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JAWORSKI HINTS A NIXON SUMMONS

Says President Was Named a Co-Conspirator to Make His Evidence Admissible

By WARREN WEAVER Jr.
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WASHINGTON, July 1—Leon Jaworski said today that the Watergate grand jury had named President Nixon as an unindicted co-conspirator so that any evidence he might have would be admissible in any trial of members of the alleged conspiracy.

The special prosecutor's statement, in legal papers filed with the Supreme Court, suggested

Excerpts from briefs filed in Supreme Court, Page 20.

the possibility that the Government might attempt to summon Mr. Nixon to testify against his former aides in the cover-up trial scheduled to open in September.

"While, we readily concede that the naming of an incumbent President as an unindicted co-conspirator is a grave and solemn step and may cause public as well as private anguish, we submit that such action is not constitutionally proscribed," Mr. Jaworski said.

Responding for the White House, James D. St. Clair charged that the grand jury's action "severely crippled" the President by leveling a charge against him that cannot be "reviewed or contested and disproved."

"To suggest," he added, "that the naming of a President as a criminal co-conspirator, even if unindicted, is not an 'impeachment' of the President, is, we submit, to play games with common words, and common sense."

The two attorneys made their contrary statements in reply briefs filed with the Supreme Court today, the next-to-last step before the high court resolves the first Watergate cases to come before the Justices.

Next Monday, the Court will

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hear oral arguments on the issues for two hours, and a decision could come any time after that. Presumably, since the Justices have only one major case left to resolve from the regular 1973-74 term, the ruling will be handed down with reasonable speed.

Two Major Issues

Basically at issue are whether the President must surrender to the Federal District Court 64 White House tape recordings for possible use in the Watergate cover-up trial and whether the grand jury had the right to name him as an unindicted co-conspirator.

A conspiracy to commit a crime can be proved upon trial by supported statements by one conspirator involving another, but such evidece nis not admissible for that purpose unless the conspirator testifying was identified as such in the indictment. He need not, however, have been indicted.

While there seems to be little likelihood that President Nixon would be any more responsive to a subpoena to appear as a witness at the cover-up trial than he has been to the tapes subpoena, Mr. Jaworski appears to be eager to preserve that potential source of evidence.

Mr. Jaworski summed up his spirited defense of the grand jury and the extent of its authority this way:

"In our jurisprudence, this body of citizens, randomly selected, trusted historically to protect the individual against unwarranted Governmental charges but sworn to ferret out criminality by the exalted and powerful as well as by the humble and weak, must be able to take cognizance of possible violators of the laws of the United States."

The Watergate grand jury, the prosecutor explained, "received a considerable amount of information concerning the President's role in the alleged conspiracy to obstruct justice" and "was not free to ignore the evidence."

But Mr. St. Clair maintained in the White House brief that if the grand jury concluded the President had been party to a crime "its only permissible course of action was to transmit that evidence to the House Judiciary Committee, rather than to make a gratuitous, defamatory and legally impermissible accusation against the President."

"The Presidency cannot function," the White House brief said, "if the President is preoccupied with the defense of a criminal case, and the thought of a President exercising his great powers from a jail cell boggles the mind.

"The President is the executive department. If he could be enjoined, restrained, indicted arrested or ordered by judges, grand juries or marshals, these individuals would have the power to control the executive branch."

Mr. St. Clair and the special prosecutor also differed over whether granting further access to Presidential records would encourage pressure for more confidential material "to grow insatiably." Already, the White House counsel said, demands for records "have come from judges and defendants all over the country."

But Mr. Jaworski said that all such subpoenas had been quashed by the courts, except for "a few issued to the President at the request of his former aides who are now awaiting criminal trial."

The prosecutor maintained that the Wtergate special prosecution force was "a quasi-independent agency" fully entitled to have the courts review its legal dispute with another agency, in this case the White House, as they have done in the past in less-publicized instances.

But Mr. St. Clair argued that "a decision by the executive branch not to use a particular document, even one which tends to support its own burden of proof in a criminal prosecution, has not been and is not a proper subject for judicial review."

Mr. Jaworski suggested that the Justices need not choose between the alternatives posed by the White House: recognizing an absolute executive privilege to keep documents secret or braching Presidential confidentiality altogether.

"The narrow issue before the Court," he said, "is whether the President, in a pending prosecution against his former aides and associates, may withhold material evidence from the Court merely in his assertion that the evidence involves confidential communications."

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Mr. St. Clair put the question in a very diffferent form:

"The central point at issue here is not whether the President's judgment in this particular instance is right or wrong, but that it is his judgment. In exercising the discretion vested in him, and in him alone, the President may make a mistaken assessment of what best serves the public interest—but courts also on occasion make mistakes.

"The President in this exercise of discretion may make a decision that is unpopular, but if so he must suffer the political consequences."