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**JUDGE CASTIGATES
REFUSAL OF NIXON
TO GIVE UP PAPERS**

**He Studies Citing President
for Contempt in Denying
of Data to Ehrlichman**

ST. CLAIR GETS REBUKE

**Gesell Hopes Attorney Will
Act to Reverse 'Affront
to Process of Justice'**

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WASHINGTON, June 7—Federal Judge Gerhard A. Gesell, weighing the possibility of citing President Nixon for contempt of court, said today that Mr. Nixon's rejection of a court-approved procedure for producing White House documents in the "plumbers" case was "offensive" and "borders on obstruction."

Visibly angry, the judge, sitting in United States District Court, rebuked James D. St. Clair, the President's Watergate lawyer, for refusing John D. Ehrlichman and his attorneys access to all of Mr. Ehrlichman's personal notes on Presidential meetings. Mr. St. Clair agreed at a hearing last Monday to make the documents available.

Judge Wants Reversal

"When your better instincts were in control," Judge Gesell said to Mr. St. Clair, "you agreed to it, and you were vetoed, and it's wrong. You know it's wrong. We all know it's wrong."

Leaning forward in his chair, he told Mr. St. Clair, "I hope you will lend your best efforts as a distinguished member of the bar to reverse this obvious affront to the process of justice."

"I've been astounded by the position taken today—totally astounded. The point that the President of the United States will not let this man be represented by counsel is offensive. I think it borders on obstruction."

The judge's comments were made after J. Fred Buzhardt Jr., the White House counsel, testi-

fied at a brief hearing this morning that Mr. Nixon retained the ultimate authority and control over the Ehrlichman papers. The papers have been stored under Secret Service guard as part of the Presidential files in the Executive Office Building next door to the White House.

Central File System

Judge Gesell requested the hearing after William C. Frates, one of Mr. Ehrlichman's attorneys, formally moved to place in contempt "those in control" of the papers. Earlier, the judge denied "without prejudice" Mr. Frates's request for immediate dismissal of the charges against his client.

As one of four defendants accused of conspiring to burglarize the office of Dr. Daniel Ellsberg's former psychiatrist in 1971, Mr. Ehrlichman has sought access to all of the original notes of his meetings with Mr. Nixon, which were turned

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over to the White House central file system after his resignation one year ago.

Judge Gesell, who said that he had convened the hearing "so I can take appropriate action under the contempt statute," later told defense attorneys that he would rule Monday on the Ehrlichman papers. Court sources said that he could order a hearing to determine whether Mr. Nixon, as the chief Federal officer in charge of the documents, was in contempt of court.

A number of authorities expressed doubt that a Federal judge could enforce a Presidential contempt order. They said that Mr. Nixon could ignore the citation, leaving Judge Gesell with the alternative of sending it to the House impeachment committee or asking Leon Jaworski, the Watergate special prosecutor, to convene a grand jury to investigate possible charges of obstruction of justice.

The question of Mr. Ehrlichman's access to his personal papers seemed to have been settled Monday, when Mr. St. Clair assured Judge Gesell that the White House would permit Mr. Ehrlichman and his attorneys to have full access to all of his notes, said to fill two cardboard boxes.

Mr. St. Clair also promised to provide a private room and stenographic material for Mr. Ehrlichman and the lawyers.

On Tuesday morning, however, Mr. St. Clair and Mr. Buzhardt—presumably acting on instructions from the President—said that the White House would instead screen the notes to remove what it

deemed irrelevant material before turning them over.

Mr. St. Clair defended the switch in procedure by telling Judge Gesell at the beginning of today's hearing that "it is our view" that Mr. Ehrlichman could go through his files alone, pick out possibly relevant material and, if the court agrees on the relevance, "we'll review it with the President and determine whether it could be released."

Judge Gesell characterized the White House's action as being in "complete disregard of the court's order" and said "we're talking about enabling a man charged by the Federal Government with a serious crime to be allowed to have counsel review notes" that could be exculpatory.

The judge then recited the aphorism "When a lawyer represents himself, he has a fool for a client" and added:

"I think Ehrlichman should have access, and that is my principal concern, particularly when Ehrlichman can't take a note [while reviewing the files] and Frates has to sit in a car outside the White House, and this man [Ehrlichman] has to run back and forth and try to recall."

