

# Nixon Reasserts Authority To Limit Ehrlichman Data

NYTimes

By SEYMOUR M. HERSH  
Special to The New York Times

JUN 11 1974

WASHINGTON, June 10 — President Nixon insisted again today that only he had 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

St. Clair's letter to Gesell is printed on Page 31.

took off on his Middle East trip, did offer some compromises in an apparent attempt to end an impasse over Mr. Ehrlichman's subpoena of the personal notes he accumulated while serving as a key Presidential adviser.

During a tense hearing Friday, Judge Gerhard A. Gesell of United States District Court made clear that he would weigh the possibility of citing President Nixon for contempt of court if the White House did not live up to its agreement—made last Monday—to give Mr.

Ehrlichman and his attorneys full access to all of the notes.

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

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

Continued on Page 31, Column 2

Continued From Page 1, Col. 7

offer was acceptable.

Sources close to Mr. Ehrlichman indicated late today that Mr. 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 [on the threat to cite President Nixon for contempt] or else dismiss the case."

In a brief filed late this afternoon, Leon Jaworski, the special Watergate prosecutor, in essence urged Judge Gesell to back away from his contempt threat. Mr. Jaworski argued that the burden was on Mr. 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.

## 'Obligation' Held 'Exceeded'

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 also 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."

As outlined in Mr. St. Clair's letter, the President agreed to permit Mr. 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 highly secure file room containing the personal notes.

Under the compromise proposal, Mr. Ehrlichman would be permitted to consult frequently with his attorneys, "but initially his counsel may not examine the notes." Previously, the Ehrlichman attorneys were not allowed in the same building.

After Mr. Ehrlichman and the attorneys agree that a document is essential, Mr. 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.

## Summaries for Judge

On the other hand, Mr. 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 Judge Gesell.

During a hearing last Monday, he noted that "the ultimate responsibility for the conduct of the trial rests with the court and there should not be even a suggestion that the court will be placed in a position where it is involved in some form of bargaining with a coordinate branch of the Government, particularly where the rights of the defendants are concerned."

On Friday the judge acknowledged that national security could be involved in the White House resistance to providing full access to Mr. Ehrlichman and attorneys, but declared that "there has to be some respect for the court's ability to deal with national security."

## Nixon Vetoes Accord

Heightening the current dispute was the White House's failure to live up to an earlier compromise worked out last Monday, which would have permitted Mr. Ehrlichman and his attorneys full access. That agreement, reached amid threats from Judge Gesell to dismiss the case, was vetoed a day later by President Nixon, leading Judge Gesell to characterize the President's action as "offensive" and one that "borders on obstruction."

At one point during Friday's hearing, Judge Gesell denied without prejudice a motion by Mr. Frates for immediate dismissal of the Ehrlichman charges, and then suggested to Mr. Frates that he move to place "those in control" of the White House papers, that is, the President, in contempt of court. That motion is still pending before the court.

A number of attorneys close to the case suggested today that Mr. Frates would seek a postponement of the trial of Mr. Ehrlichman and three other defendants, which is scheduled to begin next Monday. They are charged with conspiring to burglarize the office of Dr. Daniel Ellsberg's former psychiatrist in 1971 as part of the operation of the special investigating unit, known as the plumbers, set up in the White House.

The motion, the attorneys said, might be granted but a dismissal or finding of Presidential contempt of court was believed unlikely.

"Judge Gesell's rightly offended by the White House, but I don't think there's a legal justification for requiring them to do more," one well-informed attorney said. His point was that the White House has already provided Mr. Ehrlichman personal access to his documents and, pending a specific request from him, has met its legal obligations in the matter.

"In his briefs, Mr. Jaworski went further and expressed 'grave doubt' as to the 'good faith' of Mr. Ehrlichman and

his attorneys in seeking access to all of Mr. Ehrlichman's notes.

The special prosecutor complained about the "utter vagueness" of Mr. Ehrlichman's assertions that his personal notes could include some exculpatory material. He noted that Mr. Ehrlichman was "nowhere alleged that he made notes" concerning the break-in at the psychiatrist's office that could be found in his files. Nor, the brief said, is he entitled to his notes "on the theory that the absence of any mention of the break-in tends to prove his non-involvement."



Time Inc.

Federal Judge Gerhard A. Gesell, sitting in the "plumbers" case, ordered lawyers for John D. Ehrlichman and President Nixon to a hearing today.