

5/9/74

Phil INQ

WATERGATE

Nixon Stand May Help Ex-Aides

By CAUL FRIEDMAN
Inquirer Washington Bureau

WASHINGTON. — President Nixon's refusal to give up further Watergate evidence does more than help protect him against impeachment. It also could lead to the dismissal of cases against former high-ranking aides.

And to the extent that the President is able to help those under indictment, they in turn can resist pressures to provide information, which would be damaging to the President.

The President announced Tuesday through his attorney, that he would not obey subpoenas for tapes and other material from special prose-

Analysis

Senior Leon Jaworski and the House Judiciary Committee.

There is a risk that Mr. Nixon's hard stand may draw a contempt-of-Congress citation from the committee. But on balance, withholding the evidence is likely to protect him more than it can harm him. The committee does not seem about to risk the partisan wranglings that a vote on a contempt citation would engender.

There is no evidence that the President's "stone wall" is designed to protect others. But the President, in the edited White House transcripts, displays concern that investigators were attempting to incriminate him through aides like H. R. Haldeman and John Ehrlichman, who have since been indicted.

And the President's attorneys are fully familiar with well-established legal precedents which may require judges to dismiss cases or order not guilty verdicts

when the government withholds evidence.

Both Jaworski and his predecessor, Archibald Cox, have suggested that cases against Watergate defendants could be jeopardized by the President's refusal to give up evidence he holds.

The possible dismissal of the cases against leading Watergate defendants rests on the 1957 Jencks Act and a series of court decisions clustering around one in 1963 known as "Brady versus Maryland."

As a result of the Brady ruling, which strengthened existing law and has since been broadened, a defendant is entitled to all evidence held by the prosecution (including investigative agencies and the government itself) if it is necessary to his defense.

If the evidence is not produced so that the judge might at least examine it to see if it is relevant and necessary, then the judge has no choice but to dismiss the case.

The Jencks Act, passed to protect official files on national security grounds, authorized the government to withhold relevant evidence even when it meant a mistrial.

Haldeman, Ehrlichman, Charles W. Colson, John Mitchell and Robert C. Mar-dian, all citing Brady among other cases, have joined Jaworski in asking for the evidence the President refuses to divulge.

Ehrlichman, indicted separately in the burglary at the office of Ellsberg's psychiatrist, claims the evidence would show he was acting as a "law officer" under the authority of the President.

And in the Watergate case he and the other defendants

claim the evidence held by the President would tend to show their innocence.

If the President chooses confrontation, the courts have no way to enforce a subpoena. And Jencks provides him with a legal basis to withhold evidence from a trial.

Jaworski — perhaps to test the President's intentions — asked St. Clair to certify that the requested tapes are irrelevant, under Brady, and permit a prosecutor to verify that for the judge. St. Clair — and the President — declined to do so.