

Prosecutor's Message

By Anthony Lewis

BOSTON, May 22—In writing to the Senate Judiciary Committee about the latest White House attempt to obstruct his work, Leon Jaworski reminded us that the impeachment inquiry is not the only threat to President Nixon. The work of the special prosecutor's office remains highly significant, and beyond that there is particular symbolism in the person of Mr. Jaworski.

What stimulated his letter was an argument by James St. Clair, the President's counsel, against production of 64 tapes subpoenaed for the Watergate trials. Mr. St. Clair claimed that the special prosecutor had no right at all to sue Mr. Nixon for evidence because he is a subordinate of the President in the executive branch and has no independent legal standing.

That argument was discussed in the White House last fall as a possible defense against the original tapes subpoena by Archibald Cox. But it was never advanced in court then, perhaps because it seemed a politically risky stance or because the then-Attorney General, Elliot Richardson, objected.

It is a fair sign of Mr. Nixon's legal desperation that his lawyer made the argument now. For the independent position of the special prosecutor, including his right to seek White House evidence by judicial process, is if anything clearer now than it was last fall. The uproar over the firing of Mr. Cox forced the President to give assurances to Mr. Jaworski in terms of personal undertakings, commitments to Congress and official regulations.

Judge John Sirica recited that history in rejecting the St. Clair argument as a "nullity." Nor is the argument likely to fare any better on appeal. Judges are too practical to take seriously the Alice-in-Wonderland notion that Mr. Jaworski has been assured a "right" to sue but not to win. In any event, the idea that the executive branch can speak with only one voice in the courts has long since been dispelled.

Why, then, did the White House make the argument? Mr. Nixon these days is in the position of Mr. Micawber, hoping that if he hangs on long enough, something will turn up. In this case, he must hope to play the appeal process so that it carries him over the summer—in the courts and in the impeachment proceeding.

Mr. St. Clair has indicated that he will take the Jaworski subpoena to the Supreme Court, which is due to recess for the summer next month. In the ordinary course of things, it would not consider this case before October. Then Mr. St. Clair might well argue that the House Judiciary Committee ought to wait and see what the Su-

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preme Court says about executive privilege, however different the setting of the issue.

Mr. Jaworski can be expected to move for urgent Supreme Court action, perhaps by the seldom-used procedure of asking the Justices to grant review before judgment in the Court of Appeals. He can argue that expedited consideration is the only way to prevent further long delays in the Watergate trials. And there is not much purpose in consideration by the Court of Appeals, which rejected the Nixon claims on executive privilege in the earlier tapes case.

This is not the only trouble that Mr. Jaworski has had at the White House. Ever since the public fury over the October massacre died down, he has encountered delay, evasion, obstruction; he has not even had the ordinary civilities expected between counsel on opposing sides of a case. In the face of such attitudes he has plugged on, keeping attention focused on a problem that is at the heart of the impeachment process as well as the prosecution: the problem of getting the facts from Mr. Nixon.

Over these months Mr. Jaworski has come to symbolize devotion to duty and to law. The legal profession ought to be extremely grateful for that, after what Watergate has done to its reputation. Of course this White House is not grateful; it inevitably turns on any public servant who does his job in terms of the public interest instead of Mr. Nixon's. But Mr. Jaworski has shown us that a prosecutor should be a lawyer, not a soldier.

Hardly anyone has noticed one of the hardest things he successfully did: maintained secrecy on the tapes that he had for months before the President published edited transcripts. There was not one leak from that large office, despite the sordid character of what was on the tapes. The White House, by contrast, was busy trying to push out its laundered versions through Senators and others.

Leon Jaworski is the more significant because everyone knows he began this role with no personal or ideological bias against Mr. Nixon. He was a trial lawyer from Texas, a leader of the establishment bar, a man with a deeply respectful view of the American Presidency. First-hand experience has evidently taught him that the values most gravely wounded by this President are those of the true conservative: law, honor, country. Conservatives will note what Mr. Jaworski's steadfast lawyer's position quietly conveys: that Richard Nixon cannot afford the truth.