

Special Unit Convicted 50

10/17/75

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The former White House aide, whose name is now preceded by "convicted felon" whenever it appears in print, recalls telling another White House aide more than two years ago that the Watergate Special Prosecutor's Office would never last.

"We looked upon it (the office that was formed in May, 1973) as a necessary public relations move, but one that would become ensnared in its own bureaucracy and die a slow death after a few courtroom scenes that would be politically painful to us," the former aide said.

The man, who discussed the office that ultimately convicted him only on the con-

dition that his identity not be revealed, was wrong.

In the next 28 months, the Watergate Special Prosecution Force convicted more than 50 persons, including two former Attorneys General; helped topple a President who escaped criminal prosecution mainly because of a presidential pardon and survived a political attack that has become known as the Saturday "Saturday Night Massacre."

It operated with a broad charter from Congress to investigate the crimes covered by the general label "Watergate."

"It was eyeball-to-eyeball, and the other side ended up doing the most blinking," one

former prosecutor said, with a mixture of pride that the job had been done well but despair that the job had been necessary.

In large measure, the successes—and occasional failures—of the special prosecutor's office were due to the three men who held the top job:

Archibald Cox had to try to master Watergate's intricate details while hiring a staff, trying to keep publicly televised hearings from tainting his case and grappling with a White House that was determined to hold onto criminal evidence.

He did not have the power he thought he had been given, and his refusal to knuckle

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under to White House pressure ended with his dismissal.

Leon Jaworski succeeded the Harvard law professor and former solicitor general.

Many persons, unaware of Jaworski's refusal to consider the job without promises of total independence, thought he was just another corporate lawyer who would perform his public service in a perfunctory manner. Instead, he immediately made it clear to the White House and to others that he was hired as a prosecutor and intended to perform his task quickly and expertly.

His role was referred to by some as that of a "senior partner" in a law firm, who kept in close touch with the work of his subordinates without trying to master the details of the case. "He was a buffer between the prosecutors and powerful political currents," said one former prosecutor who worked under both Cox and Jaworski.

The third prosecutor, after Jaworski returned to his Houston law firm, was Henry S. Ruth Jr., who had served as deputy Watergate special

prosecutor under the two previous men.

Ruth was by far the most cautious of the three, persons who worked under him said, and was responsible for the decision to keep much of the office's work secret by leaving it out of the final report.

The formation of the special prosecutor's office followed a stunning series of events. After seven persons were convicted in connection with a break-in at the Watergate headquarters of the Democratic National Committee headquarters, one of the defendants—James W. McCord Jr.—told the trial judge that government witnesses had committed perjury in his trial and others who had been involved in a Watergate cover-up had not been identified.

The three assistant U.S. attorneys working on the case—Earl J. Silbert, Seymour Glazer and Donald E. Campbell—reopened their investigation and began gathering evidence that pointed to a cover-up planned by high government officials.

Former White House Counsel John W. Dean III

began cooperating with the investigators in early April, and told them of a California burglary committed under White House auspices. Former White House and Nixon campaign official Jeb Stuart Magruder also began telling investigators what he knew.

The disclosure of the break-in at the office of Pentagon Papers codefendant Daniel Ellsberg's psychiatrist and other information gathered by a federal grand jury under the direction of the prosecutors forced the resignations of an Attorney General, Nixon's two closest aides, and the acting director of the FBI.

Public doubt rose over allowing low-level federal prosecutors, on whom the cover-up originally had been perpetrated by the highest levels of government, to continue to investigate the case alone. The new Attorney General, Elliot L. Richardson, promised to appoint a special prosecutor to take over the case. His choice was Cox.

Philip Heymann, also a Harvard law professor, was one of the first persons Cox hired.

Heymann said in a telephone interview that he knew Cox was entering a "political hornet's nest" and was facing massive problems with no staff.

One of the first problems was convincing the three original prosecutors to stay on the case at least until the new prosecutor's office had been formed. They agreed, and wrote a lengthy status report on the investigation that became the basis of many of the special prosecutor's future cases.

James F. Neal, a Nashville attorney who had prosecuted former teamsters union leader James R. Hoffa in the early 1960s, was asked to spend at least two weeks to help the special prosecutor's office take over the cover-up investigation. He stayed for nearly five months, and then returned a year later to prosecute the main Watergate cover-up case.

"It obviously was no longer a third-rate burglary when we took over," Neal said recently. "In terms of determining the broad outline

of where they (the original prosecutors) were going, they were well on the way."

Neal, who spent his days reading grand jury transcripts and most of his nights discussing the case with Cox, said he was shocked by what he was reading.

"I was shocked by Watergate from beginning to end. I was repeatedly shocked. I guess I was naive in my experience in the government," Neal added.

