

Indicting the Prosecutors

NOT ABOVE THE LAW: The Battles of Watergate Prosecutors Cox and Jaworski. By James Doyle. Morrow, 420 pp. \$10.95

By **GEORGE LARDNER, Jr.**

THE WATERGATE Special Prosecution Force has lost much of its glow since the springtime of 1973 when it was created. And that is as it should be. Its pomposity in power is matched only by its sanctimony in repose.

The last of the line, Charles Ruff, the fourth Watergate prosecutor, just closed up the place this month, thank God. Ruff has the good taste to be sick and tired of it all, as he explained to Bob Woodward in a recent edition of the Washington Post. Ruff even acknowledged that the office "came into being with people writing stories about what a marvelous bunch of lawyers" it had and with the press churning out "unduly favorable reviews" about them and their judgment.

But Ruff is still reticent about the shortcomings implicit in those remarks. If ever called before a Congressional committee to elaborate, he indicated that he would follow Richard Nixon's advice to Haldeman and Ehrlichman: "I don't recall. . . I don't remember."

As the former chief press officer for

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the Watergate prosecutors, James Doyle professes no such lapses of memory. His history of that unique establishment is a lively, tightly written account of the toppling of a President, quickened by the anecdotes and backstage drama that only an insider could provide. Some of the glimpses are fascinating.

Here is Jim Neale, the masterful trial lawyer who handled the cover-up prosecutions, waggishly informing Nixon's new lawyer, Herbert J. (Jack) Miller, Jr. in August 1974, "We're gonna treat your client just the same as we treat Gordon Liddy," and then

with a White House lawyer who went to a file cabinet, looked briefly for a wanted file, and said, "It's not here," Doyle writes. "The St. Clair man brushed past the lawyer and snatched the file before it could be shoved out of sight. After that incident St. Clair could have caused a showdown and insisted that he be given control of the case, as he certainly would have done with any other client. He did not do so."

For all that, the book is still a disappointment. Doyle chronicles the inner workings of the prosecution force with too straight a face. He immunizes it

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hanging up to announce his real assessment: "That man will skin Leon Jaworski alive." Here is Jaworski, heading home for Texas after the Nixon pardon that he so subtly encouraged, celebrating his own resignation with swigs of Chablis in a swaying government car on the way to the airport. And here is Nixon's showcase lawyer, special White House counsel James St. Clair, forced to send his own assistants to accompany Nixon's aides to the restricted files to make sure that no documents disappeared.

"Once a St. Clair assistant had been

from any harsh conclusions. The only sinners are in that naughty world outside its doors: crass fellows like St. Clair, or like former Attorney General Richard G. Kleindienst who lied to the Senate, or like U.S. District Court Judge George L. Hart who treated Kleindienst like a hero and even suspended his \$100 fine.

Doyle lashes them all, deservedly. But he remains awkwardly deadpan, even defensive, about the prosecution force itself. The plea-bargaining with

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kleindienst resulted, in charging him with an inappropriate misdemeanor that he really didn't commit, but that we are supposed to believe, is all right. What Jaworski was doing as a plea bargainer, we are assured, "was precisely what prosecutors were authorized and expected to do."

Again: "Of twenty-seven corporate executives guilty of injecting dirty money into the 1972 presidential campaign, none of those associated with American industrial companies received jail sentences, even those convicted of felonies." But somehow this made to seem the fault of all those sinking judges. The prosecutors, who justifiably refused to lay out the details of all those corporate crimes—even when they had the opportunity and, one might argue, the obligation to do so in open court—once again emerge blameless.

"Watergate justice," Doyle concedes near the end, "was just as erratic as the criminal justice system has always been: deferential to the mighty, blind to inequities." But bottom lines like that are, unfortunately, hard to find in *Not Above the Law*.

For example, there was the persistent debate over whether to indict Richard Nixon. One of the most influential staffers on the prosecution force, both under Archibald Cox and then under Jaworski, Doyle argued against prosecuting Nixon as president and as ex-president. He finally changed this mind, half-heartedly at first, too late in any case to have any impact on Jaworski's decision not to prosecute. Doyle's ambivalence makes his own judgments sound hollow, especially when he concludes that "the

higher up the ladder of power and responsibility the prosecutors reached, the more prevalent became the reduced sentences and the likelihood that the defendant would serve less time than George Hearing [a hapless stooge of dirty trickster Donald Segretti, who drew a year in prison].

At the top of the ladder, of course, was a former President of the United States named Richard Milhous Nixon."

It was just such cynicism that the Watergate prosecutors were supposed to overcome. They failed.

"The facts, all the facts, must be brought to light, to assure the American people that their Government is a government of law and that those who operate outside the law, no matter how high their place or however worthy they feel their motives, must be answerable in law," Special Prosecutor-to-be Archibald Cox told the Senate Judiciary Committee on May 21, 1973.

To facilitate that mission, Attorney General-designate Elliot Richardson specifically empowered the special prosecutor "from time to time [to] make public such statements or reports as he deems appropriate" and ordered him "upon completion of his assignment [to] make a final report to the appropriate persons or entities of the Congress."

A premature "final report" was issued in October of 1975. It said nothing new. As Doyle succinctly put it at the time, "If ain't gonna hurt my book."

The final final report was issued this month under Ruff's aegis. It is a sorry repudiation of that original promise to bring "the facts, all the facts" to light. It tells us, instead, of the WSPF's recent court victory over the Freedom of Information Act, upholding the prosecutors' refusal to make public a particular inter-office memorandum that Jaworski had already substantively revealed in his own recently published book. The WSPF has proved its point again: Some are more equal than others. □