

By Anthony Lewis

BOSTON, Jan. 13—By his performance as Special Prosecutor, Leon Jaworski has quieted early questions about his ability to be independent from the President who appointed him. He has held together the staff picked by Archibald Cox; he has pressed the investigations; he has kept his distance—and his freedom—from the White House.

All that must be acknowledged as preface to consideration of the important statement that Mr. Jaworski has just made. He said that he could "see no way at the present time" to make material obtained from the White House available to the House Judiciary Committee for its impeachment inquiry.

There is no doubt of Mr. Jaworski's good faith in reaching that position. He had obtained Presidential documents and tapes by asking on behalf of grand juries, he felt, and he was therefore bound by personal honor and the rules of grand jury secrecy not to disclose them elsewhere.

Nevertheless, it must be recognized that the view he indicates raises extremely serious problems for the impeachment inquiry. Indeed, the unintended result just could be to immunize President Nixon from any effective retribution for wrongdoing.

Consider the burden placed on the House committee's impeachment staff, headed by John Doar. The exceedingly skilled lawyers of the Special Prosecutor's office have worked for six months on all the threads of evidence, and they are just about ready to ask the grand juries for major indictments. If Mr. Doar and his colleagues have to start at ground zero now, they would face an enormous task in trying to collect the evidence afresh.

There is a severe problem of time. Mr. Doar may well ask the President's lawyers to turn over relevant information voluntarily, but it is already indicated that the answer will be no. If the House then grants needed subpoena power, the White House lawyers will doubtless contest that, too. In the end the courts would almost certainly

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find that the constitutional process of impeachment carries with it an overriding right to information, but the litigation could take many months.

Of course there is a mass of material available apart from what the Special Prosecutor has got from the White House. And there are numerous possible grounds for impeachment that rest on published facts, for example President Nixon's 1970 approval of a secret security plan authorizing the use of illegal wiretaps and burglaries.

But for sound political as well as legal reasons the House committee will surely be intent on exploring the leads closest to the President—any evidence linking him personally with the crimes of Watergate and the cover-up. The committee will be looking for public support; and much of the public, for all its disbelief in Mr. Nixon, has indicated a reluctance to undertake impeachment without some showing of direct criminality.

Suppose that Mr. Jaworski acquires, or already has, some evidence linking the President to criminal acts. What does he do with it if he does not refer it to the House Judiciary Committee?

He could present the evidence to a grand jury and seek an indictment of Mr. Nixon. Many legal experts see no constitutional barrier to prosecution of a President, but Mr. Nixon and his lawyers naturally disagree. Mr. Jaworski is said to have reached no firm conclusion yet. If he were not prepared to bring such a case, how would the facts ever come out? Would the country have to wait for testimony in someone else's trial? When if ever would that come?

All this makes clear the serious nature of the dilemma that has arisen. It is an ironic situation. Congress originally insisted on a Special Prosecutor for Watergate because of the possibility that the President might be involved. Yet the Special Prosecutor's work may now turn out inadvertently to have obstructed the process established by the Constitution to correct Presidential wrongdoing.

Fortunately, the situation is not frozen. Mr. Jaworski has expressed the desire to cooperate with the House inquiry as best he can. And there is room for compromise and adjustment.

For one thing, grand jury secrecy is not an absolute in our law. Judges can release the minutes of grand jury proceedings for a variety of reasons. Federal testimony is communicated to state prosecutors, defendants may have claims on it, and so forth. The ethical and legal restraints that Mr. Jaworski feels apply to him as prosecutor would not be the same in relation to Judge Sirica, and Mr. Jaworski could seek a ruling from him.

The point is that judge and prosecutor and all concerned have obligations to a larger public interest, to Congress, to the country, to the constitutional process of impeachment. It would be extraordinary if the fact that evidence had been before a grand jury stood in the way of an impeachment proceeding. The public is likely to understand that, and to see in the dilemma another if unwitting cover-up.