

# Jaworski Asserts Nixon Vainly Attempted to Suppress Court Record of Jury's Linking Him to Cover-Up Plot

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WASHINGTON, June 14—

President Nixon tried in vain to have the Federal District Court erase from the record a grand jury's naming of him as an unindicted co-conspirator in the Watergate cover-up, according to court papers filed today by Leon Jaworski, the special prosecutor.

The President's attorneys asked Judge John J. Sirica to "expunge" the jury action from the record on the ground that the jury had no authority to act against an incumbent President, the Jaworski papers show.

Judge Sirica rejected the request, according to the prosecution's papers, after Mr. Jaworski argued that a grand jury could name the President "when it was necessary and appropriate to do so in conjunction with an independent criminal prosecution."

## Closed Hearing Held

The official court record of these closed proceedings before Judge Sirica, describing them in detail, is now under seal in the custody of the Supreme Court, pending the high court's review of the Nixon-Jaworski battle over the latest prosecution subpoena for White House tape recordings.

The record was sealed by Judge Sirica to keep the grand jury's action secret. Both Mr. Nixon and Mr. Jaworski have asked the Supreme Court to unseal it on the ground that news reports of the grand jury action have made further secrecy unnecessary.

## Request for Evidence

Mr. Jaworski disclosed the President's request for "expunging" the grand jury action in a memorandum the prosecutor submitted to Judge Sirica this afternoon, asking the judge to turn down a second request by Mr. Nixon. That request involved a second set of secret court papers, all the grand jury materials and evidence showing how the jury had reached its decision to name Mr. Nixon.

The President, through his

chief defense counsel, James D. St. Clair, asked for these materials on Tuesday so that he could present them to the Supreme Court in the hope of winning a ruling that the grand jury action was unwarranted.

In making his request Tuesday, Mr. St. Clair implied that Judge Sirica had already ruled on the question whether a grand jury was entitled to act against a President. The implication was that Judge Sirica, in effect, ruled on the matter when he refused to quash a subpoena for tapes of Presidential conversations that occurred in the alleged cover-up conspiracy.

The President's request for expunging the jury action was not specifically described or explained.

When Judge Sirica issued his ruling on the tapes subpoena, which came before the grand jury action against Mr. Nixon became known, he simply noted that he was also denying requests to "expunge" but did not say what those requests had been.

Mr. St. Clair argued in the closed hearings that grand jury could not indict an incumbent President and thus could not name a sitting president in the course of criminal proceeding, either. According to Mr. St. Clair, Congress's impeachment power is the only constitutional way to proceed against a President.

## Viewpoint Is Opposed

Mr. Jaworski responded that it was not clear, legally, that a grand jury could not indict a President.

An unindicted co-conspirator is one whom a grand jury believes to have taken part in a conspiracy but whom, for any of a number of reasons, the jury has chosen not to charge formally with a crime.

When Mr. St. Clair asked for the secret grand jury papers Tuesday, he also made it clear that he was prepared to go beyond the legal question of a grand jury's power and to argue, before the Supreme Court, that the evidence on which the Watergate grand

jury based its action against Mr. Nixon was "totally insufficient" to warrant that action.

Mr. Jaworski told Judge Sirica today, however, that Mr. St. Clair should instead make this argument in the Congressional proceeding considering impeachment of the President, and not in the Supreme Court.

"There is already available to the President another forum in which to litigate the weight of the evidence before the grand jury," Mr. Jaworski told Judge Sirica, "since the evidence the grand jury considered directly material to the President has been transmitted to the House Judiciary Committee."

The framework into which the action today fits is the pending battle in the Supreme Court over Mr. Jaworski's subpoena for tapes and records of 64 conversations, 63 of them including the President, that allegedly pertain to the cover-up.

## Intertwined Issues

The subpoena fight and the grand jury's naming of Mr. Nixon became intertwined when the President moved to quash the subpoena. Mr. Jaworski told Judge Sirica in closed session that, in order to justify the subpoena, against the motion to quash it, he would have to cite the fact that Mr. Nixon had been found by the grand jury to be co-conspirator in the cover-up.

It was this statement by Mr. Jaworski that led Judge Sirica to close to the public the subsequent legal arguments over the subpoena.

Mr. St. Clair plans to make his arguments to the Supreme Court regarding the grand jury action when the high court reviews Judge Sirica's decision on the subpoena. He hopes that when the high court rules on the subpoena it will include in its decision a ruling that the grand jury action was unwarranted.

Technically, despite all its interesting disclosures, the Jaworski memorandum filed in court today was simply a request that the court deny Mr. St. Clair's request for disclosure

of the grand jury materials.

Mr. Jaworski gave several reasons for his position.

First, he said that Mr. Clair did not raise any challenge to the factual sufficiency of the grand jury's finding when the lawyers made their various arguments before Judge Sirica. Thus, the prosecution contended, the issue is not before the supreme court.

In addition, Mr. Jaworski argued that the "kind of inquiry" that the President wanted the Supreme Court to take up—an inquiry into whether the grand jury had "probable cause" to make a finding—is "one that is traditionally eschewed by the courts."

Mr. Jaworski also argued that the grand jury's action in naming Mr. Nixon was "merely incidental" to its indictment of seven persons on charges of conspiring to cover up the burglary of the Democratic headquarters in the Watergate complex here.

"He was not the focus or target of its action," Mr. Jaworski said.

On top of that, he said, "even if a challenge to the grand jury's finding might be permitted under special or unusual circumstances, the President's lawyers had made no showing to support his assertion that the grand jury action in this case was unjustified."

Mr. St. Clair had told Judge Sirica that he was requesting the grand jury materials after hearing evidence in the secret House Judiciary Committee hearings that had been given the committee by the grand jury. He contended that the material he had heard at the committee sessions showed that the grand jury had not had sufficient evidence upon which to name Mr. Nixon.

Mr. Jaworski said in his memorandum today, though, that the materials the jury gave the committee included "additional" evidence beyond what Mr. St. Clair had apparently heard.

He also said that the jury had indirectly relied on still other evidence in reaching its decision regarding both the naming of Mr. Nixon and the indictment of the others.