

NIXON TO FURNISH 2 EX-AIDES' FILES

**But Says He Retains Right
to Deny National Security
Data in 'Plumbers' Case**

By SEYMOUR M. HERSH
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WASHINGTON, May 30 — President Nixon agreed today to provide White House files to the Watergate prosecutors and attorneys for two defendants in the "plumbers" break-in case.

However, he said he would retain the right to deny na-

*Text of St. Clair letter to
Judge Gesell is on Page 11.*

tional security documents deemed necessary by the defendants and the court, even if such action led to the dismissal of the trial.

The plumbers were part of a special investigative unit set up inside the White House by President Nixon to stop leaks of information. Five of its members have been indicted for conspiracy to burglarize in 1971 the office of the former psychiatrist of Daniel Ellsberg.

In a letter submitted at the

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request of the Federal judge trying the case, Mr. Nixon also agreed today, through his Watergate attorney, James D. St. Clair, to provide highly classified documents to the court under seal for eventual turnover to the defendants.

But he declared, "the decision of whether the document or the relevant portion shall be declassified shall remain one for the Chief Executive and will not be assumed by the court."

Modifies Stand

The possibility that a White House refusal to turn over relevant national security documents would lead to dismissal has been a major factor since indictments were first considered last year in the plumbers case.

Well-informed sources agreed, however, that the three-page letter submitted today seemed to lessen the chances that Judge Gerhard A. Gesell of the United States District Court would throw out the case because the Administration refused to permit the Watergate prosecutors and attorneys for the two defendants, Charles W. Colson and John D. Ehrlichman, to have access to their

personal notes.

During a hearing last Friday, Mr. St. Clair moved to quash subpoenas filed on behalf of Mr. Colson and Mr. Ehrlichman, two former high-level White House aides, who sought full access to their files.

In his letter, Mr. St. Clair modified his earlier stand. Regarding the request for access to personal White House files, he told Judge Gesell, "The President has authorized me to advise the court that he will authorize defendants Colson's and Ehrlichman's counsel to share the access of their respected clients to those materials, if any, within the described files that relate to the issues of the case."

After these items are selected, the letter added, "the President will then weigh the competing interest as to whether the documents should be produced."

"Members of the special prosecutor's office will be provided access to all of such materials made available," Mr. St. Clair noted.

Mr. Colson, Mr. Ehrlichman and three others have been indicted in the burglary of the office of Dr. Lewis Fielding, Dr. Ellsberg's psychiatrist. The plumbers had been ordered to investigate Dr. Ellsberg after he acknowledged providing the press with copies of the Pentagon papers, a secret history of American involvement in Vietnam.

The defendants insisted during pretrial hearings last week that they were motivated by national security in committing the burglary of Dr. Fielding's office, and have attempted to obtain access to many classified documents to demonstrate their concerns as of mid-1971. Judge Gesell has rejected national security as a defense in the case.

Alluding to that decision, Mr. St. Clair noted in the letter, "The President is unaware of any basis on which these documents could be relevant or material in this proceeding but, of course, he cannot be the judge whether these or any other documents meet the 'strict rule of relevancy and materiality' that this court stated."

Continuing in a conciliatory tone, the White House counsel also told Judge Gesell that "the President has instructed me to cooperate fully with the court and the special prosecutor to seek to avoid a dismissal of these cases." He stated his willingness to "exhaust all means available" to avoid a dismissal.

Agrees on Subpoenas

Judge Gesell agreed to permit the defendants to seek subpoenas of some national security documents in an attempt to provide facts showing that they did not conspire together. The subpoenas will be issued, he said, only after he specifically determines that this material sought is relevant.

It is in this narrow area— involving national security ma-

terial deemed relevant by the judge — sources close to the case have agreed, that a clash that could lead to dismissal may come between the White House and the court.

In his letter, Mr. St. Clair again noted that President Nixon wanted the defendants to have "a full and fair trial."

But he also said that the President believed "he must implement the constitutional responsibilities of his office by not jeopardizing the national security" by refusing to turn over defense information even if the trial was dismissed.

The Watergate special prosecutors are expected to file a brief tomorrow outlining their view on the issue, and Judge Gesell has ordered sharings on