

Jaworski Defends Naming of

By George Lardner Jr.
Washington Post Staff Writers

Special Prosecutor Leon Jaworski yesterday defended the Watergate grand jury's naming of President Nixon as an unindicted co-conspirator in the Watergate cover-up as both "necessary and appropriate."

In a memo filed with U.S. District Court Judge John J. Sirica, the Watergate prosecutor also maintained that Mr. Nixon's lawyers had failed to come up with any solid grounds for demanding the evidence that led to the accusation.

The President's chief defense lawyer, Jame D. St. Clair, asked Sirica last week to send to the Supreme Court all the secret grand jury evidence bearing on Mr. Nixon's alleged involvement in the cover-up conspiracy. The White House also asked Sirica to turn over the evidence to Mr. Nixon himself.

Jaworski opposed both moves in a 12-page memo that constituted his first public remarks on the issue. He said the evidence was much more extensive than the White House had suggested.

The prosecutor said it includes not only the sealed transcripts and exhibits that were delivered to the House Judiciary Committee in March, but also "a large amount of materials indirectly relevant to the grand jury's decision to name Richard Nixon, among others, as a co-conspirator in this case."

St. Clair has heard some of the evidence while sitting in at the House impeachment inquiry's closed hearings, but, Jaworski emphasized, not all of it.

The White House lawyer has maintained that the evi-

dence against Mr. Nixon is insufficient. Jaworski dismissed the claim as somewhat self-serving.

"... The opinion of any lawyer that the evidence against his client is unpersuasive cannot be accepted as a sufficient reason for granting unrestricted access to grand jury proceedings and exhibits," the prosecutor said.

Jaworski also maintained that the White House had no basis for seeking what amounts to a trial in the Supreme Court on the merits of the grand jury's decision.

At secret hearings before Sirica last month, Jaworski disclosed, the President's lawyers challenged only "the legal authority of the grand jury to take any action suggesting criminal complicity by an incumbent President."

As a result, Jaworski said, the most that the White House can expect the Supreme Court to resolve is the constitutionality of the grand jury's action—and not the adequacy of the evidence that prompted it.

The Watergate grand jury voted 19 to 0 to name Mr. Nixon an unindicted co-conspirator in the cover-up case shortly before returning its indictment March 1 against seven of the President's former top aides and campaign advisers.

The grand jury's action was privately disclosed to St. Clair and then to Sirica and lawyers for the cover-up defendants last month during secret court hearings on the prosecutor's subpoena for the tapes and other records of 64 White House conversations.

Jaworski said the discussions, all but one of them involving Mr. Nixon, took place in the course of "the criminal conspiracy" and

were needed for the cover-up trial.

The issue landed before the Supreme Court after Sirica overruled the President's claim of executive privilege for the tapes and ordered Mr. Nixon to surrender them. The judge also rejected the White House's attempt to expunge the grand jury's action from court records.

News of the grand jury action leaked out last week and the White House confirmed it. The records of the proceedings before Sirica are still under seal at the Supreme Court, but these transcripts are confined to legal debate over the grand jury's action and contain none of the grand jury's evidence.

According to earlier published reports, the grand jurors wanted to indict Mr. Nixon but were advised by Jaworski not to take that course.

Yesterday's memo to Sirica, however, strongly indicated that the prosecutor did not tell the grand jurors that indictment of Mr.

Nixon would be unconstitutional.

"... It is far from certain that an incumbent President is immune from indictment," Jaworski said. The prosecutor indicated that he agreed there are good "practical arguments" against such a step, but he said those arguments in no way support "immunity from being named an unindicted co-conspirator when it was necessary and appropriate to do so in conjunction with an independent criminal prosecution."

Turning to the President's demands for the grand jury evidence and his attempts to challenge it in the Supreme Court, Jaworski said Mr. Nixon already has a forum for that in the House Judiciary Committee, which has been sent "the evidence the grand jury considered directly material to the President."

As for the cover-up case in the courts, Jaworski said, "the grand jury's action was merely incidental to its indictment in this case, and he

Nixon

was not the focus or the target of its action."

The courts, the prosecutor added, traditionally have frowned on pretrial appellate review of the adequacy of grand jury evidence even when it is sought by persons who have been indicted.

"The reasoning which refuses to allow a defendant to challenge the adequacy of the facts supporting a grand jury's finding," Jaworski argued, "applies even more force in the case of an unindicted co-conspirator who is not a party to the action initiated by the indictment and who suffers no legal burden because of it."

Beyond that, Jaworski said, "counsel for the President has made no showing which would tend to support his assertion that the grand jury's action in this case was unjustified by the facts."

Although St. Clair submitted an affidavit to Sirica which called the evidence insufficient, Jaworski said the affidavit also states that St. Clair has heard only "part of the evidence submitted to the grand jury."