

NEW TEST HINTED ON NIXON'S PAPERS

AUG 14 1975

White House May Ask Court
if Senate Panel Can Gain
Access to Data on Chile

NYTimes

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Special to The New York Times

WASHINGTON, Aug. 13—

The White House is considering asking a panel of Federal judges to clarify whether it has the power to release documents from former President Richard M. Nixon's papers under subpoenas issued by the Senate Select Committee on Intelligence, Ford Administration sources said today.

According to these sources, the White House will decide "shortly" whether to seek the clarification in Federal court.

The executive branch has custody of the papers, but White House lawyers and Mr. Nixon's counsel contend that, under a court order issued last year, there is no provision for a Congressional investigative committee to gain access to the materials.

The chairman of the select committee, Senator Frank Church, Democrat of Idaho, said earlier today that the

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White House Weighs New Test Over Access to Nixon's Papers

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committee would go to court if its subpoena was not complied with.

Meanwhile, Ron Nessen, the White House press secretary, said in Vail, Col., where President Ford is vacationing, that the question of the Administration's role has been turned over to the Department of Justice for its opinion.

Yesterday, the select committee subpoenaed Philip W. Buchen, the President's counsel, and Arthur F. Sampson, director of the General Services Administration, for papers, tapes, dictabelts and other data from Mr. Nixon's Presidential years relating to actions involving United States policy toward Chile in the fall of 1970 and the creation of a domestic intelligence plan the same year by Tom Charles Huston, then a White House aide.

The White House has issued no formal answer to the subpoenas.

'Technical Custody'

Although White House officials acknowledged that Mr. Buchen and Mr. Sampson had "technical custody" of the Nixon material, they contend that their control of the material is dictated by an order issued last October by the Federal District Court here.

In that order, Mr. Buchen may have access to the Nixon papers, after notifying the former President's lawyer, Herbert J. Miller, for their use in handling "current Government business."

The White House lawyers, Mr. Miller and Mr. Nixon's other counsels said they thought that portion of the court order did not "contemplate" giving materials to Congressional investigative committees.

Indeed, one White House spokesman said, a half dozen Congressional requests for material from the Nixon papers have been turned down on this basis, including one from Representative Bella S. Abzug, Democrat of Manhattan. The Senate select committee is the first Congressional committee to issue a subpoena for material from the Nixon papers.

Last year, Congress passed a law stating that materials, including the tapes of Watergate-related conversations, engendered by Mr. Nixon and his aides during his Presidency were the property of the Amer-

ican people and thus, belonged to the Government.

The General Services Administration began to prepare a plan on how the material should be made public and catalogued for historians. Mr. Nixon went to court to contest the constitutionality of the law.

Judge Charles R. Richey of the Federal District Court here issued an order last October that halted general publication of Mr. Nixon's papers until his case could be decided.

But in his order, Judge Richey made exceptions that permitted access to the material for subpoenas in criminal cases or from grand juries, or in the case of "current Government business." There was no section spelling out whether Congressional committees could obtain the material either by request or by subpoena.

Issue to Be Reheard

Subsequent to Judge Richey's ruling, the case was taken to the United States Court of Appeals for the District of Columbia Circuit by Mr. Nixon, and the appellate court ordered the issue reheard by a panel of Federal judges, including a District Court judge and two members of the District of Columbia appellate court bench.

The case is now before this panel, and presumably an effort by the White House to seek clarification of or amend the court order would also come before it.

White House officials privately complain that the restrictions of the 1974 court order make it appear that the Ford Administration is trying to block the Senate committee's inquiry.

"If we were trying to stone-wall them on Chile," one Administration source said, "we could have tried it a long time ago."

It is unclear whether there is any material in the Nixon tapes and papers that would be germane to the Nixon Administration's actions in Chile or to the question of whether the Central Intelligence Agency was involved in plots to keep Dr. Salvador Allende Gossens from becoming President of Chile in 1970. Mr. Nixon was in the habit of making a dictabelt each night as a talking diary of the day's events, and official orders or actions on Chile.

The Senate committee decided not to try to subpoena the former President on this issue, choosing instead to subpoena his papers.