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AN APT ANALYSIS!

Laying the Dust

Final Report
by the Watergate Special
Prosecution Force.
US Government Printing Office,
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Kirkpatrick Sale

After twenty-eight months of investigations, the full-time labors of some 174 staff members, and at a cost of at least $7.7 million, the Watergate Special Prosecution Force has at last come forth with a summary report, as is required under its charter, which provides the public with what is supposed to be the first full statement of all the criminal acts associated with the complexus of Watergate. The Final Report is an outrageously shoddy document, lacking in any sense of public obligation, deceptive, inept, and incomplete, and it has about it the noisome character of its infamous predecessor, the Warren Report.

Like the Warren Report, the Watergate Report is the product of presumably honest but limited and timid men, whose allegiance is not to uncovering the truth but to laying the dust. Like the Warren Report, it seems permeated with the notion that the system must retain public confidence, that it must be seen to be infinitely self-perfecting, capable of absorbing aberrations like assassinations and Watergate crimes without fundamental damage or change. Like the Warren Report, it is the work of investigators who seem to wear protective blinders, allowing themselves only the narrowest of perspectives and even within that examining only the minimum of leads, the smallest number of suspects. And like the Warren Report, it has initially been greeted by the public and the press with no serious questioning.

The first cause for outrage over this report is its brevity—a mere 277 pages, only a small number of which deal with matters of substance. (The Warren Report offered us 888 pages, giving at least the pretense of completeness.) Fully a third of those pages are given over to lengthy and for the most part superfluous descriptions of "relations" with other groups (Congress, the White House, the press, etc.), and another third are devoted to the usual bureaucratic filler required in such reports (chronology, formal documents, organizational history, etc.). In the remaining third are included a lengthy, defensive apology for the obvious inadequacies of the report and a perfunctory section on "observations and recommendations," leaving only forty-eight pages for describing the main work of the prosecutor: the investigations, the charges, and the dispositions of the Watergate cases. This skimpy account scarcely deserves to be called a report in any sense of that term, and certainly not in the sense that Congress had in mind when it first approved the special prosecutor.

But the report's inadequacy is not simply one of length. Where we seek answers we are offered evasions; where we look for a recounting of facts and a historical record we are given prosecutorial pussyfooting. Take this example, typical of many, addressed to the dozens of charges made about Bebe Rebozo's financial finagling on Nixon's behalf:

> Between April and December 1974, the [IRS] agents and Assistant Special Prosecutors analyzed thousands of pages of records received from more than 240 sources. . . . Extensive investigation was undertaken concerning the source and application of all funds which required examination. . . . Investigation was also pursued into the suggestion in an April 17, 1973, Presidential tape that Rebozo maintained a secret fund of about $300,000. . . .
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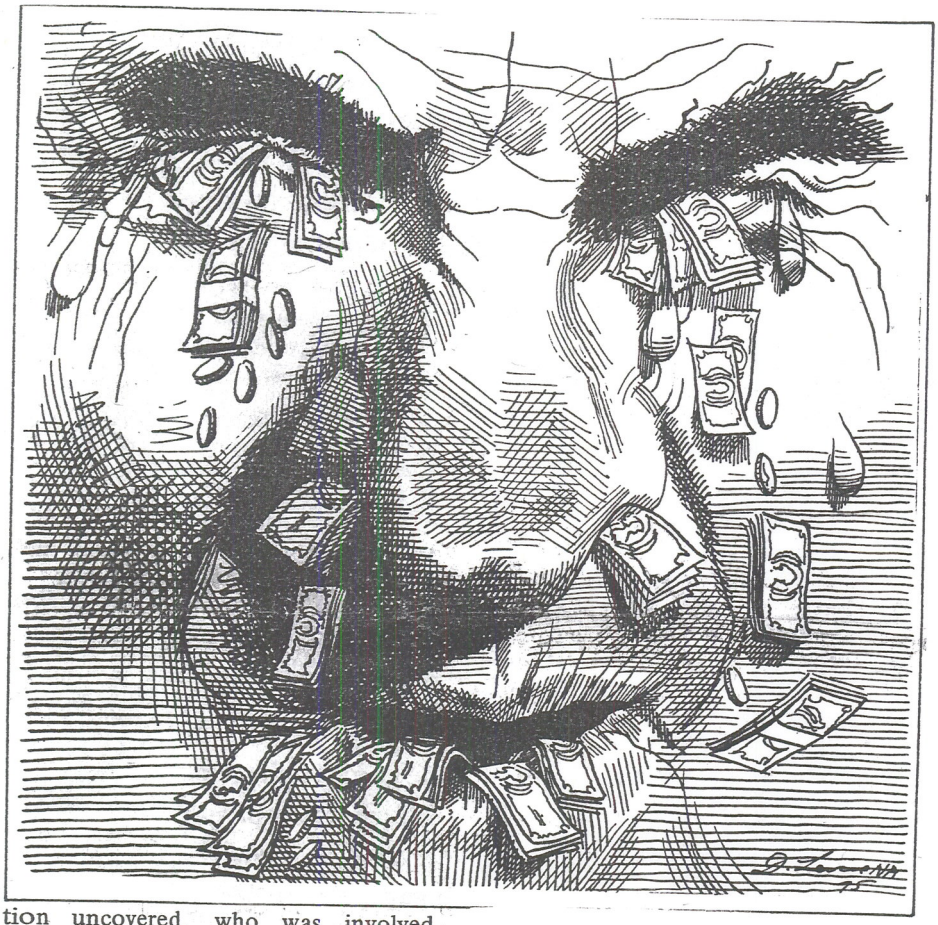
> After all investigation was completed, and the evidence had been evaluated by the prosecutors who ran the investigation and by the General Counsel's office of the Internal Revenue Service, it was concluded by the prosecutors that the evidence would not support an indictment.

