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Rodino Unit Yields On Nixon Witnesses

Jaworski Says Nixon Evidence Is 'Substantial'

By John P. MacKenzie
Washington Post Staff Writer

The Watergate grand jury had "substantial evidence" of President Nixon's involvement in the alleged cover-up to name him as a conspirator, Special Prosecutor Leon Jaworski told the Supreme Court yesterday.

Defending the grand jury action against White House charges that it was designed to prejudice the impeachment proceedings, Jaworski said there was more than a "mere suspicion of possible criminality" on Mr. Nixon's part.

Presidential lawyer James D. St. Clair insisted that Jaworski "presumably" advised the grand jury to designate Mr. Nixon an unindicted co-conspirator "with the thought that it would strengthen his hand" in the current fight over executive privilege.

These exchanges came in a second round of written legal briefs that set the stage for a July 8 Supreme Court oral argument on Jaworski's demand for tapes and documents for the Sept. 9 conspiracy trial of John N. Mitchell, John D. Ehrlichman, H. R. (Bob) Haldeman and other former Nixon aides.

As in briefs filed 10 days ago, yesterday's legal arguments ranged widely over the history of the presidency and the powers and privileges of chief executives, prosecutors and juries.

St. Clair's 48-page brief also contained a hint that Mr. Nixon might abide by a final court ruling. It said the presidency "will survive if the lower court's decision is allowed to stand" but added that the office would be significantly weaker than "the office contemplated by the framers and occupied by Presidents from George Washington through today."

Under review is a ruling by U.S. District Court Judge John J. Sirica enforcing Jaworski's trial subpoena and refusing to expunge the grand jury's finding that the President was a co-conspirator, though not a defendant, in the forthcoming prosecution.

That finding, said Jaworski, was the work of a conscientious "randomly selected" grand jury based on evidence heard over an 18-month period. He said the grand jury was not free to ignore the evidence and that the prosecutor had a duty to act on the basis of the finding.

Jaworski said every attempt was made to keep secret the jury's 19-to-0 vote of March 1 "to avoid unnecessary interference" with the House Judiciary Committee's impeachment investigation. But he added that public disclosure, while "unquestionably painful," was "virtually inevitable" since the defendants were entitled to know about the finding in advance of trial.

Besides its impact on Mr. Nixons reputation, status as unindicted co-conspirator has important strategic implications for both production of the tapes and the trial itself.

Statements made by Mr. Nixon to

See TAPES, A13, Col. 1

TAPES, From A1

the defendants ordinarily might be excluded as hearsay at their trials, but they are admissible if he is linked with them as a co-conspirator. And since a key element in deciding whether to enforce a subpoena is the admissibility of the conversations as evidence, the co-conspirator finding could determine whether the evidence must be produced.

St. Clair, joined by University of Texas law professor Charles Alan Wright, renewed his argument that an incumbent President is not subject to the criminal process, that the courts lack jurisdiction to hear the case and that the President's claim of executive privilege is unreviewable.

Jaworski refused to concede that the President is immune from prosecution but said that even if he is, he is not immune from the lesser burden of being implicated as a co-conspirator. He said the special prosecutor's office has the legal status of a "quasi-independent agency" authorized to challenge executive privilege in the courts, which have the power and ability to decide the dispute.

Both briefs argued extensively over the nature of the presidency. St. Clair contended that the President personifies the entire executive branch; Jaworski argued that executive powers have been divided over the years and shared with administration subordinates.

"The presidency cannot function if the President is preoccupied with the defense of a criminal case," said St. Clair, "and the thought of a President exercising his great powers from a jail cell boggles the mind. . . . The President, as we have noted, *is* the executive department."

St. Clair said the only remedy for abuses by a sitting President is the impeachment process.

Jaworski replied by citing St. Clair's argument to the Judiciary Committee that only the gravest "crimes against the state" were impeachable. He said this would leave a gap in the law and render the President immune for crimes that were not impeachable offenses.

Thus, said Jaworski, "a President who shared complicity in such 'private' crimes as burglary or assault might well be beyond the reach of the law, partaking at least in part of the royal immunities associated with a king."

St. Clair said the cental question was "Who decides" when there is a dispute over executive privilege. "The answer to that question is that the President decides," he said.

The White House lawyer rejected Jaworski's argument that Mr. Nixon had waived any privilege he might have had when he permitted selective disclosure of aides' testimony and edited transcripts. Even permitting Haldeman, now an indicted defendant, to hear certain tapes does not constitute a complete waiver, he said.

The President may keep some information in confidence even after he has determined "that it is in the public interest to disclose other information to those persons in and out of government in whom he has confidence and from whem he seeks advice," St. Clair said.

Jaworski, however, argued that Mr. Nixon cannot be the judge of the use of evidence so crucially affecting his most trusted aides.

St. Clair suggested that Jaworski's need for six subponaed items relating to Mr. Nixon's converstains with former White House aid Charles Colson had been diminished by Colson's plea of guilty last month to a charge of obstructing justice and the dismissal of other charges against him.

Jaworski's brief did not mention the Colson plea, but the agreement to drop other charges did not specify that he would no longer be dealt with as a cover-up co-conspirator. The agreement did state that Colson was expected to testify for the prosecution.

LEON JAWORSKI
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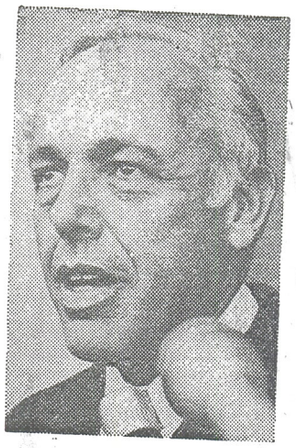

Associated Press
JAMES D. ST. CLAIR
. . . scores Nixon naming