

No Evidence, No Trial

President Nixon has now asserted a legal position which could prevent any successful prosecution of the Watergate conspirators.

Building on the Fifth and Fourteenth Amendments to the Constitution ("due process of law"), the courts have consistently ruled the obligation of the prosecution to disclose material evidence in the possession of the Government that would be favorable to a defendant, so-called "exculpatory evidence."

Presidential documents and tape recordings now known to exist could be demanded by defense lawyers of any of the Watergate personalities, once under indictment, on grounds that the evidence would be—in the words of the Supreme Court—"material either to guilt or to punishment."

But President Nixon has refused to submit such evidence to the prosecutor, who would therefore be unable to produce it to the court. The way would then be open for the defense to demand dismissal of the indictments. The legal precedents are overwhelming for dismissal to be granted. Professor Wright's remarkable letter to the special Watergate prosecutor, Archibald Cox, suggests that this loophole has been opened not entirely by chance.

"The successful prosecution of those who have broken the laws is a very important national interest, but it has long been recognized that there are other national interests that, in specific cases, may override this," Mr. Wright wrote on the President's behalf. "There are circumstances in which other legitimate national interests requiring that documents be kept confidential outweigh the interest in punishing a particular malefactor."

Along with Senator Ervin and others, we believe that uncovering the truth about Watergate is more important

than prosecuting any specific individuals; we do not, however, accept the proposition that these two goals are necessarily contradictory. Starting from a dubious constitutional abstraction, Mr. Nixon seems to have constructed a legal device which could effectively prevent former members of his White House entourage from ever going to jail and which could suppress pertinent information at the same time. Is this the clever stance which President Nixon now wishes to take before the American people?

TEXT,
24 Jul 73,
P. 19