"It was concluded"—that's all we get, no explanation of what the investiga-



tion uncovered, who was involved, what the voluminous evidence showed and how it can be evaluated, what Rebozo's defenses were, and why this conclusion should have been reached.

Time after time the same useless performance: the report cites briefly the evidence that was turned up by the press or the Congress, adds a claim about the diligence and thoroughness of the prosecutors, and then blandly concludes that "the prosecutors did not obtain sufficient evidence to bring criminal charges," or "no evidence was developed to support criminal charges," or "the investigation did not result in the proof of criminal activity." That is what the special prosecutor apparently regards as a "comprehensive report." Can he be serious?

When the report turns to the central figure in all of the Watergate scandals, its method becomes ludicrous. This official document contains no record whatsoever of the crimes of Richard Nixon, no enumeration of the charges against him, no details of his personal culpability in the cases under investigation, no information on what he might have done or said in furtherance of all the crimes his cohort has been sentenced to prison for. The special prosecutor's office has listened to all sixty-four of the specially subpoenaed tapes, including fifteen never published, and presumably could have listened to a great many more; it has had access to any presidential documents it wants, including those that Nixon is fighting to preserve as his own; and it has collected testimony from literally hundreds of people who would have information bearing on his guilt. But we are given nothing whatever about any of these matters.

Now the Final Report is at some pains, as one might suspect, to try to justify itself. Its line of argument, as near as one can see from its three-button prose, is that the special prosecutor could not release any information in those cases where people were not actually indicted for specific crimes, because this would be an abuse of the unusual powers given to the office and would be unfair to a person who had "no effective means of challenging the allegations against him or of requiring the prosecutor to establish such charges beyond a reasonable doubt." Very civil libertarian, and within certain limits entirely commendable. Except that it misses three cardinal points.

First, the report betrays a sensitivity to abuses of power far in excess of that which was intended for the special prosecutor in the first place. For the idea of full disclosure was specifically built into the prosecutor's office from the start, not simply in the original authorization which *required* that the special prosecutor "upon completion of his assignment submit a final report" to the Congress, but in the legislative history from which the office was created. When Archibald Cox, as prosecutor-designate, appeared before the Senate Judiciary Committee in March 1973 he was asked by Senator Philip Hart if the final report would include "not merely a summary of the actions that you did take but a reasonably detailed explanation of the actions you didn't take," specifically including "what evidence was before you" regarding "those figures who are under public discussion" and "your conclusion as to why action was not appropriate." Cox replied, with some passion:

I am agreeing wholeheartedly with

your observation that it is important not only that prosecutions be brought where there is a proper basis for prosecution, but that the reasons for not bringing other prosecutions or reason for not indicting other figures, the exculpatory facts, if there were any, about other figures—that all those things be included certainly in the final report.[1]

