

Last-Minute Pleas Swayed Jaworski

Kleindienst Escaped Perjury Charge

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Leon Jaworski, while Watergate special prosecutor, reversed himself in March, 1974, and stopped an eight-count felony indictment against former Attorney General Richard Kleindienst one day before it was to be filed, according to newly disclosed documents.

Jaworski, according to the documents, made his last-minute decision after listening to the pleas of two well-known Washington criminal lawyers, Herbert J. Miller, who was Kleindienst's attorney, and William J.

Hundley, a friend of the former Attorney General.

The documents say that Jaworski twice before had approved the staff-drafted indictment, which charged perjury arising out of Kleindienst's 1972 appearance before the Senate Judiciary Committee in support of his nomination as Attorney General.

Details of the intricate and apparently tense behind-the-scenes negotiations in 1974 are in documents obtained under the Freedom of Information Act by the Fund for Constitutional Government, a public advocacy group.

Among the Watergate prosecution documents was a censored version of a history of the Kleindienst case prepared in 1975 by Richard J. Davis, who took over as head of the team that investigated allegations involving international Telephone & Telegraph Corp.

The argument by Miller and Hundley that swayed Jaworski, according to the document, was that when Kleindienst first went to Jaworski's predecessor, Archibald Cox, with information about White House involvement with ITT, he was promised fa-

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avorable consideration if any case were brought against him.

The session with Jaworski, Miller and Hundley, according to the document, was a "highly charged session." Staff prosecutors, who also were present, argued that the claim of favorable consideration was "baseless."

Nonetheless, the next day, on the eve of filing the felony indictment, Jaworski told his staff he had decided he would require Kleindienst to plead only to a misdemeanor charge.

Had he been tried and convicted of a felony, it is doubtful that Kleindienst could have resumed the practice of law. After his eventual plea to a misdemeanor, a three-judge ethics panel in the District of Columbia declined to impose any disciplinary action.

The memorandum cited a repeated appeal by Miller that Kleindienst be left "with a chance to go home to Phoenix and start again as a lawyer." Miller said, according to a footnote, that "his client wanted to leave Washington quietly."

At the time, according to Justice Department foreign agent registration records, Kleindienst was representing Algerian interests who paid him a \$60,000 fee.

During the ten days after Jaworski stopped the felony indictment, he and his staff carried on what is described as a vigorous and sometimes bitter debate.

At one point Jaworski informed his staff that Miller said Kleindienst would take a lie detector test to prove that he had not withheld any information. The prosecutors agreed that a polygraph should be taken, "because if he failed the test, we might convince Jaworski to change his decision" to seek only a misdemeanor indictment.

But the document does not show whether a polygraph was taken; that portion is excised.

It does trace in detail, however, how the facts in the Kleindienst case were "stretched" to permit a one-count misdemeanor plea on "refusal to answer questions" from a congressional committee.

In a footnote, Davis wrote that although Jaworski has said he would take the unpopular Kleindienst plea to court by himself, a few days before it was scheduled he asked Davis to handle it instead. Davis refused. He did agree to accompany Jaworski to court, as Henry Ruth, who was Jaworski's deputy and his eventual successor.

Within three days after the pleading, the three staff prosecutors who handled the Kleindienst case resigned in protest.

Focus of the Kleindienst investigation was his 1972 confirmation statement that with regard to ITT anti-trust matters in the Justice Department "I was not interfered with by anybody at the White House; I was not importuned. I was not pressured. I was not directed."

The prose utors, according to the memorandum, turned up documents at the Justice Department that showed Kleindienst and the assistant attorney general for anti-trust, Richard M. McFaren, in April, 1969 asked White House aide John Ehrlichman "for permission" to proceed with the case involving an ITT subsidiary.

They found another document on which it was noted in handwriting that "Ehrlichman wanted (former Sen. Everett) Dirksen and Congressman (Bob) Wilson" notified about another ITT case.

The prosecutors summarized their analysis of Kleindienst's testimony by saying, "Despite his assertion to the contrary, (he) had not carefully limited his answers to make them literally truthful. Instead the record showed that he had gone out of his way to make false statements aimed at covering up the true facts.

When the prosecutors were drawing up their case in late 1973 and early 1974, they brought in Kleindienst's lawyer Miller, and went over with him each alleged false statement. At those sessions, according to the memorandum, the prosecutors "identified for Miller those statements . . . considered false" and heard Miller "attempt to convince us why we were wrong."

According to the memorandum the prosecutors, after the discussions with Miller, "finally settled on counts we were more confident as to what to expect in defense and had thought how we would meet it."

On March 6, 1974, the prosecutors submitted to Jaworski a "unanimous recommendation" a 13-count felony indictment against Kleindienst.

At a meeting with Jaworski, Ruth and others the next week, it was suggested that there were too many counts but the indictment itself was agreed to, according to the memorandum. "Jaworski approved the filing of an indictment on the understanding we would reduce the number of counts," they said.

Next day, the prosecutors notified Jaworski they had reduced their indictment to eight counts.

That afternoon Jaworski met privately with Miller and Hundley, who argued against an indictment based on Cox's assurances to Kleindienst and the subsequent public disclosure of that information.

Next day Jaworski talked to Cox and subsequently told the prosecutors "we should go ahead and file the indictment" and "we should not accept the [misdemeanor] plea." But the following day Jaworski changed his mind.