

The Prosecutor's Personal Indictment



A jubilant prosecutor Leon Jaworski leaves the Supreme Court after it rules Nixon must surrender the Watergate tapes. He calls Nixon's memoirs "a masterpiece of evasion" and boils with anger that some may be taken in.

HOUSTON, TEX.

Leon Jaworski, the special Watergate prosecutor who painstakingly constructed the edifice of evidence that cornered Richard Nixon into resigning the Presidency of the U.S. on Aug. 9, 1974, does not believe in kicking a man when he's down.

At 72, Jaworski has grown philosophical and tolerant of man's frailties, but his Texas-Polish blood boils to see RN: *The Memoirs of Richard Nixon* high on the list of best-sellers.

"I don't care about the \$2 million Nixon reportedly got for the book," Jaworski explains, "or the million he made from the David Frost TV interviews or his emergence from the shadow of his self-imposed exile. What bothers the hell out of me is that there are people who might lend some credence to Nixon's written version of Watergate.

"I can tell you this," Jaworski states flatly, his green eyes glinting, "Nixon's treatment of Watergate in his book constitutes a masterpiece of evasion, self-serving declarations, distortion of

facts and erroneous conclusions.

"There's a legal term which best describes his version—'confession and avoidance.'"

In 1973 Jaworski was chosen to replace Archibald Cox of "Saturday Night Massacre" fame as special prosecutor in the Watergate drama. He was checked out by Gen. Al Haig, Nixon's chief of staff and staunch defender, who was satisfied Jaworski was safe, reliable and widely respected.

All by himself

Haig got more than he bargained for. Jaworski arrived in Washington all by himself, without even a secretary. In 11 months he outmaneuvered the Presidential legal lights to the point where Nixon realized there was only one reasonable way out—resignation.

Jaworski regards Richard Nixon as "a wretched human being" who abandoned his most loyal colleagues to save himself, and suspects that Nixon, following his Hyden, Ky., speech on July 2, will contend in subsequent

public appearances, as he does in his book, that he was not guilty of any criminal wrongdoing in Watergate.

"But he was," Jaworski affirms.

"And the facts of his wrongdoing are not in dispute, because the tape recordings speak for themselves.

"In his book, of course," says Jaworski, "Nixon refers to excerpts from the tapes, but he slyly manages to ignore the parts that are highly inculpatory. He twists and tortures the actual words in an effort to avoid their damning effect.

"But the facts are irrefutable. In his March 21st, 1973, tape recording Nixon clearly reveals that he not only participated in discussions regarding the payment of hush money to Howard Hunt and others engaged in the Watergate burglary—but he, in effect, approved such a payment.

"From the time I first listened to the March 21st tape and throughout all the Watergate days and until this very hour," Jaworski says, "I then believed and I continue to believe that perhaps

the most damning part of the conversation he had with Haldeman was in his coaching Haldeman how to avoid telling the truth and at the same time how to avoid a charge of perjury. In doing that, Nixon was clearly guilty of subornation of perjury." "Subornation" is legalese for inducing someone to do something.

A lawyer for 53 years and a former president of the American Bar Association, Jaworski is accustomed to cite chapter and verse in his arguments.

"On page 797 of his book," he states, "Nixon tries to gloss over this part of the conversation by placing himself in the position of a legal counselor advising a client.

"I thought Nixon knew more law than to take that position. Anytime a lawyer instructs his client to give certain testimony that is untrue and then tells him that he can qualify his testimony by saying 'as I recall' or 'as best as I can remember' in order to avoid a perjury charge, the lawyer not only has committed a serious breach of ethics, he has violated the law by suborning perjury. Such advice is far different from counseling a client to take the Fifth Amendment, which is a constitutional right. Being evasive under oath, or outright lying under oath and thus deliberately withholding truth, constitutes perjury."

Several months ago Leon Jaworski refused to buy a copy of Nixon's memoirs "because I knew the man is incapable of admitting guilt and telling complete truth and I am in no way going to contribute to his royalties. He's already living high off the hog with a pension and benefits at taxpayers' expense. But if you will send me a copy at the Madison Hotel in Washington," he said at the time, "I'll read the Watergate chapters and tell you what I think."

Jaworski thinks that "Nixon was the individual most likely to have erased the 18½ minutes" on the tape of June 20, 1972, which was three days after the Watergate break-in.

"On page 951," Jaworski notes, "Richard Nixon attempts to explain the 18½-minute gap in what was a very vital conversation with John Mitchell, the one in which Mitchell told Nixon precisely what happened in the Watergate break-in. It was a highly significant conversation because from then on—immediately after the break-in—Nixon knew what had occurred and who was responsible.

"The tape which suffered the 18½-minute gap at someone's hands was submitted for study by a number of

of Richard Nixon

by Lloyd Shearer

the leading authorities on tape recordings, malfunctions of recorders, and erasures. All six of them, appointed by the court and none by the prosecution, testified that there were at least seven segments on the recording which showed that on at least seven occasions the erasing mechanism was stopped and started—obviously for the purpose of determining whether enough of the recording had been erased to eradicate the highly inculpatory conversation between Nixon and Mitchell. . . .

