

## Judge Orders Separate Ehrlichman Trial, Delays Case Until Nixon Releases Data

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WASHINGTON—The delay in John Ehrlichman's "Plumbers" trial may be good news for the former presidential aide and, at least temporarily, for his former boss as well.

However, the situation could add to the pressures for President Nixon's impeachment, if the President is held in contempt or blamed for an eventual dismissal of the case due to his continued refusal to supply materials Mr. Ehrlichman has subpoenaed for his defense.

Federal district Judge Gerhard Gesell cited the President's noncooperation yesterday in separating Mr. Ehrlichman's trial from that of the other defendants and postponing it from Monday until "a later date." The judge has been warning for some time that the law requires the government to produce all material that might be useful to defendants in criminal cases and he has threatened to begin contempt proceedings against the President or, as a last resort, to dismiss the charges if the documents aren't made available.

In the short run, the indefinite postponement in Mr. Ehrlichman's trial means that the House Judiciary Committee will probably have to complete its work without the benefit of any evidence that might have emerged in courtroom testimony about the extent of Mr. Nixon's involvement with the Plumbers. The three remaining defendants, charged with burglarizing a psychiatrist's office to get information on Pentagon Papers figure Daniel Ellsberg, will go on trial Monday as scheduled, but none of them was close enough to the President to have any direct knowledge of his role. The three—G. Gordon Liddy, Bernard Barker and Eugenio Martinez—were all convicted previously in connection with the Watergate break-in.

Judge Gesell's action came at a brief courtroom hearing yesterday morning. Mr. Ehrlichman is charged with one count of conspiring to violate the psychiatrist's constitutional rights and four counts of lying about it to the Federal Bureau of Investigation and to a grand jury.

The judge said he will issue an order, probably today, to enforce the Ehrlichman subpoena against the President so that "appropriate pretrial release of the pertinent documents" in the hands of the White House "can be accomplished, permitting Mr. Ehrlichman's trial to go forward at a later date." Both Judge Gesell and Mr. Ehrlichman's attorney called "unacceptable" the President's latest offer to let Mr. Ehrlichman examine his White House files with his lawyer available for consultation in an adjoining room. The judge also said that he "can't properly perform" his duty to conduct a fair trial if Mr. Nixon persists in saying that he alone will decide whether the documents Mr. Ehrlichman wants are relevant.

Lawyers say the only way they know of to enforce a subpoena is a contempt proceeding. The first step, a contempt citation, would consist of an order that the President "show cause" why he shouldn't be held in contempt for his refusal to comply with the subpoena. If, following legal arguments, the judge found the President in contempt, he would then be faced with the problem of enforcing his order. The usual penalty for contempt is a fine or a jail term until compliance is obtained.

A contempt order could be appealed, but the President might want to avoid a Supreme Court endorsement of such an order, and there isn't any guarantee the high court would agree to hear the matter anyway. While a contempt order from a district court judge mightn't be regarded by the Judiciary Committee as formal grounds for impeachment, it wouldn't help the President's standing in public opinion polls or with the committee members.

If dismissal should result from continued defiance of the subpoena and of Judge Gesell's directive that he, rather than the President, be allowed to decide what's relevant to the case, the judge would be certain to lay the blame squarely on the President's shoulders. He has already angrily inquired whether the President is "deliberately" taking action to "abort" the case. And last week he declared that the President's resistance to Mr. Ehrlichman's subpoena was "offensive" and "borders on obstruction."

Some Judiciary Committee members believe the President has a "sweetheart" deal with his indicted former aides: They ask for

evidence that might help get them off and he refuses to produce it, thereby forcing an end to their trials and removing the danger that they might incriminate him. One member, Rep. John Conyers (D., Mich.), charged two weeks ago that the President "is continuing the cover-up" by withholding evidence sought by his former aides. "If the judge says he's got to see those files and the President refuses," said Rep. John Seiberling (D., Ohio), another committee member, "I'd certainly consider that possible grounds for impeachment."

Yesterday Mr. Ehrlichman asserted there wasn't any "substance" to the charge that the subpoena controversy is part of a continuing cover-up. The last time he talked with the President was Christmas Eve, Mr. Ehrlichman said. He declined to characterize the President's response to his subpoena, saying he didn't think a comment from him would be "appropriate," and he refused to comment on the effect of the judge's action on the President.

"I am gratified at the judge's ruling because I believe if all the evidence can be presented in my behalf I'll be fully exonerated," he told reporters, adding that yesterday's ruling went "in the direction" of producing all the evidence.

In yesterday's proceeding the special Watergate prosecution force was put in the somewhat unusual position of arguing that the White House had produced enough evidence. Assistant Special Prosecutor William Merrill said he didn't see how Mr. Ehrlichman's attorney could find the latest Nixon offer unacceptable until he'd tried it. "If he tries it, he might like it," Mr. Merrill commented.

Mr. Merrill contended that Mr. Ehrlichman's request—for access to over two years of his notes on yellow legal pads—was too broad. "We're trying to resolve something in a vacuum without knowing if anything (relevant) is really there," he said. He declared that the prosecution was ready to go to trial at this time and was prepared to defend against appeals any conviction that might result.

Later, Mr. Merrill conceded to reporters

that the judge's action could mean a lengthy delay in Ehrlichman trial while the subpoena controversy is pending.

Meanwhile, President Nixon's lawyer, James St. Clair, tried to give the House Judiciary Committee a brief defending Mr. Nixon's role in the Watergate affair. But Chairman Peter Rodino (D., N.J.) declined to accept it on the ground it was "premature." Rep. Rodino said Mr. St. Clair will get a chance to respond on the President's behalf once the committee staff has finished its initial presentation of the evidence concerning impeachment in about 10 days.