

Nixon Offer On Ellsberg Case Papers

Washington

President Nixon yesterday offered to let a federal judge, prosecutors and defense attorneys examine White House documents being sought in the Ellsberg break-in case, but said he alone should decide if they could be made public at trial.

Adopting a firm position with only minor concessions to U.S. District Judge Gerhard A. Gesell, the President noted that his rejection of Gesell's subpoena for the papers might cause dismissal of criminal charges against John D. Ehrlichman and Charles W. Colson, two former White House officials.

He said it was more important, however, not to damage "national security."

Gesell has rejected suggestions that he accept subpoenaed documents in private. He said that is improper "for a public trial."

Last week Gesell threatened to dismiss the case if he determined that the papers sought by Ehrlichman and Colson were "relevant and material" to their trial.

The judge will conduct a hearing on the matter next Monday. 3/2/74

In the letter, which was delivered to Gesell's chambers, presidential lawyer James D. St. Clair said:

"The President is not desirous of having these, or in fact, any indictments of former government officials

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dismissed without a full and fair trial but he must implement the constitutional responsibilities of his office by not jeopardizing the national security even if it means that the court determines that these cases must ultimately be dismissed.

"As the court of course is

aware, it does happen on occasion that the paramount interest of national security does result in the dismissal of criminal prosecutions thought to depend upon disclosure of classified information."

The letter gave no clue as to what areas of national security might be compromised.

However, the documents sought by Ehrlichman and Colson include many papers marked "secret" that deal with investigations by the former White House "plumbers" unit, a group whose job was to plug leaks of national security information.

It was in connection with Daniel Ellsberg's leak of the Pentagon papers that Ehrlichman, Colson and three others are charged with conspiracy in the burglary of Ellsberg's psychiatrist's office in September, 1971.

A government official outside the White House, who asked that his name not be used, said yesterday that the breadth of the Colson and Ehrlichman subpoenas "could reveal bona fide national security information" that might cause the president legitimate concern.

St. Clair's letter said a secret "damage assessment" report subpoenaed by Colson "cannot be made public without substantial risk to the security of the United States."

This document, written by Colson, was submitted in private to the Supreme Court in 1971 in connection with the government's suit against the New York Times over its publication of the Pentagon papers. It set forth how national security had allegedly been harmed.

St. Clair said the report could be made available for private inspection by Gesell and defense attorneys "upon the condition that should the court find all or any part of the document relevant and material, the decision of whether the document or the relevant portion of it shall be declassified shall remain one for the Chief Executive and will not be assumed by the court."

With regard to Ehrlichman's and Colson's personal

files at the White House, St. Clair said the President is willing to extend to their lawyers the right to examine — but not to photo-copy, remove or take notes from — these papers.

Ehrlichman and Colson themselves have already had such access.

The subpoenaed documents were sought by Ehrlichman and Colson on grounds they would show that serious national security concerns over leaked information existed at the White House in 1971, and that these concerns were so serious as to lead some officials to believe a burglary was within the scope of Mr. Nixon's directive to stop these leaks at any cost.

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