"This is absurd. I just don't see how I can tolerate it."

The judge said that proper Presidential concern over national security was not at issue in Mr. Ehrlichman's subpoena for his personal papers, because there had yet to be a determination that any of the material sought—and refused by the White House—was vital to security.

"Don't you agree if we come to that rub," he said to Mr. St. Clair in reference to possible national security issues, "that it ought to be directed to the papers that are rationally needed to the case, and

not because he [the President] feared that Ehrlichman's counsel would want something that he would not disclose?"

"We're dealing with an academic problem at this point," the judge said.

"Would you, as a lawyer, say that all the [Ehrlichman] notes weren't relevant?" he asked Mr. St. Clair. "I can't try the case with the President behind me deciding what he could or could not release to the court."

"I don't think he understands the consequence of what he's doing," the judge said a moment later. "I think he's getting bad advice through persons like Mr. Buzhardt and you, who have not informed him of his options."

Willing to Summarize

The judge restated his willingness, first expressed at Monday's hearing, to summarize or carefully excerpt national security materials from any White House documents or personal notes deemed relevant to Mr. Ehrlichman's defense. He also restated his

willingness to deal with sensitive material under a protective order barring its release to the public.

"There has to be some respect for the court's ability to deal with national security," he said. He told Mr. St. Clair that he had not offered a way "to deal with the impasse."

"We're now at trial, and we're down to dilatory tactics," he added. "You made a commitment in open court. I didn't think it was necessary in dealing with you to get it in writing. I take it to be a commitment that you broke."

Mr. St. Clair said that he had a client, the President, who disagreed with the commitment that had been made in court.

"I take it that any commitment you make to me in court is subject to his veto," Judge Gesell said. He made it clear that he was not yet disposed to dismiss the plumbers case.

"Dismissal is a course I should not follow unless I've exhausted all other means," he said.

That view was echoed by William H. Merrill, head of the Watergate prosecuting team. He expressed dismay at Mr. Nixon's failure to comply with the Ehrlichman subpoenas, but told the judge "We don't feel at this point that the case should be dismissed just because of the reluctance of Mr. St. Clair's client" to cooperate.

Hearing Begins

The judge, who seemed to agree with Mr. Merrill's approach, called for an immediate hearing to determine who had custody of the records denied to Mr. Ehrlichman, the necessary first step to any citation for contempt of court.

The first witness was Mr. Ehrlichman, who appeared tanned and rested. He told how the personal notes, bound in about eight volumes, were seized by agents of the Federal Bureau of Investigation on the day he left office, April 30, 1973.

He said that access to all of his notes were vital to his defense because, "by being able to get into the entire flow of matters through chronologically, it refreshes my recollection." Under questioning from Mr. St. Clair, Mr. Ehrlichman said that a White House offer of full access to his notes was not adequate, because it did not include similar access for his attorneys.

Mr. Buzhardt, the second and final witness at the brief hearing, said that a young White House aide, Geoffrey C. Shep-

hard, a former aide to Egil Krough Jr., one of the plumbers, was the official who had screened Mr. Ehrlichman's personal notes before they were turned over to him and his attorneys.

"Do you know whether he's practiced law?" Mr. Frates asked. "Has he studied the indictment? Just a bright young man that you handed these files to for his determination of what's relevant," the Ehrlichman attorney added with sarcasm.

Under further questioning, Mr. Buzhardt said that he had reviewed the notes culled by Mr. Shephard and deleted "National security" material from them before they were provided to the defendant.

Throughtout his testimony, Mr. Buzhardt glanced at Mr. St. Clair. He said that Mr. Nixon had played a major role in his defense and reviewed or approved much of the material that was to be turned over in various court proceedings.

"The President makes the decision on the basis of specific requests," Mr. Buzhardt testified. He added that Mr. Nixon was theoretically the sole authority for access to the Executive Office Building file room where Mr. Ehrlichman's and other sensitive files were stored.

In another subpoena matter, Judge Gesell also reviewed today each of more than 30 specific requests for access to White House files made by Mr. Ehrlichman. Most of the subpoenas were described by the judge as being too broad and either were denied or deferred until they could be made more specific.

If approved and delivered to the White House, those subpoenas—some of which call for classified information—could also prove a stumbling block to the case if the President decided not to release the material.