

WXP
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Jaworski: Deepening Dilemma



Leon Jaworski

The previously undisclosed fact that John W. Dean III quietly returned to Washington last weekend and immediately entered the heavily guarded downtown offices of the special prosecutor for more questioning poses new dangers for Richard M. Nixon and a deepening dilemma for Leon Jaworski.

The interrogation of Dean picked up where it stopped several weeks ago when he left for the West Coast because of his mother-in-law's illness. It is expected to continue for some time. That would scarcely be the case if the secret White House tape recordings heard so far by the prosecutor's office flatly proved, as the White House contends, that Dean's accusations against President Nixon are lies.

But if the prosecutors think Dean is telling the truth, it would follow that they must also suspect that the President is criminally culpable—and therein lies the dilemma for Special Prosecutor Jaworski. He publicly committed himself last week against handing over any evidence to the House Judiciary Committee's impeachment proceedings. At the same time, many legal scholars bet he cannot and will not seek a criminal indictment against the President prior to impeachment.

In that case, his evidence against the President, buttressed by deposed White House counsel Dean, at least temporarily would fall between the two stools of indictment and impeachment. So, unless he can work out some arrangement with the House, Jaworski will face accusations—surely

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unjustified—of abetting yet another White House cover-up.

At the heart of this is whether Dean, who has been the only overt accuser of Mr. Nixon, told the truth in sworn testimony before the Senate Watergate Committee. For months, White House aides have been claiming that the notorious tapes would show that Dean lied under oath.

If so, Dean would be in deep trouble. When he pleaded guilty last Oct. 19 to a one-count prosecution in return for immunity, the deal with the special prosecutor made this exception: no immunity from perjury. Thus, a clear-cut contradiction of Dean by the White House tapes would give the special prosecutor an obvious perjury case against him.

Yet, though the prosecutors—including Jaworski himself in some cases—have heard the Nixon-Dean tapes (except, of course, the two missing tapes), they are resuming interrogation of

Dean. The inescapable conclusion is that they do not feel that possible differences between the tapes and Dean's Senate testimony are damaging his credibility.

A credible Dean equals a vulnerable Nixon. Despite this, the President might be effectively immune for some time to come, thanks to two points made to us by Jaworski during an interview this week in his Washington office.

First, Jaworski reiterated—closing the door hard—his public declarations last week that his evidence would not be made available for the House impeachment proceedings. Evidence presented to a grand jury, he said, cannot go to the House unless the judge consents or until the trials are finished.

Second, Jaworski emphasized that his office has not reached a legal opinion about whether a sitting President can be indicted. "I haven't reached that conclusion," he said, conceding that many legal scholars believe impeachment must precede indictment.

Prof. Archibald Cox, Jaworski's predecessor, shared his doubts about the constitutionality of indicting a President. But there was no doubt either in Congress or the Justice Department that Cox would turn his evidence over to the House if and when it got around to serious impeachment proceedings. That represents the sole difference in approach between Cox and Jaworski, but it is sufficiently serious to threaten Jaworski's performance.

In many ways Jaworski has been more an aggressive prosecutor than Cox. There is no slightest sign of collusion between him and the White House. Indeed, Jaworski's position seems attributable to prosecutorial zeal—his refusal to undermine fastidiously prepared cases for forthcoming Watergate indictments by turning confidential grand jury evidence over to Congress.

Nevertheless, the White House is mightily pleased by that refusal, automatically placing the special prosecutor in an uncomfortable position. His problem is now obvious: Can a legal way be found to share his information with the House without violating the rights of defendants in his own prosecutions? If John Dean's testimony indeed is not basically contradicted by the tape recordings, that is a question the special prosecutor will have to answer.

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Columnist William Raspberry is on vacation.