

Judge Agrees to Compromise in Ehrlichman Case

Washington

U.S. District Judge Gerhard A. Gesell and attorneys for President Nixon avoided a clash yesterday and compromised at least temporarily on the issue of release of documents for the defense of former top Nixon adviser John D. Ehrlichman, who faces criminal charges in the break-in at the office of Daniel Ellsberg's psychiatrist.

The compromise includes agreement by the White House to waive its previous insistence on executive privilege over many documents already turned over to Ehrlichman for preparation of his defense and includes a sworn statement by presidential counsel J. Fred Buzhardt that other documents sought by Ehrlichman are not relevant to his defense.

Gesell substantially modified his sharply phrased claims to be the sole arbiter of what subpoenaed material now under lock and key in the White House would be relevant to the Ehrlichman trial.

The White House has "progressed substantially" in its stand on production of the documents, Gesell said. He indicated he may again schedule Ehrlichman for trial with the other three defendants in the case as early as next week.

While substantially subdued in comparison with his previous stinging rebukes during encounters with White House lawyers, Gesell made it clear that he would watch the new plan closely to make sure that no snags develop in its implementation.

The acceptance of the plan was announced by Gesell about a half-hour after he was scheduled to release or-

ders enforcing Ehrlichman's pretrial subpoenas. Many legal observers said those rulings could have included an order that the President show why he should not be held in contempt of court for refusing to produce subpoenaed materials.

During the brief court proceeding yesterday, Gesell said, "I was up a good number of hours last night. I was about to reach a decision none of us would have liked to see."

The White House position

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was announced in a motion filed by the Watergate special prosecutor's office asking that Gesell reconsider his Tuesday ruling that Ehrlichman's trial must be separated from that of other defendants and postponed indefinitely because of the White House refusal to produce the documents.

Ehrlichman, G. Gordon Liddy, Bernard L. Barker and Eugenio R. Martinez face charges stemming from the 1971 break-in at the office of Daniel Ellsberg's psychiatrist.

The special prosecutor's office, which has been at odds with the White House over access to documents, sided with the President in this issue and filed Buzhardt's sworn affidavit to support its motion.

Ehrlichman's attorneys appeared stunned when they learned the judge might reinstate their client for trial as soon as next week. They said Ehrlichman re-

turned to the West Coast after Gesell's ruling Tuesday.

Neither of the White House changes in position — the waiver of executive privilege and Buzhardt's personal review of the subpoenaed material — approaches a more basic objection that Gesell had voiced concerning the continued White House denial of access to the notes by Ehrlichman's attorneys.

That denial deprives Ehrlichman of his right to effective assistance of counsel, Gesell has said in open court. However, Gesell apparently saw yesterday's movement on the part of the White House as substantial enough to allow the case to proceed, reserving any further ruling pending the outcome of the compromise.

The subpoenaed materials at issue are Ehrlichman's handwritten notes of conversations with the President for a 2½-year period.

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