

Judge Orders Separate Trial For Ehrlichman

WASHINGTON (AP) — A federal judge Tuesday ordered a separate trial for John D. Ehrlichman in the Plumbers' case because of persistent refusal by President Nixon to permit Ehrlichman unlimited access to his White House files.

Three other defendants are to go on trial next Monday, but there were indications that Ehrlichman's trial, if held at all, would be delayed beyond the impeachment proceedings in Congress.

After two weeks of struggle on the White House files issue, U.S. District Judge Gerhard Gesell said conditions laid down by Nixon would deny Ehrlichman his right to make full use of a lawyer and therefore to a fair trial.

Nixon has repeatedly asserted that only the President may finally determine what White House materials should become evidence in Gesell's court.

Gesell said Tuesday: "The President flatly refuses to make documents available to the court in camera (at a closed hearing) and thus makes it impossible for the court to properly perform its duty."

"In view of this resistance to lawful trial subpoenas, the court feels it is necessary ... to sever Mr. Ehrlichman from the

remaining defendants and to continue his trial until a later date."

Gesell said he will issue an order Wednesday "to enforce the subpoenas" so Ehrlichman may have access to files he claims are needed for his defense.

Of seven men originally indicted in the Plumbers' case, only three now are scheduled to stand trial starting Monday on charges that they conspired to burglarize the office of Daniel Ellsberg's psychiatrist in 1971. The three are G. Gordon Liddy, Bernard L. Barker and Eugene Martinez.

At issue in the pretrial proceedings has been the insistence of Ehrlichman's lawyers that they must accompany the former presidential domestic affairs adviser while he reviews 28 months of handwritten notes left behind in the White House files.

The notes are stored inside two cardboard boxes within a White House vault. Under White House rules, Ehrlichman may review the notes alone, without taking notes or making any reproductions.

Under the most recent compromise offered by the White House, Ehrlichman's lawyers would have been permitted to sit in a room adjacent to the

vault, but Nixon would have remained the final arbiter over which material could be released.

"The proposal is unacceptable," Gesell said Tuesday. "It denies him (Ehrlichman) the right of counsel."

Assistant special Watergate prosecutor William S. Merrill said after the hearing it is possible the Ehrlichman trial might be delayed beyond the end of the year.

The Plumbers were a special White House investigative unit set up to investigate news leaks. Ellsberg leaked the Pentagon papers to the New York Times, and the break-in at the psychiatrist's office was part of an investigation of Ellsberg.

Ehrlichman also is awaiting trial regarding the alleged cover-up of the investigation into the original Watergate break-in. That trial, expected to last

two months or more, is scheduled to begin Sept. 9. It may conflict with a possible new date for Ehrlichman in the Plumbers' case and may parallel an impeachment trial in the Senate.

Ehrlichman has also been charged with perjury in California from court appearances resulting from the break-in at the psychiatrist's office in Beverly Hills.

A trial date for those charges was delayed pending the outcome of the federal trial in Washington, and the impact of Gesell's order on the state charges is undetermined.

In another development in the cover-up case, White House lawyer James D. St. Clair said the grand jury which named Nixon as an unindicted Watergate co-conspirator acted improperly.