

Joseph Kraft

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Jaworski: Safeguarding the Watergate Evidence ...

Weighty legal considerations prevent the Watergate special prosecutor, Leon Jaworski, from casually turning over the fruits of his investigation to the impeachment inquiry now being conducted by the House Judiciary Committee. But I come away from a chat with Mr. Jaworski convinced that he is far less adamant on the subject than widely reported.

He does not want his own investigation either to block the impeachment proceeding or to prolong it beyond reason. My sense is that he and the committee counsel, John Doar, can work out a compromise on all evidence including the vital White House tapes. At the heart of the problem there is what comes naturally to the 39 representatives who make up the Judiciary Committee. That is leaking to the press any newsy items given to the full committee.

Such leaks would immediately raise the question of pretrial publicity. Mr. Jaworski believes that he has solid cases against many of the major figures implicated in Watergate. He expects to bring indictments in the next few weeks and to go to trial on at least some of the cases in March. He believes he is going to get early convictions.

But if evidence handed over to the Judiciary Committee leaked, before trial, the defendants would have a

ready-made argument that the cases should be thrown out because of pre-trial publicity. Moreover, Mr. Jaworski is using evidence against many of the defendants to get them to talk about higher-ups, not excluding the President. If the defendants believe they can get off on a plea of pretrial publicity, they are that much less likely to talk now.

In addition, there is the question of grand jury confidentiality. Mr. Jaworski has obtained information as a prosecutor bound by an understanding that he will disclose only such evidence as is required for criminal indictments. He could not properly give that information to the committee unless he was assured it would be treated on the same confidential basis.

The more so as some of the information has already been submitted to the grand jury. It thus belongs to the judge hearing the Watergate case. Watergate case, John Sirica. Finally, there is the case of the White House tapes. They were turned over to the special prosecutor under court order after a judicial test. The federal courts specifically refused to grant Senate Watergate committee access to the tapes. So, in fairness, the tapes and other documents received under court order could not be turned over to another congressional committee without judicial approval.

While sensitive to all these considerations, Mr. Jaworski is perfectly alert

to the inadvertent consequences of standing hard and fast on refusal to cooperate with the impeachment inquiry. He understands that the material he has gathered is relevant to an impeachment proceeding. He knows it would take the House committee many many months before it could, working on its own, amass the same evidence. While very strong on his own responsibilities as a prosecutor with a special congressional mandate, Mr. Jaworski does not argue that his task is more important than an impeachment proceeding.

In these conditions, there is an obvious middle way for cooperation between Mr. Jaworski and Mr. Doar. They can together go to judge Sirica and ask for a ruling on evidence gathered for the grand jury. Summaries of the material could be given to Mr. Doar with the proviso that they could be used in summoning and questioning witnesses but not for direct release to the Judiciary Committee. In that way the inquiry could be speeded and confidentiality preserved.

As to the White House tapes and associated documents, Mr. Doar will undoubtedly have to subpoena them and, presumably, he will have to fight the White House in a court case. But it seems very likely that the courts will uphold the primacy of an impeachment proceeding, which is specifically ordained in the Constitution, over any



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privilege the White House might argue. In the meantime, Mr. Jaworski could shorten Mr. Doar's labors considerably by indentifying for him the tapes and papers that ought to be subpoenaed.

What all this says is that accommodation can be made between requirements of the Watergate special prosecutor and the needs of the impeachment proceeding. The problem is not so much Mr. Jaworski, as making arrangements inside the House committee so that the professional staff can acquire evidence on a confidential basis.