. Clair added.

Gesell indicated last week that the special prosecutor should be given access to all the raw material to which the defense is given access to prevent "selective use of evidence."

However, Jaworski said yesterday that "the President's response ... seems adequate at this time. ... We see no reason to make resolution of the defendants' claims to access in any way dependent on assurance of similar access by our office under these circumstances."

Jaworski reserved the right to take a different position later if he is not satisfied with the materials to which his office is given access.

"... If documents obtained from these files by the defendants appear to paint a partial and distorted picture of the relevant transactions or to suggest the existence of other relevant and related materials which were not disclosed by the access we are accorded pursuant to the President's offer, we may then seek further access to those files," Jaworski said.

In general, the special prosecutor's office said that the subpoenas by Colson and Ehrlichman for handwritten notes of their conversations with the President and other White House officials are too broad as they are currently drawn.

Instead, the two sides could agree on what the documents would show if they could be made public or use only excerpted portions of the documents that could be made public.