Second, if the special prosecutor were truly worried about the rights of innocent persons, he could find standard prosecutorial ways to protect them. For Nixon, of course, the point is moot, since his rights to a fair trial cannot be in jeopardy since he can't be tried. Here obviously the report would have been free to make a complete and detailed case, laying out the full public record for the first time. For the others who have come under public and prosecutorial scrutiny the process is well established: asking the grand jury to issue a *presentment* (as it did in the Nixon cover-up)—a bill of particulars setting out the full facts of the case but not leading to an indictment—with the provision that people named in it have an opportunity to offer their side of the story, complete with documents and depositions if they choose, thus allowing the information to get onto the public record without any infringement of due-process rights.

Finally, the special prosecutor's reticence betrays a basic misunderstanding of the purpose for which the office was established. It was not created simply to nab a few high-placed malefactors and assure that they stood trial, but rather to provide the country with a full and reliable account of the Nixon Administration's crimes. If any doubt on that score existed it should have been dispelled by the "firestorm" over the Cox firing which made it abundantly clear that the public felt the special prosecutor was performing a privileged function in healing the body politic and had a special responsibility to *them*. This Final Report lacks any realization of this responsibility.

But even this failure, the ultimate cover-up, does not fully reveal the extent of the special prosecutor's shoddy performance. Failures of investigation recur so often throughout that one wonders if a deliberately restrictive policy might not have been at work from the beginning. To start with, the special prosecutor's office did not hire its own investigators, either for field work or for administrative supervision. Instead it relied on the FBI and the IRS for all its interviews and inquiries, just as if those agencies had never themselves been tainted by the Watergate mess, and had not been shown to be willing dupes of the very president under investigation.

The office also grandly refused to use planted informers or electronic surveillance, arguing that the public would regard these as smacking too much of Nixon's own techniques, in spite of the fact that when done with court approval these techniques are legal, common, and, as the report itself admits, "often used in 'white-collar' and organized crime investigations."

[1] Hearings on the Nomination of Elliot Richardson to be Attorney General, Senate Committee on the Judiciary, March 21, 1973, p. 211.

(*continued on page 8*)

Moreover, the prosecutors neither threatened nor brought charges against any of those who sought to hamper their investigations—even though, as the report acknowledges, "witnesses often failed to provide as much evidence as the prosecutors might have expected from them," and others "appeared to have testified falsely before the grand jury" and "such deception had occurred often."

In drawing up charges, the special prosecutor's office treated its suspects with such generosity you might think it was dealing with a case of a broken piggy-bank. It did not bring charges in criminal conspiracy cases where there might have been an "overt act" but "little or no evidence that the plan had actually been implemented," which is rather like surprising the man who is climbing in your bedroom window and then letting him go because he didn't steal your jewelry. It did not bring charges for "reasons of health," or when it didn't get the pertinent White House documents at the time it wanted them, or even when a lawyer could talk the prosecutorial team out of it in pre-indictment interviews (a "departure from many Federal prosecutors' normal practice"). It did not charge the big corporations for illegal campaign contributions if the corporate officers maintained that, golly, they hadn't really known about the law, or that they only did what their corporation lawyers told them ("honest misunderstandings"), or even if it had evidence of corporate guilt but "little promise of successful identification of the particular individuals involved."

What is perhaps most objectionable, the special prosecutor did not bring any multiple charges against people involved in more than one crime. This means that John Mitchell, for example, was charged only with the Watergate cover-up and was let off the hook for his probable perjury in the ITT case, his extra-legal authorizations of the White House wiretaps, his presumed conspiratorial role in campaign trickery, his apparent quid-pro-quo services on behalf of various corporate campaign donors, and his clear connections with the Gemstone project which directed the original Watergate burglary. The rationale for this is that any additional sentences the guilty might receive "would probably run concurrently with the sentences already imposed, having no effect on the actual period of imprisonment"—as if *that* were the point of the prosecutor's office, as if there were no obligation to ascertain the full extent of guilt, get the pleas or verdicts on record, present the truth as clearly as possible.

Given this remarkable behavior, it is perhaps not surprising that the special prosecutor failed to bring any charges in 60 percent of the investigations he undertook—not even counting the separate campaign financing cases where "most of the inquiries failed to develop evidence"—and in four of the cases where he did bring charges he did not have enough evidence to convict.

