

Sirica Urges Haldeman and Ehrlichman To Seek White House Data as Friends

By LESLEY OELSNER

Special to The New York Times

WASHINGTON, June 12—Federal Judge John J. Sirica, saying that "the easy way" is worth a try, advised John D. Ehrlichman and H. R. Halde- man today to "have a nice heart-to-heart talk" with President Nixon about the White House files they contend they need for their defense in the Watergate cover-up case.

Mr. Nixon has "great faith" in both men and he is also their "friend," Judge Sirica said. So the judge said, the President might make the files available without their having to be subpoenaed.

Judge Sirica, offering his proposal during the third day of pre-trial hearings in the cover-up case, insisted it was only a "suggestion." But he made it clear that it was a strong suggestion, one that he wanted followed, and he asked lawyers for the two men to bring him an answer.

He also made clear the reason behind the suggestion: It would "make it easier for the courts," he said.

A Similar Problem

A few doors down the hall in the United States Courthouse here, a problem similar to that facing Judge Sirica had caused some legal tangles in Judge Gerhard A. Gesell's trial of the so-called plumber's case. Mr. Ehrlichman is a defendant in that case too, and his efforts to obtain access to White House files had led Judge Gesell to sever his case temporarily.

Judge Gesell ruled yesterday that the White House position made it impossible for the court to perform its duties. Today, he reinstated Mr. Ehrlichman as one of the four defendants.

Both Judge Sirica and lawyers for the special prosecutor seemed at times this morning to be trying to distinguish the present situation in the cover-up case from that in the "plumbers" case. But one of Mr. Ehrlichman's lawyers, Andrew C. Hall, seemed to trying to draw a parallel.

The matter came up during arguments over the procedures to be followed in the "discovery" phase of the case—the phase in which attorneys for both sides receive certain information held by attorneys on the other side.

The defense counsels were arguing for broad and early discovery, contending that Federal rules and the complexity of the case made it essential that the prosecution turn over large amounts of information immediately. The prosecution said that it was ready to provide the defense with more than it was entitled to, and at an earlier date than was necessary, but that the defense was asking too much.

Exculpatory Material

Among other things, the prosecution contended that it should not be required to provide the defense with "exculpatory" material held by other governmental groups, such as the Senate Watergate committee or the White House and not held by the prosecution.

Judge Sirica had already said that if the defense wants material held at the White House that is "exculpatory" to the defendants, the defense would have to subpoena the President and not, as the defense contended, require the prosecution to obtain the material.

But as the argument proceeded, Mr. Hall rose to complain "We had this experience in Judge Gesell's court" (in the plumbers case).

Judge Sirica responded, at first, by telling all the lawyers to sit down and try to work



United Press International

John J. Wilson, left, and Frank H. Strickler, defense lawyers in Watergate cover-up case, on way yesterday to hearing before Judge John J. Sirica in Washington.

out some agreement. They could come back to court if they had problems they couldn't resort, he said.

But a few minutes later, after a brief complaint by Richard Ben-Veniste of the prosecution force about one of Mr. Hall's statements, the judge suggested that the group take a "practical standpoint."

Praised by President

"Let's forget about the legal right to obtain something from the President now," he said. "Everybody knows that Mr. Ehrlichman and Mr. Haldeman were praised by Mr. Nixon when they resigned. He has great faith in them, doesn't he? Correct. There's no question about it, as many other people do."

His tone, which had sounded tentative, took an inquisitive note. He asked:

"Have they tried to go in and see the President and say, 'Look Mr. President, our liberty and our reputation is at stake. It's true we can serve a subpoena on you, but we are talking about doing it the easy way. Have they tried this approach?"

"Couldn't they go in and see the President and say, 'May we look through our files to see if there are any exculpatory matters here without going through the courts, the Supreme Court, the Court of Appeals?"

Material Could Help

Judge Sirica repeated this suggestion in various wording several times more as the hearing progressed—and repeated that the effort was worth a try.

"I would be interested in knowing what our President would say if it was put to him in that manner, friend to friend the President having confidence in them."

"We have the President of the United States in control of something that might be helpful to the defendants," the judge said at another point.

Former White House aides such as Mr. Haldeman are al-

ready entitled to go and look at their files in the White House. However, the current policy is that the former aides may not copy the files or have their lawyers with them.

According to the judge's law clerk, D. Todd Christofferson, the judge's comment was a suggestion that the President let the aides look at their files and then take or copy materials they considered essential.

Judge Sirica appeared to be limiting his suggesting to Mr. Ehrlichman, once Mr. Nixon's chief of staff. He noted that he would not make the suggestion if they were "strangers."

He noted also that the suggestion would not apply to Kenneth W. Parkinson, another defendant a lawyer who was hired by the Nixon re-election campaign group immediately after the Watergate break-in.

Several lawyers rose to say that it would not apply to their clients, including John Bray who said that the relationship of his client Gordon C. Strachan to Mr. Nixon was "trivial" and Thomas Greene, lawyer for Robert C. Mardian, said that "the President doesn't trust Mr. Mardian."

Mr. Hall said that he did not know if Mr. Ehrlichman had ever made such a request. John J. Wilson representing Mjr. Haldeman, said that he would transmit the judge's suggestion but asked for—and got—the judge's assurance that a failure to carry out the suggestion would not be counted against his client.

In other developments at the hearings, Judge Sirica made it clear that he intended to try to pick a jury for the trial despite the publicity about the case. Lawyers for the defendants, led by Plato Cacheris, representing John N. Mitchell, has asked that the case be dismissed on the ground that there had been so much publicity about the case that it would be impossible to impanel a grand jury.

"I have faith in the jury system," Judge Sirica said.