

**Ehrlichman Sees Notes**

# Nixon Opposes Subpoena

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President Nixon yesterday asked U.S. District Judge Gerhard A. Gesell to dismiss a subpoena on behalf of former White House aide John D. Ehrlichman asking for 32 White House documents, including transcripts or tapes of various presidential conversations.

The presidential request sets the stage for another confrontation between the White House and Judge Gesell over production of White House documents that could be used as defense evidence by defendants in Watergate-related trials.

A hearing is set for today on the motion to dismiss the subpoena as well as on a previous White House claim of executive privilege on other documents subpoenaed by Ehrlichman.

Gesell has said he would dismiss all charges in the Ellsberg break-in case if defendant Ehrlichman is not given all the evidence he needs to present his defense. Earlier this week he accepted a compromise suggested by the President on the first batch of subpoenaed materials that allowed Ehrlichman's attorneys

to examine White House documents.

However, there have been reports that Ehrlichman's attorneys have not been given access to the first subpoenaed documents—which were Ehrlichman's own hand-written notes of his conversations with the President—without the documents first being screened by White House aides for their relevance to the break-in case.

The attorneys' access was first limited after the compromise because Ehrlichman himself was not in town to accompany them to the White House, according to persons familiar with the case. However, even after Ehrlichman arrived the defense attorneys were not given the total access to the files that presidential attorney James D. St. Clair indicated earlier this week they would be afforded, those persons said.

William S. Frates, Ehrlichman's chief attorney, had pressed St. Clair in front of Gesell last Monday concerning the proposed access and St. Clair said all the documents could be read by the attorneys.

The new subpoena by Ehrlichman's attorney is for 32 separate items from the White

House, ranging from presidential tapes to additional files kept by Ehrlichman during his White House tenure.

Presidential attorney St. Clair said yesterday that the subpoena should not be enforced because it is too broad.

"The material sought relates to a broad spectrum of issues covering a period of more than two years," St. Clair said. Because the subpoena is so broad, St. Clair added, "it is not possible to identify or locate the items to the extent that they may exist."

St. Clair pointed out that the issue of executive privilege does not exist in this subpoena because the defense has not sufficiently shown that the material is relevant to the case.

The President will make a determination concerning whether he will claim executive privilege at the time he is convinced the material is relevant, St. Clair said.

Among the 32 items subpoenaed by Ehrlichman is a tape of a conversation between Ehrlichman and the President in which "Ehrlichman advised the President of the United States of the trespassory entry into Dr. Fielding's office," according to the subpoena.

There is no date given as to

when the alleged conversation took place, and Ehrlichman's attorneys would not expand on the language in the subpoena.

According to the presidential tapes transcript, President Nixon was first advised of the break-in by former White House counsel John W. Dean III at a meeting on March 17, 1973. Ehrlichman was not present at that meeting, according to the tapes.