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Jaworski: Nixon Party To Illegality

By John P. MacKenzie
Washington Post Staff Writer

Watergate Special Prosecutor Leon Jaworski told the Supreme Court yesterday that President Nixon is "a party to an illegal enterprise" and that Mr. Nixon's confidential White House relationships had been "abused and tainted" by a criminal conspiracy.

"Executive privilege cannot be invoked by a party to an illegal enterprise to suppress the evidence of that conspiracy," Jaworski said in a legal memorandum filed with the court.

Jaworski used his strongest language to date in describing the President's legal status as an unindicted co-conspirator in the Watergate cover-up case. The occasion was an exchange of legal arguments over an issue freshly injected into the high court's test of Mr. Nixon's right to withhold evidence from the September trial of alleged cover-up conspirators.

The principal issue is whether Jaworski is entitled to receive White House tape recordings and papers related to 64 conversations of President Nixon and his close White House aides. Mr. Nixon claims executive privilege in withholding the material but Jaworski says it is needed for the prosecution and possibly for the defense.

Presidential lawyer James D. St. Clair, in a motion filed with the justices Wednesday and disclosed yesterday, asked the court to supplement the record in the case with evidence that led to the grand jury's 19-to-0 vote to implicate Mr. Nixon in the cover-up.

Without that secret material, St. Clair said, Mr. Nixon is being denied potentially favorable evidence, faces a trial without a chance to obtain it and "has fewer rights for pretrial discovery than an ordinary criminal defendant."

The Supreme Court has scheduled arguments July 8 on the executive privilege question and St. Clair's contention that naming the President as a conspirator is beyond the grand jury's legal power. Legal briefs on these issues are due today.

Jaworski said the sufficiency of the grand jury's evidence was not raised before U.S. District Court Judge John J. Sirica, who refused to expunge the panel's conspiracy finding, and is not before the Supreme Court now. The real issue, he said, concerns only the basic power of the jury.

See PROSECUTOR, A8, Col. 1

PROSECUTOR, From A1

He noted that the courts consider grand jury action conclusive as to whether probable cause existed for an indictment. The policy against going behind a grand jury action is even stronger, Jaworski said, when the challenge is from an unindicted co-conspirator who is "not the focus or target" of the indictment and who "suffers no direct legal burden because of it."

St. Clair, citing grand jury material made available to him by the House Judiciary Committee, submitted under seal a legal memorandum he said showed the President's conspirator status was unsupported by the evidence.

The secret memo bore the title, "The Evidence Establishes That The President Did Not Authorize The Payment of Howard Hunt's Attorney Fees." The grand jury's indictment charged that a March 21, 1973, payment of $75,000 to Hunt, a Watergate burglary defendant, was part of a cover-up rather than for legal expenses.

Jaworski said St. Clair's remarks about the evidence were "startling" since he could not know all the grand jury's evidence. He said the Judiciary Committee did not have all of it and the grand jury had retained data "indirectly relevant to the President's complicity."

Apparently referring to White House conversations involving payments to Hunt, Jaworski said "the grand jury's finding of probable cause — even if it were premised wholly on that excerpt — could hardly be termed irrational" since Mr. Nixon himself has said that the tape recording could be interpreted "in different ways."

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

St. Clair said the President cannot vindicate himself in a judicial proceeding because he "cannot be tried in the judicial forum before an impeachment conviction."

To this Jaworski replied, "It is far from certain that an incumbent President is immune to indictment." He said he had made this argument in closed proceedings before Sirica.

Jaworski says he talked the grand jury out of indicting Mr. Nixon. It has never been entirely clear whether Jaworski considered an indictment beyond the jury's power or merely inadvisable because of the legal battle that would have ensued.

St. Clair's legal memorandum ascribed a new motive to the grand jury decision "to name the President as an unindicted co-conspirator and to forward eveidence showing the President's complicity to Congress."

He said the jury "was attempting to substitute the proceedings before the judicary Committee for that of a trial in District Court. The grand jury was attempting to charge the President with a crime but using a different forum for the trial."