

President Won't Bow On Files

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By Timothy S. Robinson
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President Nixon again asserted yesterday that he alone will decide which subpoenaed White House documents will be turned over to defense attorneys for former White House aide John D. Ehrlichman for possible use as evidence during the Ellsberg burglary trial.

Mr. Nixon's unchanged position that he, rather than the courts, will judge what is "relevant" to Ehrlichman's defense sets up another round this morning in a continuing legal confrontation between the President and U.S. District Judge Gerhard A. Gesell.

Judge Gesell said from the bench last Friday that Mr. Nixon's refusal to simply turn over all subpoenaed documents "borders on obstruction" of justice. The judge then began legal proceedings, which continue today, that could lead to his holding Mr. Nixon in contempt of court.

The President's unchanged position was made clear yesterday in a letter from his attorney, James D. St. Clair to Gesell, in which Mr. Nixon said that he would allow only Ehrlichman to examine his handwritten notes of presidential conversations with the President.

Ehrlichman's defense attorneys, according to the White House plan proposed in the letter, could be in an adjoining room and could confer with Ehrlichman on specific parts of the notes as long as he did not show them any of the notes.

If Ehrlichman and his lawyers then both determined that a document should be produced by the President for possible use in courts, White House lawyers

EHRlichman, From A1

would pass the request on to the President for his determination of whether the material was relevant to the Ellsberg case.

"... The President himself shall determine whether or not it is in the public interest to produce the notes for use in the trial," St. Clair said in the letter.

Judge Gesell set a 9:30 hearing this morning on whether the arrangement is acceptable to Ehrlichman's four-man team of attorneys. Persons familiar with Ehrlichman's defense said "it can be assumed" the White House proposal is unacceptable.

Refusal by Ehrlichman's attorneys to agree to the White House plan could place Judge Gesell in the position of ruling on a contempt motion filed by Ehrlichman's attorneys against persons in the White House who failed to produce the subpoenaed evidence.

That person, according to testimony by presidential counsel J. Fred Buzhardt at a hearing before Judge Gesell last Friday, is President Nixon himself.

If such a ruling came from Gesell, it would probably be in the form of a "show cause" order, which would require the President to tell the court why he should not be held in contempt.

Although the pending contempt motion was filed by Ehrlichman's attorneys, they did so reluctantly last Friday after Judge Gesell told them the White House refusal to turn over subpoenaed documents would stand if the issue were not pressed by either the defense or the prosecution.

Ehrlichman's attorneys have asked that charges against their client be dismissed because of Mr. Nixon's actions, a move that has been denied at this point by Judge Gesell. However, Judge Gesell has also indicated in the past that dismissal of charges is a distinct possibility if the defense does not eventually have access to all evidence to which it is entitled.



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Frank Strickler, left, and John Wilson, attorneys for John Ehrlichman, arrive at District Court for hearing.

The special prosecutor's office, meanwhile, has maintained throughout the controversy that Ehrlichman's subpoena for all his handwritten notes of conversations with the President is too broad and should not be enforced. They reiterated that position in a legal brief filed with the judge late yesterday afternoon in which they suggested that Ehrlichman and his attorneys accept the White House offer in yesterday's letter from St. Clair.

St. Clair said in the letter that he reported to the President about the proceedings before Judge Gesell on Friday, and then listed the procedures that the President had approved "in order that the subject case can be tried with fairness to the defendants and to the government."

After the decision by Ehrlichman and his attorneys that documents are relevant to his defense and a White House decision that

the request is valid, the White House would submit the material to the judge for his inspection as to relevance, according to the letter.

However, if the White House decides that the notes are not related to the case, a summary will be prepared by White House lawyers and be submitted to the court, the letter said.

At that point, though, if the court determines that the notes are relevant and that the summary prepared by the White House is not an acceptable substitute, the President will retain his authority to withhold them, according to the letter.

St. Clair also reiterated in the letter that the President specifically reaffirmed his formal claim of executive privilege on the subpoenaed notes.

"Surely, therefore, what clearly is a valid formal claim of privilege by the President concerning notes of a confidential presidential conversation cannot afford a basis for either a charge of contempt of court or obstruction of justice on the part of the President, as public media has interpreted your honor's statements in open court to mean," St. Clair said.

Gesell has made it clear

throughout his colloquies with presidential attorney St. Clair that he believes that the ultimate authority in the production of evidence in a criminal trial rests with the court, not the President.

Ehrlichman and three other persons are charged with conspiring to violate the civil rights of Dr. Louis Fielding, who was Pentagon Papers codefendant Daniel Ellsberg's psychiatrist, by breaking into his Los Angeles office. Ehrlichman also is accused of one count of lying to FBI agents and three counts of lying to a grand jury investigating the break-in.