

The Right And the Power

The Prosecution of Watergate.
By Leon Jaworski.
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By SEYMOUR HERSH

This memoir begins with a telephone call in late October 1972 a few days after President Nixon and his chief of staff, Alexander M. Haig Jr., have orchestrated the "Saturday Night Massacre." The President has just fired Archibald Cox, the special Watergate prosecutor, Elliot Richardson, the Attorney General, and William Ruckelshaus, Richardson's deputy.

The telephone call is from an old friend who informs Mr. Jaworski, a former Johnson Administration aide who is a prominent attorney in Houston, that he is going to be offered Mr. Cox's job. He's in the White House by the next morning for an interview, having been flown to Washington as the only passenger in an Air Force jet with, Mr. Jaworski carefully notes, a uniformed crew of four, including a steward.

Haig is charming. Mr. Jaworski quotes him at one point in that initial talk as telling him, "You're highly regarded, and it's no secret that you're high on the list for appointment to the Supreme Court."

"I suppressed a smile," Mr. Jaworski solemnly wrote.

Too bad. He should have laughed. I did.

Not only at that line but a page or two earlier when Mr. Jaworski, after recalling the protests and national outrage over the "Saturday Night Massacre," added the following analysis: "There has to be more to Watergate than what met the eye."

There's no sense in advocating (as I'm tempted to) the complete abolition of lawyers in our society, but at least, it seems to me, they should spare us the agony of publishing memoirs.

Reading this is part laugh riot, part sheer terror at the thought that it purports to be the inside story of how the White House dragon was slain, and how the Constitution worked in the Watergate affair.

For example, by early January 1974, Mr. Jaworski's extremely competent

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staff (which had been assembled by Mr. Cox) had analyzed the first batch of White House tapes and had prepared a 128-page document outlining Mr. Nixon's complicity in the Watergate cover-up. No less than eight separate categories of crimes were described in the document.

His staff, Mr. Jaworski makes clear, was urging that the President be included among those charged in the cover-up indictment.

"I had no doubt but that the grand jury wanted to indict him," Mr. Jaworski notes—adding that the indictment would need his signature because "in the last analysis, the decision on whether to indict the President was my responsibility."

Since mid-December when the first of the White House tapes was made available to his office, Mr. Jaworski writes, "I had believed the President to be criminally involved in the Watergate cover-up."

So, the President was believed to be guilty, there was ample evidence and his staff and the grand jury wanted an indictment.

Mr. Jaworski decided no. Not only was there the possibility that an indictment of the President would be struck down by the Supreme Court, he explains, but it also "would produce many months of delay in disposing of the issue of his culpability, months during which the country would be suffering from the trauma of an indicted President."

What Mr. Jaworski hoped to avoid was, of course, precisely what happened in the next eight months. Was it not equally conceivable even then—in early January, as the House impeachment committee began its inquiry—that a criminal indictment of a sitting President would have, in fact, speeded the whole process?

He made his decision not to indict, Mr. Jaworski writes, after analyzing the issue from a legal standpoint and from the standpoint of "what was best in the nation's interest."

A few weeks later he informed Haig that the President would not be included in the Watergate cover-up indictment. An obviously relieved Haig responds, "You're a great American, Leon."

So it came down to Mr. Jaworski's definition of what was good for America. Which is, of course, why he was acceptable to the White House as special prosecutor and Archibald Cox was not.

Later, after Mr. Nixon had vacated the White House, Mr. Jaworski would vacillate on the question of whether to indict the President and, after Nixon's pardon by President Ford, decide not to challenge the legality of that pardon. His staff, he notes, "without exception" had urged a criminal indictment of Nixon.

