

EHRlichman WINS A DELAY OF TRIAL IN 'PLUMBER' CASE

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Judge Cites Nixon's Refusal
of Data — Vows Attempt
to Enforce Subpoenas
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By SEYMOUR M. HERSH
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WASHINGTON, June 11 — Federal District Judge Gerhard A. Gesell, citing President Nixon's refusal to provide White House documents, ordered today that a separate, later trial be held for John D. Ehrlichman in the "plumbers" case.

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

Judge Gesell also announced that he would issue a "specific order" tomorrow 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.

Today'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 had the right to determine which White House documents could be made available for Mr. Ehrlichman's defense.

One obvious reason for the prosecutor's concern over the severing of the Ehrlichman case was the possibility, heightened by the inevitable delays and plea bargaining in the Watergate cases, that he would never be brought to trial in the case.

Subpoena for Papers

Mr. Ehrlichman has subpoenaed personal papers and notes from more than two years of his tenure as the President's chief domestic adviser, demanding 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, announced through his lawyer yesterday that he would provide summaries of demanded documents to the judge in private. But he declared that if

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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 today, Judge Gesell listened to arguments over the latest White House offer and then, with obvious reluctance, announced that "the proposal is unaccepted."

The judge noted that the White House offer would still preclude Mr. 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 and thus makes it impossible for the court to properly perform its duties."

Resistance Cited

"In view of this resistance to a lawful trial subpoena," Judge Gesell added, "the court feels it is necessary to sever Mr. 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—would begin Monday as scheduled.

The three men, and Mr. Ehrlichman, were indicted in March for their role in conspiring to burglarize the office of Dr. Daniel J. 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," authorized by Mr. Nixon in mid-1971 and told to stop leaks to the press.

Mr. 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."

No Contact with Nixon

Obviously happy, the 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," Mr. Ehrlichman said. He added that he had not talked to the President since they exchanged Christmas greetings last December.

A similar denial was offered by J. Fred Buzhardt, the White House counsel, who attended the hearing. "I think the President was acting responsibly under the circumstances," Mr. Buzhardt said. He added that he believed the case against Mr. Ehrlichman "will go forward" once the issue of access to White House documents was resolved.

It was unclear when Mr. Ehrlichman's trial could be rescheduled. He is due to begin trial Sept. 9 in connection with the Watergate cover-up, and there were some court insiders who suggested that no trial would take place this year if the President faces impeachment proceedings this fall.

That possibility was also conceded by William H. Merrill, an associate Watergate special prosecutor who argued



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John D. Ehrlichman, center, speaking to reporters outside court in Washington yesterday after his trial was postponed. Evidence required by the defense had not been made available by President Nixon.

before Judge Gesell that the latest White House compromise should at least be tried for a week before being rejected. "If he tries it, he might like it," Mr. Merrill said.

Mr. Merrill acknowledged that the President's refusal to permit Mr. Ehrlichman access to all the papers was "hard to understand from a philosophical framework, but I don't think it's a legal requirement." "We're not at the point where specific documents have been described adequately" in the Ehrlichman subpoena, the prosecutor said.

The Watergate prosecutors were known to be upset at Judge Gesell's decision today to move decisively on the White House refusal to cooperate without first determining that the documents sought by Mr. Ehrlichman were in fact relevant to his defense.

Optimism About Trial

In a brief filed yesterday, Leon Jaworski, the special prosecutor, took issue with the theory — often expressed by the judge — that Mr. Ehrlichman was entitled to review Government files, "looking for hypothetically exculpatory materials that we have no reason to believe."

Mr. Jaworski also challenged the "good faith" of Mr. Ehrlichman and his attorneys in continuing to press for access to the documents.

Despite today's ruling, some of the prosecutors continued to remain optimistic about the chances of eventually getting Mr. Ehrlichman to trial. "We're not going to give up the ghost

until we see what happens," one of them said.

A number of the Watergate prosecutors emphasized that there was no indication that President Nixon conspired or in other ways worked with Mr. Ehrlichman to deny his files in an effort to abort the prosecution.

One well-placed source said in a telephone interview that Mr. Ehrlichman and his attorneys "knew" that no matter how hard they pressed, the President would not give up the personal notes. At one point, the source added, the notes were described to Judge Gesell as being, in effect, "a running commentary on day-to-day affairs in the White House."

Mr. Ehrlichman, who did not know of the White House taping system, testified during a court hearing Friday that his personal notes, on yellow legal pads, filled two cardboard boxes in a secure White House file room.

4 Teamster Officials Quit

ST. LOUIS, June 11 (UPI) — Four Teamsters Union officers, rebuffed by the United States Supreme Court in an appeal of their embezzlement convictions, resigned today and prepared to begin serving prison terms. The four officers of Local 600 — Donald Lane, president; Clyde Goad, vice president; Daniel Mahany, secretary-treasurer, and Michael Ryan, recording secretary — submitted their resignations at a union meeting and appointed their own successors.

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