

Jaworski's Nixon Decision

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The decision to block the almost certain criminal indictment of a sitting U.S. President was a lonely one, according to the man who made it and who now defends it vigorously.

"I knew a lot of things in my own mind and my own heart...the total sum of which no one else knew," former Watergate Special Prosecutor Leon Jaworski recalled in a recent interview. "The proof (of former President Nixon's guilt) was there."

"(But) we had no precedent, a Constitution that was silent on this point, and I had to

make the best guess I could," Jaworski said. He paused momentarily, then added more slowly: "I'd still make the same decision again."

The decision is history. The federal grand jury's evidence against the former President was sent to the House Judiciary Committee considering Nixon's impeachment, and Nixon was named instead by the grand jury as a co-conspirator in Watergate crimes without specifically being charged with criminal activity.

Jaworski spent more than two hours in a recent interview describing his tenure

as special prosecutor, defending his plea-bargaining agreements with numerous defendants, including former Attorney General Richard G. Kleindienst, and discussing his later considerations of what would have been the hardest decision of all—whether to indict Nixon after he resigned the presidency in August, 1974.

That last decision was avoided when Nixon was pardoned by President Ford in September, 1974. Jaworski resigned about a month later, after ascertaining that the

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pardon could not be challenged in court.

Now back as the head of one of the nation's largest law firms, a 215-attorney practice that occupies several floors of a downtown Houston bank building, Jaworski recalls his battles with the White House over access to potential Watergate evidence as "the toughest sort of fighting anyone can be involved in."

He said that within two months after becoming special prosecutor, "I became aware of what this investigation was going to lead to...I could see the handwriting on the wall."

Nixon also must have known by then, Jaworski surmised: "He knew what was on those tapes. Goddamn, he played 'em often enough."

Jaworski was called to Washington to become special prosecutor after the Oct. 19, 1973, "Saturday Night Massacre" that included the firing of the first Watergate special prosecutor, Archibald Cox. The Houston attorney had rejected requests to take the job when it was first created in May, 1973, saying he didn't think the job carried the necessary independence at the time.

Sooner than he expected, he encountered what he termed "the dragging of feet" at the White House. "They" were delaying turning over materials and refusing outright to turn over other potential evidence.

He also said he believes the

White House was attempting to undermine various plea-bargaining sessions the prosecution was having with Watergate defendants. Jaworski said the plea-bargaining was necessary to nail down the Watergate case, and the White House didn't want it nailed down.

"If it hadn't been for plea-bargaining, I don't think we would have ever gotten the full story of Watergate," Jaworski said forcefully.

Plea-bargaining was one area where Jaworski received his strongest public criticism, most notably in the case of former Attorney General Kleindienst.

Kleindienst was allowed to plead guilty to a misdemeanor charge of failing to testify accurately and fully to a congressional committee considering his nomination. He received a suspended 30-day sentence.

Many persons—including members of the Watergate Special Prosecution Force who resigned in protest over the plea—felt Kleindienst should have been forced to plead to the felony charge of perjury.

The former Attorney General had testified under oath to the committee that he had no conversations with Nixon concerning an appeal of an International Telephone and Telegraph Corp. antitrust case, when a tape recording showed the two had discussed it.

The President had ordered Kleindienst to drop the appeal,

and Kleindienst had refused, the tape showed.

Jaworski, pointing out that this was one of the few cases where he allowed a misdemeanor plea, said, "A man who stands up to the President as Kleindienst did in this situation is entitled to some brownie points."

But Jaworski's most important decision still was his personal finding that a sitting President could not be indicted by a grand jury, especially when the impeachment machinery was already in progress.

"Had I gone ahead and let Richard Nixon be indicted, then I have serious doubts that the U.S. Supreme Court would have permitted it for the offenses that were involved," he said.

Nixon resigned "only when he saw his case was hopeless," Jaworski said. "You're driven to the conclusion he did it because it was his soundest and best manner of escape at the time."

Although the former President was under active investigation until his pardon, Jaworski said he had no "sense of frustration" that the President escaped prosecution.

"I can't conceive of a man enduring more punishment and a greater stigma than he did under those circumstances. I can't feel...in the overall picture...that he 'got away,'" Jaworski said.

He said he and his staff also had heated discussions over whether to indict the former President after Nixon's resignation and before his pardon.

"I didn't duck the damned thing," Jaworski added. He said, though, that he didn't feel he could make a decision on the President's fate until after the Watergate cover-up jury was sequestered and, by the time that occurred, the former President had already received the pardon.