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John D. Ehrlichman leaving court in Washington yesterday with one of his attorneys, Spence Boyer, and Jean Staudt, a White House lawyer, after a meeting with Judge Gerhard A. Gesell.

Gesell Puts Off Ruling on Ehrlichman Case for a Day

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WASHINGTON, June 13 — Federal Judge Gerhard A. Gesell delayed today for 24 hours the issuance of a formal order reinstating John D. Ehrlichman as one of four defendants in the "plumbers" case, pending a challenge by Mr. Ehrlichman to a crucial White House affidavit filed yesterday. Mr. Ehrlichman was reported to have spent the day going through his personal White House files in an effort to find evidence that a similar White House search two days ago had erred in concluding that the papers contained nothing bearing on "the issue of guilt and innocence."

The personal papers, and Mr. Ehrlichman's insistence that he and his attorneys have full access to them, have been the cornerstone of a long legal dispute with President Nixon, who has insisted on having the final right to determine whether those or any other White House documents could be provided to Judge Gesell in United States District Court.

A Middle Ground

In turn, Judge Gesell has threatened within the last few weeks to dismiss the charges against Mr. Ehrlichman and to hold the President in contempt of court if he did not capitulate.

A middle ground seemed to have been found yesterday when the Watergate special

prosecutor's office requested that J. Fred Buzhardt Jr., the White House counsel, personally go through Mr. Ehrlichman's papers in an attempt to find any material that possibly could be used to aid Mr. Ehrlichman's defense. Mr. Buzhardt found none.

A number of lawyers suggested today that it was the White House affidavit to that effect that was a deciding factor in Judge Gesell's change of mind yesterday about severing Mr. Ehrlichman from the other defendants and trying him later.

"The judge simply took Buzhardt's affidavit as being a conclusive settlement," one lawyer close to the case said.

Trial Is Expected

Another source close to Mr. Ehrlichman acknowledged that, although Judge Gesell had yet to issue an order reinstating Mr. Ehrlichman and setting a new trial date, "There's no doubt about where we are—we're going to trial."

William S. Frates, Mr. Ehrlichman's chief attorney, also indicated as much after a two-hour meeting in Judge Gesell's chambers this morning. He told newsmen that he and his wife had planned a six-day vacation to begin soon and added, "I don't think I'm going to make it."

At the meeting in the judge's

chambers, sources said, Mr. Frates and the other Ehrlichman attorneys, Andrew C. Hall, Henry Jones and Spencer Boyer, contended that Mr. Buzhardt was in no position to evaluate Mr. Ehrlichman's notes. This apparently prompted the judge to order Mr. Ehrlichman to make another search of his files.

On Tuesday, Judge Gesell ended three weeks of pretrial

arguments over the White House's refusal to provide Mr. Ehrlichman and his attorneys access to all of his notes by severing the White House aide and announcing plans to go ahead on Monday, as scheduled, with the trial of the other defendants.

Judge Reversed Himself

Yesterday, however, the judge, citing what he said was a significant change in the White House position on executive privilege, in effect reversed himself and said that he would not issue a formal order severing Mr. Ehrlichman from the case. He also indicated that the trial would be delayed at least one week.

Mr. Ehrlichman and the other defendants—G. Gordon Liddy, Eugenio R. Martinez and Bernard L. Barker—were indicted last March for allegedly conspiring to burglarize in 1971 the office of Dr. Daniel Ellsberg's former psychiatrist.

One well-informed lawyer said that Judge Gesell could change his mind again if Mr. Ehrlichman and his attorneys uncovered today materials in his personal files that challenged the thoroughness of the search made by Mr. Buzhardt. The White House attorney told the judge yesterday that he spent seven and one-half hours the night before going through Mr. Ehrlichman's notes. *U.S.N.*