

Nixon Bends a Bit In 'Plumbers' Case

Washington

President Nixon insisted again yesterday that only he has the right to determine which White House documents could be made available to the defense of John D. Ehrlichman in the "plumbers" case.

Mr. Nixon, in a letter made public a few hours after he took off on his middle east trip, offered some compromises in an apparent attempt to end an impasse over Ehrlichman's subpoena of the personal notes he had accumulated while serving as a key presidential adviser.

During a tense hearing Friday, U.S. District Judge Gerhard A. Gesell made clear that he would weigh the possibility of citing Mr. Nixon for contempt of court if the White House did not

live up to its agreement — made last Monday — to give Ehrlichman and his attorneys full access to all of the notes.

The compromises were offered the court yesterday in a letter signed by James D. St. Clair, the President's Watergate attorney. The compromises did provide for those documents determined by the White House to be relevant to the Ehrlichman case to be presented to Gesell for his finding on possible relevancy. But St. Clair's letter said the President would reserve the right to determine which documents sought by Ehrlichman would be forwarded to the judge.

The judge, who had strongly suggested last week that he might call for a contempt hearing over the White House's intransigence, instead summoned St. Clair and William C. Frates of Miami, head of the Ehrlichman defense team, to a special hearing this morning to determine whether the White House offer was acceptable.

Sources close to Ehrlichman indicated that Frates

would continue to demand full access to his client's notes. "We can't live with it," one member of the defense team said. "It looks to me like the judge is either going to have to back down

Back Page Col. 6

From Page 1

(on the threat to cite President Nixon with contempt) or else dismiss the case."

In a brief filed late yesterday afternoon, Leon Jaworski, the special Watergate prosecutor, in essence urged Gesell to back away from his contempt threat. Jaworski argued that the burden was on Ehrlichman and his attorneys — and not the White House or the prosecutor's office — to demonstrate that material being sought in his personal White House files could be relevant in any way to their defense.

The special prosecutor further argued that his office, "by turning over all conceivable relevant evidence in his own possession, and by conducting a search for all such evidence in numerous outside agencies, has not only met, but has far exceeded, any obligation" imposed by due process.

He concluded that the White House's latest compromise proposal, while cumbersome, "is still more than adequate."

Ehrlichman wants the notes for use in his defense in the Ellsberg break-in case scheduled to start next week.

As outlined in St. Clair's letter, the President agreed to permit Frates and three other members of the Ehrlichman defense team, Andrew C. Hall, Spencer Boyer and Henry Jones, to remain in an office next door to the file room containing the personal notes.

Under the compromise proposal, Ehrlichman would be permitted to consult frequently with his attorneys were not allowed in the same building.

After Ehrlichman and the attorneys agree that a docu-

ment is essential, St. Clair wrote, they can submit it to him so the President can determine "whether in his opinion the matter selected is related to the issues in the pending case." Once that determination is made, he said, copies will be provided to Judge Gesell in private.

On the other hand, St. Clair added, if in his opinion the documents selected are not related, they will be carefully summarized and also submitted to the judge. If the judge then decides that the notes are relevant and a summary of them not acceptable, "then the President himself shall determine whether or not it is in the public interest to produce the notes for use in the trial."

It is precisely that issue — the President's insistence on determining what material, whether relevant or not, could be turned over the court — that has upset Gesell.

New York Times