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Text of St. Clair's Letter About Ehrlichman Papers

Special to The New York Times

WASHINGTON, June 10—Following is the text of a letter from James D. St. Clair, special Presidential counsel, to Judge Gerhard A. Gesell regarding the dispute over the personal papers of John D. Ehrlichman:

Dear Judge Gesell:

I have, of course, reported to the President regarding the proceedings in your court last Friday, June 7, 1974, and advised him of my understanding that you agree that the President has the final determination as to whether to declassify national security material so that it may be used in the forthcoming trial.

Pursuant to his instructions to me to cooperate with the court in order that the subject case can be tried with fairness to the defendants and to the Government, I have obtained his approval to the following suggested procedures:

1. Mr. Ehrlichman may examine the entire file of his notes of Presidential conversations.

2. His attorney may be present in the office adjoining the vault in which Presidential documents are stored and Mr. Ehrlichman may confer with him regarding any of the documents, but initially his counsel may not examine the notes.

3. If, after examing the notes and conferring with his counsel concerning the same, Mr. Ehrlichman determines that he desires a document produced, it will be submitted to counsel for the President for review to determine whether in his opinion the matter selected is related to the issues in the pending case.

4. If it is determined that the notes selected are so related, copies thereof will be submitted to the court for an in camera determination by the court as to their relevance. Copies will be furnished to the parties under the existing protective order, unless the court otherwise orders.

5. If, in the opinion of the President's counsel, the notes selected are not related, a summary of the subject matter, date, place and persons present at the meeting covered by the notes will be prepared by counsel for the President and submitted to the court for its determination as to relevance and materiality.

6. If the court determines that the notes are relevant, that the summary is not acceptable as a substitute, and that the notes themselves must be produced, then the President himself shall determine whether or not it is in the public interest to produce the notes for use in the trial.

The foregoing is based, of course, on the presumption and belief that Mr. Ehrlichman and his counsel will make a god faith effort to select only relevant and material documents.

These procedures in my view comply with the regulations, a copy of which were furnished you on June 7, 1974, and I believe satisfy the requirements of a fair trial and at the same time comply with applicable law relating to disclosure of classified material. In order that custody of these notes can be fully accounted for, it will be necessary that Secret Service officers will have to supervise the physical handling of notes, but of course they will not monitor conversations between Mr. Ehrlichman and his counsel.

In order that there be no further misunderstanding, the President has directed me to advise you that he specifically reaffirms his formal claim of privilege filed with the court and, except to the extent at his determination material is released to the court for its in camera inspection and possible later use at the trial, he must respectfully insist on this privilege.

Inasmuch as the material in question consists of notes of confidential Presidential conversations, there can be no doubt but that they are properly the subject of executive privilege, as recognized by the Court of Appeals in Nixon vs. Sirica, 487 F. 2nd, 700. In that opinion, the court stated at page 715, "We acknowledge that wholesale public access to executive deliberations and documents would cripple the executive as a co-equal branch."

Surely, therefore, what clearly is a valid formal claim of privilege by the President concerning notes of confidential Presidential conversations cannot afford a basis for either a charge of contempt of court or obstruction of justice on the part of the President, as public media has interpreted Your Honor's statements in open court to mean.

If the foregoing procedures are agreeable to the court we are prepared to implement them forthwith.

JAMES D. ST. CLAIR
Special Counsel to the President