

Text of Jaworski Letter to

Following is the text of the letter Watergate Special Prosecutor Leon Jaworski sent yesterday to Senate Judiciary Committee Chairman James O. Eastland (D-Miss.):

When I appeared before your committee during the hearings on the nomination of the Honorable William B. Saxbe to be Attorney General, I assured the committee in response to a question by Senator Byrd that I would inform the committee of any attempt by the President "to circumvent or restrict or limit" the jurisdiction or independence of the special prosecutor. I am constrained to advise you and the members of your committee, consonant with this and other promises made when I testified at hearings before your committee on the special prosecutor bill, that in recent days these events have occurred:

Following the issuance of a subpoena for White House tapes to be used as evidence in the trial of United States v. Mitchell, et al (which are needed for prosecution purposes and perhaps to comply with the rights of the defendant under Supreme Court rulings), the President, through his counsel, filed a motion to quash the subpoena.

Because of sensitive matters involved in our response to the motion to quash, I joined with White House counsel in urging Judge Sirica to conduct further proceedings in camera. After the court determined

to hold further proceedings in camera, White House counsel for the first time urged the court to quash the subpoena on the additional ground that the special prosecutor had no standing in court because the matter of his obtaining the tapes in question involved "an intra-executive dispute." As stated by counsel for the President in the argument before Judge Sirica, it is the President's contention that he has ultimate authority to determine when to prosecute, whom to prosecute, and with what evidence to prosecute. Judge Sirica has not ruled and I am released from in camera secrecy.

The crucial point is that the President, through his counsel, is challenging my right to bring an action against him to obtain evidence, or differently stated, he contends that I cannot take the President to court. Acceptance of his contention would sharply limit the independence that I consider essential if I am to fulfill my responsibilities as contemplated by the charter establishing this office.

The position thus taken by the President's counsel contravenes the express agreement made with me by General Alexander Haig, after consulting with the President, that if I accepted the position of special prosecutor, I would have the right to press legal proceedings against the President if I concluded it was necessary to do so. I so testified in the House Judiciary Committee

hearing and in the hearings conducted by your committee. Thereafter, at the suggestion of members of your committee, I sent a copy of my testimony on this point to counsel for the President, Mr. J. Fred Buzhardt, who acknowledged its receipt without questioning my testimony. I should add that when my appointment was announced by Acting Attorney General Bork on November 1, 1973, he stated that as a part of my agreement to serve, it was "absolutely clear" that I was "free to go to court to press for additional tapes or presidential papers," if I deemed it necessary.

You will recall, Mr. Chairman, that when I testified at the session of your committee on the special prosecutor bill, the following exchange took place between us:

The Chairman. You are absolutely free to prosecute anyone; is that correct?

Mr. Jaworski. That is correct. And that is my intention.

The Chairman. And that includes the President of the United States?

Mr. Jaworski. It includes the President of the United States.

The Chairman. And you are proceeding that way?

Mr. Jaworski. I am proceeding that way.

(Part 2, Page 571)

Senator McClellan put the question to me this way:

May I ask you now, do you feel that with your understanding with the White House that you do have the right, irrespective of the legal issues that may be involved—that you have an understanding with them that gives you the right to go to court if you determine that they have documents you want or materials that you feel are essential and necessary in the performance of your duties, and in conducting a thorough investigation and following up with prosecution thereon, you have the right to go to court to raise the issue against the President and against any of his staff with respect to such documents or materials and to contest the question of privilege.

Mr. Jaworski. I have been assured that right and I intend to exercise it if necessary.

(Part 2, Page 573)

Senator Hruska also examined me on this point as is shown by the following questions and answers:

Senator Hruska. And it was agreed that there would be no restrictions or limitations, that even as to those items on the tapes, whether they were asked for or not, you would be given access to them. However, if there would occur an impasse on that point on the availability of any material, that there was expressly,

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without qualification, reserved to you the right to go to the courts. So that it would be at a time when General Haig, acting on behalf of the President, or in his stead, would say no to this particular paper, I don't feel that you should have it, this has high national security and other characteristics, and if you felt constrained to differ with him at that point, you could go to court, and there would be no limitation in that regard?

