

# Nixon's grip on evidence wins Ehrlichman a trial delay

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WASHINGTON — Federal Judge Gerhard Gesell today ordered an indefinite delay in the criminal conspiracy trial of former presidential aide John Ehrlichman because President Nixon "flatly refuses" to surrender evidence the judge said is necessary for the defense.

Gesell rejected as unacceptable a White House offer of compromise in the evidentiary dispute and said he would "very soon" issue orders to enforce Ehrlichman's subpoenas on the President.

But he said the trial of Ehrlichman's three codefendants in the Ellsberg break-in case would start as scheduled Monday.

Gesell has vigorously rejected Nixon's claim to be the sole judge of what evidence should be surrendered in the Ellsberg case.

The judge held a hearing to receive Ehrlichman's response to a White House suggestion yesterday outlining procedures whereby Ehrlichman — but not his lawyer — could look at materials at the White House that Ehrlichman says he needs to defend himself

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against charges connected with the break-in of the office of the psychiatrist of Pentagon Papers defendant Daniel Ellsberg.

William Frates, Ehrlichman's lawyer, told Gesell the proposal was "completely unacceptable" because it denied his client his constitutional right to counsel. Gesell agreed.

Gesell had threatened to dismiss the case against Ehrlichman entirely unless Nixon agreed to release the material. Instead, it appeared the judge was pre-

paring to wait until the Supreme Court rules next month on a demand by special prosecutor Leon Jaworski that Nixon is answerable to the courts for failing to turn over subpoenaed evidence.

Jaworski had sided with the White House, arguing

that Ehrlichman already had been given more than he needed or the law required.

Assistant special prosecutor William Merrill, who is in charge of the Ellsberg case, told Gesell today that Ehrlichman should at least try the White House proposal for screening his White House files before he reject it.

"I don't see how he can say it is unacceptable until he tried it," Merrill said. "If he tries it, he might like it"

Ehrlichman, once Nixon's No. 2 adviser, contends that his notes from his White House days now under Nixon's control could clear him.

The three who will be tried Monday are G. Gordon Liddy, Bernard L. Barker and Eugenio Martinez, who were convicted previously in connection with the Watergate break-in.