

St. Clair's Letter to Judge Gesell in 'Plumber' Case

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WASHINGTON, May 30—Following is the text of a letter sent today by James D. St. Clair, President Nixon's Watergate counsel, to Judge Gerhard A. Gesell of United States District Court, outlining Mr. Nixon's views on the release of personal White House files sought by Charles W. Colson and John D. Ehrlichman, two defendants in the "plumbers" case:

Dear Judge Gesell:

In re United States of America v. John Ehrlichman, et al—Cr. No. 74-116

At the Court's request, I have consulted with the President of the United States concerning the possibility that you might dismiss these cases if the material demanded by the defendants Colson and Ehrlichman in subpoenas issued by this Court on May 22, 1974, and made returnable on May 24, 1974, at 2 P.M. is not produced.

Security Risk Seen

During the course of our colloquy on May 24, 1974, the Court observed that it was appropriate to find out at the outset whether or not these cases can be tried rather than to proceed therewith only to find out at a later date that they cannot be tried. I concurred in this view.

So that the Court may be fully informed in this regard,

the President has directed me to advise you that at least the item described in Paragraph 2 of defendant Colson's subpoena, which was submitted and accepted in camera by the United States Supreme Court in connection with New York Times Co. v. U.S., 403 U.S. 714 (1971), cannot be made public without substantial risk to the security of the United States.

In addition, I am informed that the defendants have filed further requests for production of documents since the hearing on May 24, 1974. At the direction of the President, I must also advise you that a member of these documents in all likelihood cannot be made public without substantial risk to the security of the United States.

The President is unaware of any basis on which these documents could be relevant or material in this proceeding but, of course, he cannot be the judge whether these or any other documents meet the "strict rules of relevancy and materiality" that this court stated in its memorandum and order of May 24, 1974, would be applicable. The President has noted that the court stated at the hearing on May 24, 1974, that nothing would be received under a protective order prohibiting disclosure of

the contents of any document.

The President stands ready to make available to the court for in camera inspection by the court, and for disclosure to defendants' counsel under a protective order preventing further disclosure, the document described in item 2 of defendant Colson's subpoena upon the condition that should the court find all or any part of the document relevant portion of it shall be declassified shall remain one for the Chief Executive and will not be assumed by the court.

Jaworski Was Advised

The court should be aware that special prosecutor Jaworski was advised as early as Dec. 11, 1973, that certain critical national security materials could not be made available for use in a public trial if an indictment were returned with respect to the activities of the special investigations unit (subnominee "the plumbers"). The special prosecutor expressed the opinion at that time that such materials would not be relevant and therefore did not pose a bar to the prosecution of alleged offenses arising out of the activities of this unit.

The President is not desirous of having these, or, in fact, any indictments of former Governmental officials dismissed without a full and fair trial, but he must implement the constitutional responsibilities of his office by not jeopardizing the national security, even if it means that the court determines that these cases must ultimately be dismissed.

As the court of course is

aware, it does happen on occasion that the paramount interest of national security does result in the dismissal of criminal prosecutions thought to depend upon disclosure of classified information. U.S. v. Ayers, et al, No. Cr.—48104 (E.D. Mich., dismissed Oct. 15, 1973).

With respect to the first item of each of the two subpoenas, the President has authorized me to advise the Court that he will authorize defendants Colson's and Ehrlichman's counsel to share the access of their respective clients to those materials, if any, within the described files that relate to the issues in this case.

Competing Interest

As to any materials which the respective defendants believe relevant to their defense, the President will then weigh the competing interest as to whether the documents should be produced. Members of the special prosecutor's office will be provided access to all of such materials made available to the defendants and their counsel.

While we believe that the above procedure should be satisfactory to the parties, the President has instructed me to cooperate fully with the court and the special prosecutor to seek to avoid a dismissal of these cases. Accordingly, I stand ready to confer with the court and the special prosecutor to exhaust all means available to avoid this result consistent with the President's responsibilities.

Sincerely,
JAMES D. ST. CLAIR
Special Counsel to the
President