

'Stonewall' Puts New Focus On Lawyer-Client Relationship

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If President Nixon advised former Attorney General John N. Mitchell to "stonewall" the Watergate investigation by pleading his Fifth Amendment rights, did Mr. Nixon thereby commit an obstruction of justice?

Defense lawyers have contended in the past that such advice can never violate the law, because to "plead the Fifth" is a constitutional right for which a witness can suffer no legal penalty.

Over the years prosecutors have argued the contrary, saying that even advising another person to do something that is legal and constitutional can be a crime under some circumstances.

The legal issue in Mr. Nixon's case won't be settled unless members of the House Judiciary Committee or the Watergate prosecutors determine that the advice was actually given, a point that is sharply disputed.

A committee staff memorandum says the advice was given during a taped conversation March 22, 1973, but both Mitchell and presidential lawyer James D. St. Clair deny it.

According to the staff memo, Mr. Nixon told Mitchell:

"And, uh, for that reason, I (unintelligible) I don't give a s-- what happens. I want you to (unintelligible) stonewall it, plead the Fifth Amendment (unintelligible) else, if it'll (unintelligible). That's the big point. . ."

Apparently, by coincidence, a related issue is to be decided by the Supreme Court next year. The justices have agreed to review a Texas court's contempt verdict against a lawyer for advising his client to "take the Fifth" and stand on his privilege against self-incrimination.

Oddly, if Mr. Nixon did give the advice, it would have been the opposite of a lawyer's advice to his client. Mitchell, as Attorney General, was "the President's lawyer." Before that, the two men were law partners.

Where the lawyer-client relationship is not involved, courts have generally ruled with the prosecutors that such advice can amount to obstruction of justice, tampering or intimidating a witness, depending on the evidence. Thus the alleged episode may involve an indictable or impeachable offense.

One of the leading legal precedents is a 1964 ruling by the 9th U.S. Circuit Court of Appeals in the witness intimidation case of Marvin R. Cole, former promoter of a Las Vegas casino, whose conviction was left standing by the Supreme Court.

Cole claimed he was just giving "friendly advice"—and sound advice at that—when he told an associate to remain silent when recalled by a grand jury. The associate confided that he had lied to the panel previously and feared a perjury prosecution if he now told the truth.

Unfortunately for Cole's defense, the advice that silence would be in the associate's best interest was coupled with a reminder that he had a "lovely wife and family and you wouldn't want anything to happen to them, would you?" The associate sought government protection and became a prosecution witness.

The court of appeals held that the trial judge had properly permitted the jury to decide whether this advice was given with the corrupt motive of frustrating justice.

In the Nixon-Mitchell tapes quoted in the committee staff memorandum, the President is depicted as telling Mitchell, "Even up to this point, the whole theory has been containment, as you know, John."

The suggestion is that the advice to "take the Fifth" was not friendly counsel in Mitchell's interest but a directive to keep the investigation from spreading or going higher.