

Ondine

By William Safire

WASHINGTON—Is John Dean 3d a liar or not?

Special Prosecutor Leon Jaworski, in a breach of Federal regulations restricting prosecutors from making out-of-court statements about "the credibility of prospective witnesses," has gone on television to insist, "We have found no basis for a perjury charge" against Mr. Dean.

Asked if he would use Mr. Dean as a witness if he thought the former White House counsel was a liar, Mr. Jaworski replied: "No, I would not. . . . If we believe John Dean's veracity was subject to question, we will not use him as a witness."

No leaked documents or secret tapes are needed to see if Mr. Dean is a liar. We have the public record.

On Nov. 5, 1973, Richard Ben-Veniste of the special prosecutor's staff came before Judge John Sirica in open court to break some very damaging news in as gentle a way as he could. "Members of our staff interviewed Mr. Dean and questioned him with respect to the contents of Mr. Hunt's safe," Mr. Ben-Veniste said. "Mr. Dean related that at some time in late January 1973, he discovered a file folder in his office containing the President's estate plan, two clothbound notebooks with cardbard covers and lined pages containing some handwriting. Dean at that time recalled that these had come from Howard Hunt's safe."

The prosecutor passed along with a straight face Mr. Dean's assurances that he had never even looked at the contents of the notebooks in the safe, which had not been turned over to the F.B.I. And what did Mr. Dean do with these notebooks that he casually "discovered" while presumably thumbing idly through a file?

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"He shredded both notebooks in his shredder," stated the assistant prosecutor. "At the same time he also discovered a pop-up address book containing some names with each page X-ed out in ink. Dean threw this pop-up notebook into the wastebasket at this time."

Mr. Dean's admission that he had deliberately destroyed evidence was only a small bombshell, a one-day story that was quickly forgotten since it might cast doubt on the veracity of the President's chief accuser.

Testifying under oath before the

Senate Watergate committee, Mr. Dean told of his reaction to John Ehrlichman's suggestion that Mr. Dean "deep six," or throw into the river, some of the evidence from Mr. Hunt's safe.

"After leaving Mr. Ehrlichman's office," Mr. Dean swore, "I thought about what he had told me to do and was very troubled. I raised it with [Fred] Fielding and he shared my feelings that this would be an incredible action to destroy potential evidence."

The man who was to later admit he had shredded the Hunt notebooks went on: "After weighing the implications of Ehrlichman's instructions to destroy the items I decided that I would not engage in any such activity myself or be pushed into it."

To distract the Senators from his own destruction of evidence, Mr. Dean put the focus on the envelopes given to F.B.I. Director Gray:

"With regard to the sensitive documents," Mr. Dean swore, "I suggested that they be given directly to Gray. I told Ehrlichman that, if ever asked under oath, I had to be able to testify that to the best of my knowledge, everything found in the safe had been turned over to the F.B.I."

That seemed like a smart move: the F.B.I. agents would think Mr. Dean had turned over all the materials to them, but the two envelopes he held back were turned over to their boss—Mr. Dean was safe from perjury because Mr. Gray was also in the F.B.I. But there was one flaw that Mr. Dean overlooked: the damned notebooks, which Mr. Dean cannot admit he set aside without plunging even more deeply into perjury.

Mr. Dean recounted to the Senators under oath that in Mr. Ehrlichman's office "I told Gray that Fielding and I had gone through Hunt's documents and had turned over all the materials to the agents except the documents in these two envelopes." Those phrases—"all the materials," "everything found in the safe"—are destined to be John Dean's undoing, and to be a severe blow to whatever prosecutions depend on Mr. Dean's veracity. Somebody—a sinister force?—withheld the notebooks from the F.B.I., and if even the prosecutors find it "safe to assume" it was the same man who later destroyed them, then it is equally safe to assume that he has lied about the shredded notebooks again and again.

If Mr. Jaworski wants to satisfy himself about whether Mr. Dean's veracity is "subject to question" by another route, he might call Justice Department prosecutors who knew of the existence of these notebooks from Howard Hunt: In 1972, they described the purloined notebooks to John Dean, who denied any knowledge of them—and this denial was one reason Mr. Dean felt he had to destroy them.

Despite all this, Mr. Dean has not been charged with perjury. Moreover, lying to Federal investigators is a violation of paragraph 1001 of Title 18 of the U.S. Code, the statute under which Mr. Herbert Porter was recently sent to prison. Mr. Dean is not charged with either. Perhaps Mr. Jaworski feels the truth might shatter the veracity of the witness he so desperately needs.