

The 'Will and Zeal' of the Prosecutor

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Since the appointment of Leon Jaworski as the new Watergate special prosecutor, the concentration on the question of his powers and his immunity from dismissal has virtually blacked out the more vital question of the prosecutor's will and zeal. In the long run, that will matter most.

It is important, of course, for the special prosecutor to have complete independence and to be protected from a presidential firing, but that in itself is no guarantee that Mr. Jaworski, or anybody else chosen by Mr. Nixon, will bring to the job the kind of determination needed for this monumental task.

There is no infallible way of finding such a man, this side of mind reading. Nevertheless, there are certain standards that can be reliably applied in seeking the ideal lawyer. In the first place, he should be the choice of Congress or the courts, not of the President. His position should rest on a long record of service in the public interest. And it would help if he were known as a champion of political reform rather than a defender of the status quo.

Mr. Jaworski, an able, wealthy corporation lawyer, does not fit this description. Politically he has long been a supporter of the conservative wing of the Texas Democratic party headed by John Connally who backed Mr. Nixon for re-election last year. He was once president of the American Bar Assn., but his 42 years at the bar have been mostly dedicated to defending special, rather than public, interests, for which he has been richly rewarded.

It is not going to be easy to find another Archibald Cox, but there are other distinguished legal lights like him—men who have devoted themselves selflessly to the law, and who have proved their independence in government service. The only reason

the nation got Cox is that he was chosen not by the President but by an attorney general (Elliot Richardson), who had a commitment to Congress to find such a figure.

No matter how broad a charter Jaworski is given by Mr. Nixon, what good will come of it if it should turn out that the new prosecutor does not have the will and the spirit to make the most of it, as Cox obviously did? In fact, it was that maximum determination that led to Cox's dismissal.

Mr. Jaworski's integrity is not in question. He has an honorable reputation and is well thought of in his com-

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munity. As the chief Watergate prosecutor, however, will he be content to do simply an acceptable job or, like Cox, will he fight to do a memorable one? As Cox discovered, this can be a thankless task. The endless ramifications of Watergate and its related scandals are so complicated that only an effort beyond the call of duty will ever bring them all to light.

What kind of a prosecutor would be most likely to do the heroic job necessary? One who owes his appointment to Mr. Nixon? Or to Congress and the courts? At this point, it is not clear whether Congress will establish an independent special prosecutor to be appointed by a panel of judges. If it

doesn't, it should at least follow Elliot Richardson's advice to make the President's choice subject to Senate confirmation.

Mr. Nixon has put on a show of giving Jaworski what the White House calls a broader mandate than Cox had. Actually, the new order setting up the terms of Jaworski's job is identical to that of Cox, except that Mr. Nixon agrees not to fire Jaworski before consulting with eight key members of Congress and "ascertaining that their consensus is in accord with his proposed action."

This is by no means the equivalent of making dismissal subject to congressional approval, for the eight-man panel would be loaded for Mr. Nixon. The eight to be consulted are the majority and minority leaders of the Senate and House, plus the chairmen and ranking members of the Senate and House Judiciary committees.

Specifically, this would mean Sen. Mike Mansfield (D-Mont.), Sen. George Aiken (R-Vt.), Speaker Carl Albert (D-Okla.) and Rep. Gerald Ford (R-Mich.), representing the leadership. Sen. James Eastland (D-Miss.) is chairman of Senate Judiciary, and Sen. Roman Hruska (R-Neb.) is a minority ranking member. Rep. Peter Rodino (D-N.J.) is chairman of House Judiciary and Rep. Edward Hutchinson (R-Mich.) is a ranking Republican.

At first glance, it looks like a 4-4 partisan standoff, but in practice it would undoubtedly be 5-3 for Mr. Nixon, since Sen. Eastland has consistently supported the President, even to approving the wretched nomination of Harold Carswell to the Supreme Court, which was rejected by the Senate as a whole. The eight-man review scheme is a tricky ploy that ought to be dismissed out of hand.