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Envelope and Briefcase: 'Bad News for Mr. Nixon'

The sealed envelope and locked briefcase handed Judge John Sirica along with the Watergate indictments signaled that Special Prosecutor Leon Jaworski had escaped his impeachment dilemma with dangerous implications for President Nixon.

Having decided nearly two months ago against sending grand jury evidence directly to the House Judiciary Committee impeachment proceedings, Jaworski is now using Sirica as a conduit. The material handed Sirica last Friday was not, contrary to federal courthouse talk, the product of a runaway grand jury. Rather, it was Jaworski's attempt to prevent a situation where Nixon evidence could be used neither for impeachment nor indictment.

This adds a new direction to the impending constitutional confrontation between the House and the President over demands for evidence. With Presidential Watergate counsel James St. Clair getting Sirica to call a hearing for today, Mr. Nixon's lawyers now seem ready to try keeping the secret evidence out of congressional hands. Whether they succeed or fail, however, many Judicial Committee members feel the President's position has deteriorated sharply over the last five days.

In mid-January, Jaworski declared he must deny the House Committee request

for evidence on grounds of grand jury secrecy. Since it was highly dubious that a President could be indicted (though Jaworski then was undecided on this point), it seemed possible Mr. Nixon might fall between the impeachment and indictment stools and escape any scrutiny.

That prospect caused the first potential disagreement between establishment corporation lawyer Jaworski and his ardent young lieutenants inherited from the deposed Archibald Cox. Moreover, no matter how effectively Jaworski prosecuted the Watergate conspirators, he would be accused of aiding the cover-up if accusations against the President were not thoroughly considered.

Exactly what happened next is murky, thanks to the gag rule imposed by Sirica last Friday. There seems no truth to courthouse rumors of a runaway grand jury that tried to indict Mr. Nixon, next wanted to name him as an unindicted co-conspirator and finally sent the sealed envelope to Judge Sirica against the prosecutor's wishes. However, all signs indicate the question of indicting the President did come up in the grand jury. Jaworski several weeks ago decided an incumbent president could not be indicted. But for that decision to be made, it can be assumed the grand jury felt an indictment was justified by the evidence.

This may have coincided with the grand jury's Jan. 30 request asking the President to testify.

Following this, Jaworski decided to resolve his own dilemma by shipping Sirica evidence concerning the President and Watergate, assuming the judge's most probable recourse would be to send it quickly to the House Judiciary Committee.

Actually, the grand jury's sealed envelope almost surely does not contain an accusation of Mr. Nixon's complicity in the cover-up as described in published reports. Rather, it is believed to list evidence without coming to conclusions.

Thus was the dilemma transferred from special prosecutor to White House. One senior presidential aide immediately contended Sirica should have promptly disclosed to St. Clair the nature of the secret evidence, but the White House seemed perplexed about what to do. When Sirica did not quickly dispatch everything to the House last Friday as Jaworski may have hoped, St. Clair had time to win today's hearing. Nevertheless, the President faces unpleasant alternatives: letting the secret evidence go to Congress or seeming to obstruct the impeachment proceedings.

All this has transformed the Watergate landscape, less dramatically than last October's Saturday Night Massacre

but perhaps just as profoundly. The secret evidence has halted for now the escalating debate over whether an impeachable offense need be criminal. Furthermore, Vice President Gerald R. Ford has veered from the strict White House line on Watergate for the first time.

In Phoenix, Ariz., last Sunday, Mr. Ford said the sealed evidence, "good or bad," should be sent immediately to the House Judiciary Committee — words definitely not echoed at the White House. Indeed, Nixon aides telephoned the Vice President's office to ask meaningfully whether the Vice President really said that in Phoenix.

On the surface, nothing has changed at the White House. High administration Nixon officials express relief that the indictments did not accuse Mr. Nixon and he was not an unindicted co-conspirator. Oblivious to Sirica's gag rule, the White House propaganda campaign to discredit deposed White House counsel John W. Dean III as chief government witness flourishes.

But that cannot obscure the new reality in Mr. Nixon's struggle for survival: either the envelope and briefcase will soon be in the hands of the House Judiciary Committee or bogged down in a court fight thanks partly to the President's lawyers. Either result is bad news for Mr. Nixon.