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A Separate Trial for Ehrlichman

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U.S. District Judge Gerhard A. Gesell, citing President Nixon's refusal to provide White House documents, yesterday ordered that a separate, delayed, trial be held for John D. Ehrlichman, the key remaining defendant in the "Plumbers" case.

The judge's order was immediately treated as a significant victory by Ehrlichman and his attorneys, who broke into smiles and congratulated each other.

Gesell also announced that he will issue a "specific order" today in an attempt to enforce the court's demand that Mr. Nixon provide the documents.

Lawyers said the judge's order could lead to presidential contempt of court hearings.

Yesterday's decision, which left attorneys for the special Watergate prosecutor's office privately bitter and angry, was triggered by Mr. Nixon's refusal to back down in a dispute with the judge over who has the right to determine which White House documents could be made available for Ehrlichman's defense.

Ehrlichman has subpoenaed more than two years of his personal White House notes and demanded that they be made available to him and his attorneys for possible use in his trial.

The President, in the latest of a series of compromises publicly announced Monday, agreed to provide summaries of demanded documents to the judge in private but declared that if the documents themselves were sought, he specifically maintained the right to determine "whether or not it is in the public interest to produce the notes."

During a 12-minute hearing yesterday, Gesell listened to arguments over the latest White House offer and then, with obvious reluct-

ance, announced that "the proposal is unaccepted."

The judge noted that the White House offer still would preclude Ehrlichman's attorneys from having access to the material, but then said that there was a more important reason for his rejection:

"The President flatly refuses to make the documents available to the court in camera (in private) and thus makes it impossible for the court to properly perform its duties."

"In view of this resident-

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ance to a lawful trial subpoena," Gesell added, "the court feels it is necessary to sever Ehrlichman from the remaining defendants and to continue his trial until a later date."

The judge added that the trial of the three remaining defendants — G. Gordon Liddy, Virgilio R. Martinez, and Bernard L. Barker — will begin as scheduled Monday.

The three men, and Ehrlichman, were indicted in March for their role in conspiring to burglarize the office of Dr. Daniel Ellsberg's former psychiatrist in 1971. At the time, the four were involved with the White House special investigations unit, known informally as the "Plumbers" who were authorized by Mr. Nixon in mid-1971 to stop newspaper leaks.

Ehrlichman, accompanied by one of his daughters, told newsmen later that "I'm gratified at the judge's action because I believe that if all the evidence can be presented on my behalf then I will be fully exonerated."

The obviously happy former White House aide scoffed when a newsman asked, in effect, whether Mr. Nixon had deliberately withheld the evidence in anticipation that the case against him would be thrown out.

"There's no substance to that at all," Ehrlichman said, adding that he had not talked to the President since they exchanged Christmas greetings last December.

It was unclear when Ehrlichman's trial could be rescheduled.

He is due to begin trial September 9 in connection with the Watergate coverup and there were some court insiders who suggested that any trial would not take place this year because of presidential impeachment proceeding this fall.

New York Times