"What clinches the deliberate erasure of this gap," Jaworski explains, "rests in the same erasure having occurred on a dictaphone belt in which Nixon undertook to summarize his conversation with John Mitchell.

'And then John said . . .'

"Nixon had a habit, notwithstanding the tape recordings, of picking up a portable dictaphone and summarizing the conversations he had over the telephone which he thought were significant. Believe it or not, all that could be found on this dictabelt after we successfully subpoenaed it was: 'And then John [Mitchell] said . . . and the rest of it was erased.

"After reading Nixon's version in his book," Leon Jaworski says, "I must reluctantly conclude that he was the individual most likely to have done the erasing."

Jaworski can refute the accuracy of RN: *Memoirs of Richard Nixon* with

'After the break-in, Nixon knew what had occurred and who was responsible.'

countless citations of omissions, errors and deceptions, which in fact he did during the course of our many interviews. But he seems satisfied to point out that the grand jury named Nixon as an unindicted co-conspirator and that there was evidence that Nixon had conspired to violate 18 U.S.C. 1503—obstruction of justice; 18 U.S.C. 1623—perjury; 18 U.S.C. 201 (D)—bribery; 18 U.S.C. 1505—obstruction of a Congressional committee, and 18 U.S.C. 1510—obstruction of a criminal investigation.

One question frequently asked of Jaworski is why he did not seek a grand jury indictment against Nixon on one or several of the above charges and try him in court and thereby establish indisputably Nixon's criminal guilt or innocence.

Jaworski's explanation is that after the House Judiciary Committee had voted 38-0 that Nixon was guilty of obstructing justice—and Nixon, fearing loss of his pension and other benefits, had resigned—he, Jaworski, had received a phone call from Sen. James Eastland (D., Miss.), head of the Senate

Judiciary Committee and an old friend of Richard Nixon.

"This was in around the middle of August 1974," Jaworski recalls. "Eastland asked me if I would drop by his office. When I did, he informed me that Nixon had phoned him from San Clemente. Nixon had been crying, Eastland said and quoted Nixon as saying, 'Please, Jim! Don't let Jaworski put me on trial with Haldeman and Ehrlichman. I can't take any more.'

Empathy aroused

"Eastland didn't try to influence me one way or another. He simply repeated the conversation he'd had with Nixon. It was touching and heart-breaking, and I could really empathize with both men.

"I knew the grand jury would indict Nixon in 10 seconds if I so recommended and decided to prosecute him; but could we, my staff and I, assure an ex-President of the U.S.A. a fair and speedy trial in light of the tremendous publicity he'd been given? That wasn't an easy decision to make. But it was mine to make, and I asked

many of the lawyers I had inherited from Archibald Cox whether we should prosecute or not. Practically all recommended indictment and prosecution—with some variations, of course."

One of the most brilliant young lawyers on Jaworski's Watergate staff was George Frampton, 27, who turned out to be wisely prophetic. Four years ago he sent Jaworski a memo in which he wrote: "The prospect of Mr. Nixon publishing his memoirs (and thereby adding several million dollars to his net worth) should remind us that, unlike his aides who are convicted of crimes, Mr. Nixon will have the 'last say' about his own role in Watergate if he is not prosecuted. This is why, in my view, it is important to have some definitive resolution of Mr. Nixon's Watergate actions. . . . What is certain is that if he is not prosecuted, after the vivid memory of impeachment proceedings fades away and there is no more special prosecutor, Mr. Nixon in his writing and speaking will have the final opportunity to defend and justify his own role in Watergate as proper, constitutional and in the national interest—and to argue that only the political hysteria of the times brought about his downfall. (Mr. Nixon will undoubtedly argue, for instance, that the fact that he was not prosecuted demonstrated that there was insufficient evidence that he had actually committed any crime.)"

Query by Ford's counsel

Before Jaworski could decide on Nixon's prosecution, he was asked by Philip Buchen, counsel to the new President Gerald Ford, how long it would take if Nixon were indicted, to receive a fair trial. Jaworski estimated between nine months and a year.

Five days later, on Sept. 8, 1974, Gerald Ford pardoned Richard Nixon, and the question of indicting and prosecuting the 37th President of the U.S. became moot. Leon Jaworski had been taken off the hook. The Nixon-haters urged him to challenge the legality of the pardon, but Jaworski checked it out, was convinced of its legality, and therefore would not. On Oct. 12th, after almost one year as Watergate special prosecutor, he resigned and went home to Houston, Tex., convinced that Richard Nixon would never again rise from the ashes of his disgrace. Now he wonders.

Jaworski is winding up his work as special counsel to the House committee investigating payments by South Koreans to members of the U.S. Congress. He took on the job without pay.

But it is by virtue of his role in Watergate that Leon Jaworski has stamped his name indelibly on the pages of a sorry but memorable chapter of American history. He did what he had to do.



Nixon's secretary Rose Mary Woods demonstrates how an 18½-minute gap in a crucial tape could have happened by accident. Jaworski, however, has concluded it was most likely Nixon himself who did the job of erasing.