Cox and his staff had already asked the White House for at least one tape, on the basis of a conversation that a cooperative witness had recounted. As in many instances that summer, the White House had not provided the materials. But the office had no idea the elaborate White House taping system existed until it was revealed to the Senate Watergate committee by Alexander Butterfield.

As Cox prepared a subpoena for specific White House tapes, he appeared to know that it would cause a confrontation that could result in his firing, Heymann said.

"I think he regarded it as a major issue that would cause him to be fired," Heymann said. "He didn't know if the President was guilty...he just knew it was a necessary step. I remember him taking the decision very seriously."

Neal suspected trickery on the part of the White House.

"I warned Archie this was a trap. ...We'll seek to get them (the tapes), the President will release them, they'll show innocence. Let's go slow," Neal recalled telling Cox. Neal, who later used the tapes as evidence to win convictions in the Watergate case, said he did not believe at the time that President Nixon could have engaged in some of the taped conversations later played in court.

Cox, known for his litigation work, was not sure he would win the subpoena case easily, but he thought he would win eventually.

"What worried him some, especially as the case went on, was whether it would be very harmful to the court system if he won and the President did not comply," Heymann recalled.

After the special

prosecutor's office won the subpoena the President offered a compromise but not the tapes. Cox said the tapes were necessary for legitimate criminal investigations and trials. The President ordered Attorney General Richardson to fire Cox.

Richardson refused and resigned, forcing the President to ask Deputy Attorney General William D. Ruckelshaus to dismiss Cox. Ruckelshaus refused and was fired.

The firing was carried out by Solicitor General Robert H. Bork, and the FBI entered the now abolished special prosecutor's office to prevent the removal of any documents.

The reaction that followed the firing of Cox was described by a White House official as a "firestorm" of public protest. Although Nixon capitulated and turned over the tapes, serious efforts to impeach President Nixon made headway on Capitol Hill for the first time.

Nixon then said a new special prosecutor would be named.

Leon Jaworski said he thought hard about taking the job when it was offered to him in October.

He had already rejected the job in May, and only after being assured complete independence in several meetings with White House aides, did he accept and come to Washington.

He said that before the first of January he became convinced the investigation would lead to President Nixon. The White House was refusing to provide documents and materials, and was complaining about the vigor of his prosecutors. The President hired an attorney to represent him in clearly expected impeachment hearings.

The grand jury concluded that Nixon was culpable in the cover-up and named him as an unindicted coconspirator after Jaworski told the jurors they could not indict an incumbent President. Instead, the evidence against the President was sent to the House Judiciary Committee, which used it as a "road map" in the impeachment process.

Meanwhile, Jaworski made probably the most internally controversial decision of his tenure by allowing former Attorney General Richard G. Kleindienst to enter a misdemeanor plea to a charge

of failing to testify accurately to a Senate committee.

Major indictments were returned in the Watergate cover-up and in the Ellsberg break-in case. Two federal judges known for their strong will, U.S. District Court Judges John J. Sirica and Gerhard A. Gesell, were assigned the cases and made it clear the White House had to

cooperate in providing trial evidence.

When the President refused to comply with a trial subpoena for 64 tapes in the Watergate cover-up case, the prosecutor took the case directly to the U.S. Supreme Court. With unprecedented speed, the court ruled 8 to 0 that Nixon had to turn over the tapes.

One of those tapes was one that members of the special prosecutor's office had speculated would be "explosive" to the Nixon defense.

It was a conversation on June 23, 1972, in which Nixon clearly ordered the use of government agencies to obstruct justice.

Nixon publicly released a transcript of the tape, and resigned. The special prosecutor's continued its investigation of the top Watergate suspect privately for the next month, until he was pardoned by President Ford.

After the Watergate cover-up trial got underway in October, 1974, Leon Jaworski also resigned and went back to his Houston law firm.

Jaworski's successor, Henry S. Ruth Jr., is known to his staff members and others as a quiet, deliberative man who believes in an extremely cautious approach to prosecution.

He was, in effect, cleaning up an investigation that still had many loose ends. The cleanup was also complicated by civil litigation over the custody and control of White House documents from the Nixon administration, which eventually allowed the prosecutor's access to the materials for investigative purposes.

Following cover-up convictions of former White House aides John D. Ehrlichman and H.R. (Bob) Haldeman, former Attorney General John N. Mitchell and former Assistant Attorney General Robert C. Mardian, the staff began a steady cutback of employees.

It also suffered what some of its employees believed to be its most serious courtroom setback when former Treasury Secretary John B. Connally was acquitted of bribery charges early this year.

As the terms of special Watergate grand juries expired, a final witness was called: Richard M. Nixon. His testimony has not yet been made public, and is mentioned only in passing in the special prosecutor's report.

The special prosecutor's office is still active, occasionally presenting witnesses to regular federal grand juries here and handling appeals of Watergate-related cases.

But its major role in American history is ended.