

APR 13 1972

Subpoena of Nixon Aide Is Blocked

SF Chronicle
Washington

Angered by President Nixon's refusal to let White House aides testify, Democrats of the Senate Judiciary Committee tried but failed by a single vote yesterday to subpoena them for questioning about the tangled ITT affair.

With Senator James O. Eastland (Dem - Miss.), the committee chairman, abstaining, three motions to order the aides to appear as witnesses in defiance of the President failed by identical tie votes, with six Democrats for and six Republicans against.

The subpoena effort was directed primarily at Peter J. Flanigan, a special White House assistant with Wall Street ties. Flanigan arranged for an outside consultant's report that became a critical factor in the Justice Department's decision last summer to agree to an out-of-court settlement of an antitrust case against International Telephone and Telegraph Corp.

The controversy over that settlement and a purloined memorandum on ITT stationery linking it with an ITT contribution to the Republican national convention has held up a Senate confirmation vote on Richard G. Kleindienst to be attorney general.

Senator Robert C. Byrd (Dem-W. Va.), the majority whip, said Kleindienst's nomination appeared to be "in great trouble."

PRIVILEGE

As the White House said earlier he would, Mr. Nixon invoked the doctrine of executive privilege yesterday.

In a letter to Eastland, Presidential Counsel John W. Dean III assured the committee that Flanigan's only role in the ITT matter was to obtain independent financial expertise at the request of Richard W. McLaren, then chief of the Justice Department's Antitrust Division, and that Flanigan did not contribute "directly or indirectly" to the outside

consultant's findings.

This so aroused Senators Sam J. Ervin (Dem.-N.C.) and Byrd who had been friendly to the Kleindienst nomination — that they announced they would vote against confirmation unless the President allowed Flanigan to appear.

"If the President wants to make his nominee for attorney general a sacrificial lamb on the altar of executive privilege that will be his responsibility and not mine," Ervin said before offering his motion to subpoena Flanigan and other White House and Justice Department personnel with knowledge of the ITT matter.

VOTE

With Ervin and Byrd joining the anti-Kleindienst Democrats on the committee, they needed only Eastland's vote to win.

But the chairman abstained.

Three members of the 16-member committee were absent for the votes — Senators Strom Thurmond, (Rep-S.C.) Birch Bayh, (Dem-Ind.) and John McClellan (Dem-Ark.)

Bayh favored the subpoena motion, Thurmond opposed it and McClellan's views were not known. With Senator Hugh Scott (Rep-Pa.) leaving Sunday for China, committee Republicans might be hard-pressed to maintain their position if Ervin reintroduces his motion.

If the subpoena move passes and Mr. Nixon chooses to ignore it, a constitutional confrontation would ensue that might have to be settled in court.

The committee approved a move to send two physicians to Denver for an independent examination of ITT lobbyist Dita D. Beard to determine whether she is well enough to testify.

Mrs. Beard, a heart patient, has denied writing the purloined memo.

United Press