

# Jaworski Opposes Bid to Disqualify

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WASHINGTON, April 26—The special prosecutor, Leon Jaworski, strongly defended Judge John J. Sirica today against charges of bias and prejudice in the Watergate cover-up case.

At the same time, he also suggested that there "may be merit" in letting a judge other than Judge Sirica decide the motion—among other reasons, to forestall a reversal on appeal. He said that such motions were generally decided by the judge who was asked to disqualify himself. He also said, though, that there were means through which a judge who was challenged could refer the matter elsewhere—in this case, to the District Court's "calendar committee" of judges.

He said that Judge Sirica could "fully protect" the defendants' constitutional rights to a fair trial in the Watergate case. He said, too, that the contentions by five of the defendants that Judge Sirica had a "personal stake" in their convictions were "scurrilous accusations."

Mr. Jaworski made his arguments in a 22-page legal memorandum filed in United States District Court here this afternoon in response to motions by the five defendants asking Judge Sirica to disqualify himself.

## A Careful Stance

He said that the motions should be denied.

Mr. Jaworski took a careful stance in his memorandum. In traditional legal fashion, he based his request not on a contention that Judge Sirica was eminently qualified; rather, he argued that the five defendants—John N. Mitchell, John D. Ehrlichman, Charles W. Colson, Gordon Strachan and Kenneth Wells Parkinson—had failed to state sufficient grounds for disqualification.

"While we take the position that, on the merits, a reassign-

ment of the case is not necessary," Mr. Jaworski said, "one advantage in having this question determined by the calendar committee might lie in the virtual conclusiveness of such a disposition, since the considered judgment of that three-judge panel would be given the heaviest weight on appeal from any convictions in this protracted and important case."

"Accordingly, without in any way contesting the power or propriety of a ruling by Judge Sirica on the recusal motion, the court may find it desirable, in light of all the circumstances, to have these motions reviewed by the calendar committee."

Judge Sirica's secretary said this afternoon that there was no decision yet as to whether the judge would refer the motions to the other judges.

Three of the defendants—Mr. Mitchell, Mr. Colson and Mr. Ehrlichman—suggested in a joint motion that Judge Sir-

ica not rule on the question himself.

Two of the seven defendants in the cover-up case—H. R. Haldeman and Robert C. Mardian, made no disqualification motions. One of the contentions made by their five co-defendants in support of their motions was that the present defense attorneys for Mr. Haldeman and Mr. Mardian had represented Judge Sirica in certain legal proceedings in the past.

The five defendants made a number of other allegations, as well. Essentially, though, they made these basic points:

¶ Judge Sirica's actions as presiding judge in the trial of the original Watergate case were "prosecutorial," in that he sought to ferret out the truth in the case and insure that all the wrong-doers be prosecuted, and that the person who presided over the cover-up trial must not have been involved in the prosecution of the case.

## Sirica in Watergate Trial

¶ Judge Sirica was too familiar with evidence and issues in the case to be open-minded.

¶ He favored the prosecution.

¶ He had a stake in the outcome of the case, in that he had been broadly praised for uncovering the case but also criticized for some of his judicial tactics, and that convictions would justify his previous actions.

### Memorandum Quoted

The prosecutors' brief, signed by Philip A. Lacovar, Richard Ben-Veniste and Sidney M. Glazer of the Watergate force as well as by Mr. Jaworski, disputed each of these allegations. Judge Sirica acted within the bounds of law, the brief said in effect.

On the subject of the "scurrilous accusations," the memorandum said this:

"Judge Sirica has an 'interest' in convictions in this case only if the evidence fairly establishes

guilt. More to the point, however, he has an equal personal and professional interest in seeing our judicial system function properly through an acquittal if the evidence is insufficient.

"Moreover, even if the purported desire for 'vindication' constituted a basis for disqualification, the claim urged here rests on a faulty premise. If vindication were sought by Judge Sirica, he already has been vindicated."

All that Judge Sirica wants, the memorandum said, is that an investigation be made of the cover-up, and the pertinent facts be presented to a jury.

Defendants often make motions for disqualification, and usually they are denied in part, according to Monroe Freedman, dean of the Hofstra University Law School, because granting disqualifications would lead to "judge-shopping and delay."