

White House Bars Ex-Aides From Taking Notes on Files

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The White House said yesterday that former presidential aides involved in the Watergate investigation will not be permitted to make even handwritten notes of documents on file in their former offices.

Deputy Press Secretary Gerald L. Warren, in disclosing a decision he said White House lawyers had made on May 23, said former aides could "peruse" the documents, but could not copy them in any way.

The White House statement came as the staff of the Senate select Watergate committee prepared a challenge to President Nixon's position that he has constitutional authority to withhold White House notes and documents that the commit-

tee said it needs for its investigation.

A memorandum prepared by lawyers for the committee suggests that Mr. Nixon's arguments in support of his position are a rehash of claims the President made on executive privilege. On May 22, Mr. Nixon backed off from his earlier stand on executive privilege and agreed to permit his aides to testify before the committee.

It was the following day, White House spokesman Warren revealed yesterday, that it was decided that the former presidential assistants could examine papers on file "to refresh their memories" but would be expressly prohibited from making photocopies or even taking written notes.

Warren said the ruling was based on "desire to maintain confidentiality of presidential papers, not only

for this President, but all presidents."

While testifying before the committee two weeks ago, former presidential counsel John W. Dean III asked the senators for help in getting White House permission to photocopy papers on file in his old offices.

Dean said he had been allowed access to his files, but he complained that he had to laboriously copy by hand stacks of documents that had been requested by the committee. He said that on some occasions he had to use the top of a safe as his desk.

An administration source acknowledged yesterday that Dean had copied documents by hand, despite the May 23 ruling, but said such instances were "exceptions rather than the rule."

Warren, who revealed
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the ruling in answer to a question at a regular briefing, said the prohibition did not extend to personal papers. But another spokesman explained that the exemption is limited to such items as check books, personal bills and other papers brought to the White House from outside.

The Senate Watergate committee is scheduled to discuss the problem in an executive session before this morning's public hearing resumes.

A committee staff member had suggested earlier yesterday that the members would not hold a vote today on whether to subpoena the papers, but rather would seek a resolution of the problem that would not require a court ruling. Upon hearing on Warren's statement, another committee source said, "Well, they're going to force the issue to court, aren't they?"

In a letter last Saturday to Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the committee, the President stated that under no circumstance would he testify before the panel or open presidential papers for committee inspection.

Mr. Nixon said nothing to change his May 22 promise that Dean and other former assistants may inspect their papers under supervision and make notes from them.

The White House had no explanation yesterday for the delay in disclosing the May 23 guidelines, or why they were implemented just one day after Mr. Nixon had issued a comprehensive statement about Watergate.

Among the papers sought by the committee are: daily news summaries prepared for the President upon which Mr. Nixon purport-

edly wrote notations to aides; notes purportedly taken by former White House chief of staff H. R. Haldeman during alleged discussions of Watergate with Dean; briefing papers for presidential news conferences, and all Watergate-related papers from the files of Haldeman, Dean and former White House domestic affairs adviser John D. Ehrlichman.

The committee staff, in its memorandum made available yesterday, noted that legal scholars disagree as to whether there is a legal basis for executive privilege. Even if there is, the staff asserted, it would not apply to the request for the papers because the doctrine may not be used as a device to conceal information relating to the commission of a crime.

The committee staff memorandum said that by permitting his aides to testify, "Mr. Nixon has opened the door to evidence and it is now difficult for him to argue that presidential documents regarding Watergate may be withheld.

"There is, in short, no reason to draw a distinction between documentary and testimonial evidence, and waiver of rights as to the former should also result in waiver as to the latter," the staff statement argued.

While the committee has requested a wide range of papers, the staff memo noted that documents nevertheless could be selected

and exised by the White House so that they included only matters within the scope of the committee's investigation.

That same theme, of more narrowly defining what the committee wants, was sounded by Sen. Ervin at yesterday's hearings during

extended questioning of former Attorney General John N. Mitchell.

Ervin said he believed the executive privilege extended only to confidential communications between the President and his aides that are for the purpose of assisting the President in performing "in a lawful manner one of his constitutional or legal duties.

"Since there is nothing in the Constitution requiring the President to run for reelection, I don't think that executive privilege covers any political activities whatsoever . . . I also take the position that executive privilege does not entitle a President to have kept secret information concerning criminal activities of his aides or anybody else because there is nothing in the Constitution that authorizes or makes it the official duty of a President to have anything to do with criminal activities," Ervin said.

The former Attorney General agreed.

Rufus L. Edmisten, deputy counsel to the Watergate committee, described the comments by Ervin and other committee members as "feelers" aimed at achieving some agreement between President Nixon and the committee.

Meanwhile, there were indications yesterday that Ehrlichman will be compelled to tell Senate investigators whether he informed Mr. Nixon of his suspicions that high officials of the President's re-election campaign were involved in the Watergate operation.

On May 4, Ehrlichman refused to discuss that during an interview with committee investigators. At that time, the White House position was that all conversations between Mr. Nixon and his aides were covered by executive privilege.

At yesterday's hearing, Mitchell said it was his understanding that Ehrlichman cannot invoke executive privilege on his own, that the prerogative is the President's alone.

And Warren, at the press briefing, said the question of Ehrlichman's future testimony "is firmly covered" in Mr. Nixon's statement of May 22. On that date, the President said that executive privilege "will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct in the matters currently under investigation, including the Watergate affair and the alleged coverup."

Ehrlichman has not been interviewed by committee investigators since May 4, but Senate sources indicated he probably will be questioned privately again before making a public appearance before the committee. He has consistently denied any role in the planning and coverup of the June 17, 1972, break-in of the Democratic National Committee headquarters at the Watergate office building.