Mr. Jaworski further writes that his

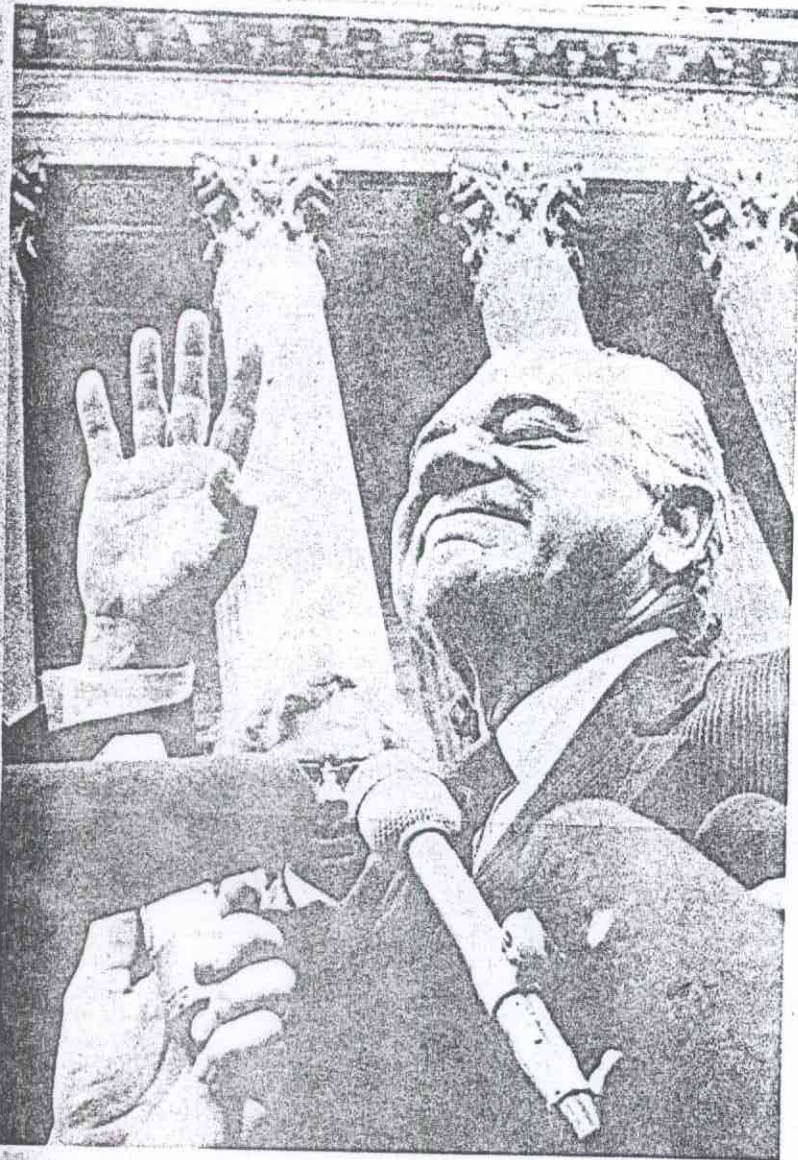


decision not to indict the President was based on this "chief question occupying my mind . . . could Richard Nixon receive a fair trial? That was the true dilemma."

A similar concern, however, had not made him hesitate in going forward with the indictments of Mitchell, Ehrlichman, Haldeman and the other Watergate conspirators in the cover-up case. In all fairness, it should be noted that Mr. Jaworski does reprint excerpts from a staff member's memorandum on the issue which made the point that "there is no precedent for dismissal of an indictment on publicity grounds, much less for a decision not to indict at all."

Don't misunderstand. I'm not trying to suggest that Mr. Jaworski is anything but a decent, honest man following his instincts, but it's a little staggering for a non-lawyer to realize anew—as this book so clearly tells us

How Leon Jaworski came to the rescue, in his own words



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—how deeply arbitrary personal biases and personal beliefs cut across the administration of justice in this nation. To put it more directly—there is a double standard, especially for Presidents facing prosecution who are allowed to pick their prosecutor.

There are others eligible for special consideration, too, Mr. Jaworski writes—among them ex-Attorneys General.

Richard Kleindienst, who resigned as Attorney General in 1973, was permitted by Mr. Jaworski to plead guilty to a misdemeanor-count for his perjury before a 1972 Senate committee investigating the White House's involvement with the International Telephone and Telegraph Company. He subsequently received a suspended jail sentence of one month and a suspended fine of \$100.

The Jaworski decision led to public criticism and the public resignation of three members of his staff, including

Joseph Connolly, the young lawyer who was in charge of the I.T.T. task force.

Mr. Jaworski explains his decision by noting that Mr. Kleindienst, "at the time he testified, was subordinate to the President. Had he revealed the pressures which had been brought to bear on him, it would have caused great embarrassment to the President and produced domestic repercussions and possibly international ones."

If by the reference to domestic and international repercussions Mr. Jaworski means that Mr. Kleindienst's honest testimony about Nixon's interference with a pending Justice Department case against I.T.T. could possibly have led to a classic scandal before the 1972 elections, I agree with him.

As it was, Mr. Jaworski—obviously annoyed by Mr. Connolly's disloyalty—writes that "Kleindienst's failure to tell the truth to the Senate Judiciary Committee was all Connolly had to show for his efforts, and he wanted to make the most of it" by prosecuting Kleindienst for perjury. Nowhere does Mr. Jaworski seem to consider the notion that, as the highest legal officer in the nation, Mr. Kleindienst should have been judged by the most rigorous of standards.

What does come through in Mr. Jaworski's account is evidence that we in the press corps missed a big story: his estrangement from his staff. It's obvious, and I've discussed it recently with some former senior members of the staff, that there were profound disagreements and a lack of trust between the establishment lawyer from Texas, who had just concluded a term as president of the American Bar Association, and the young Turks from the Harvard, Yale and Columbia law reviews.

Consider how Mr. Jaworski describes his shock and dismay upon first hearing a portion of the damning White House tape of March 21, 1972, in the office of Carl Feldbaum, one of his young assistants whose job it was to initially screen the tapes. The President, John Dean and H. R. Haldeman were "worrying over a money payment to the Watergate burglars with Nixon indecisive and questioning one moment, keen and demanding the next. Listening to him scheme," Mr. Jaworski writes, "knowing he was President of the United States, I felt as if my heart was shriveling inside of me."

"Suddenly," the memoir goes on, "I realized that Feldbaum and the other young men were watching me intently. They were trying to determine my reaction. I couldn't afford to let them read my face, so I tried to will myself to be impassive until I had heard enough. I thanked Feldbaum, and sought solitude in my office."

Aw, Leon, if you'd only let it hang out. You might have gotten him first. ■

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