Mr. Jaworski. That is a correct statement.

Senator Hruska. That is your testimony?

Mr. Jaworski. Yes, sir.

Senator Hruska. So that by the charter and by your agreement and your discussions you are not to be denied access to the courts

(Part 2, Page 600)

When my deputy, Henry S. Ruth Jr., was testifying in connection with the special prosecutor bill, Senator Scott asked him the following question:

Senator Scott. I imagine it may be clear that he has no doubt of his right to bring action in the courts against the executive if he so deems to be proper?

Mr. Ruth. Well, senator, he understands his instructions are to pursue all of the evidence he needs, including to go to court if the evidence is not forthcoming.

(Part 2, Page 518)

At the time of the Saxbe nomination hearings, Senator Byrd exacted the assurance from me that I would "follow the evidence wherever it goes, and if it goes to the Oval Office and to the President himself, I would pursue it with all my vigor." And at the same time, he obtained the assurance from Mr. Saxbe that he would give me full support in matters that were within the performance of my duty even if "there are allegations involving the President" (page 22 of the hearings before the committee on the nomination of William B. Saxbe, December 12 and 13, 1973).

Of course, I am sure you understand, Mr. Chairman, that I am not for a moment suggesting that the President does not have the right to raise any defenses, such as confidential communications, executive privilege, or the like. It is up to the court, after hearing, to determine whether his defense is sound. But any claim raised by White House counsel on behalf of the President that challenges my right to invoke the judicial process against the President, as I am doing in an effort to obtain these tapes for use at the trial in *U.S. v. Mitchell, et al*, would make a farce of the special prosecutor's charter and is in contravention of the understanding I had and the members of your committee ap-

parently had at the time of my appointment.

In a letter to me from Mr. St. Clair, counsel for the President, Mr. St. Clair undertakes to circumvent the clear and unmistakable assurance given me by the President by contending that: "The fact that the President has chosen to resolve this issue by judicial determination and not by a unilateral exercise of his constitutional powers, is evidence of the President's good faith." Of course, under Mr. St. Clair's approach, this would make the assurance of the right to take the President to court an idle and empty one. Counsel to the President, by asserting that ultimately I am subject to the President's direction in these matters, is attempting to undercut the independence carefully set forth in the guidelines, which were reissued upon my appointment with the express consent of the President. It is clear to me that you and the members of your committee who were familiar with the public announcements of the President and the acting Attorney General, did not construe them in so meaningless a manner (as is evident by the above referred to statements in questions that were propounded to me), and neither did I. To adopt Mr. St. Clair's version would give rise to this anomaly—"the President has no objection to the special prosecutor filing his action against him but once filed, the President will stop the

special prosecutor from proceeding with it by having his counsel move to dismiss on the ground that the special prosecutor cannot sue him."

Judge Sirica, in overruling this contention of the President in an opinion made public by the court this afternoon, pointedly said:

The special prosecutor's independence has been affirmed and reaffirmed by the President and his representatives, and a unique guarantee of unfettered operation accorded him: "the jurisdiction of the special prosecutor will not be limited without the President's first consulting with such members of Congress (the leaders of both Houses and the respective Committees on the Judiciary) and ascertaining that their consensus is in accord with his proposed action." The President not having to consulted, to the court's knowledge, his attempt to abridge the special prosecutor's independence with the argument that he cannot seek evidence from the President by court process is a nullity and does not defeat the court's jurisdiction.

Because the members of your committee exacted from me the promise at the hearings that I would report a development of this nature, I am submitting this letter.

Respectfully yours,
LEON JAWORSKI
Special Prosecutor