He did not find any culprits, not a single one, in the clear crime of erasing the eighteen and one half minutes from the June 26 tape or the deliberate tampering with other White House tapes sent to the impeachment inquiries. Nor did he find those responsible for the multifarious activities of the White House Plumbers (other th

Fielding break-in), the seventeen wiretaps directed by the White House against staff members and newsmen, the abuse of and by the Internal Revenue Service, the Nixon "responsiveness program," the illegal "Ruby" and "Sedan Chair" operations, the campaign sabotage by twenty-six Segretti agents in sixteen states, the assaults by Nixon goons on antiwar protesters, the voluminous quid-pro-quo charges against the 1972 fatcats, the illegal campaign-finance filings of the Democrats, the misuse of the National Hispanic Finance Committee, the Rebozo-Hughes slush fund—and, finally, the actual planning and administration of the original Watergate burglaries. Not one culprit.

And those are just the cases which the Final Report mentions. There is an additional catalogue of cases that the prosecutor's office apparently never even investigated, or at least does not talk about in this report.

There is, for example, the role of the Department of Justice—with what irony we must use that label now—in the Watergate cover-up. Not a word appears here about the shameful stalling tactics of the original Watergate prosecutor Earl Silbert, who delayed the trial until after the elections and kept insisting that the fall guys caught at the Watergate were really "off on their own"; or about the thoroughly unethical and clearly illegal behavior of Assistant Attorney General Henry Petersen, who carried secrets from the Watergate grand jury rooms into the Oval Office and did his artful best to keep the Watergate scandals as far away from the White House as possible. Nor is there mention here of the obstructions of justice by then-FBI-head L. Patrick Gray, who not only burned sensitive documents in an investigation he was supposed to be in charge of, but actually held up FBI investigation of the Watergate burglary for two weeks while he tried to work out a cover-story with the CIA, and then was evasive and dishonest in talking about the whole matter while under oath.

Finally the report ignores the amazing performance of former Attorney General Richard Kleindienst, in charge of the investigation, who seems, at least, to be guilty of obstruction of justice and misprision of felony in failing to come forth with information he had from the very beginning about the involvement of top White House and re-election people in the Watergate bugging.

The misdeeds of the CIA are similarly overlooked. General Vernon Walters and Director Richard Helms by all accounts worked along with Gray and the White House to fabricate a CIA excuse to limit the investigations; and the CIA gave illegal support for White House Plumbers operations in both the Dita Beard and Daniel Ellsberg cases. There's also the matter of the Huston plan, for which at least five people—Tom Charles Huston, H. R. Haldeman, Richard Helms, DIA Director Donald V. Bennett, NSA Director Noel Gayler—were according to sworn testimony guilty of criminal conspiracy, at least parts of which were in fact carried out. Then there's the issue of the Nixon pardon, whose legal justifications are defended in the report (though without much enthusiasm and even less substantiation), but whose *factual* surroundings were never examined by the special prosecutor, though there is sufficient superficial evidence, including the underhanded deal by which Ford tried to give the tapes to Nixon, to indicate that there was prior collusion in violation of Sections 201, 241, and 371 of the US Criminal Code.

Above all, there is the succession of charges against Richard Nixon, about which not even a whisper is heard here—the man might as well be a ghost. There is not a word about the mysterious financing of his San Clemente house, his part in falsifying his tax records, or the misuse of government agencies to improve his San Clemente and Key Biscayne houses. Nothing about the bombing of Cambodia and the falsification of records which Nixon ordered to conceal it. Nothing about his attempts to obstruct justice in the approaches to Judge Matthew Byrne in the Ellsberg case and the possible misuses of Judge Charles Richey and Roemer McPhee in the Watergate case. Nothing about the extent and location of Nixon's private money, widely rumored to be managed by Rebozo and concealed in Bahamian and Swiss banks, nor any attempt to explain the "secret fund of about $300,000" Nixon himself mentioned in the April 17, 1973, tape.[2] Nothing about Nixon's clear part in the Fielding burglary, the transfer of FBI wiretaps to the White House, the punitive effort to deprive the *Washington Post* of various television licenses, and the interference with the Justice Department in the ITT antitrust affair.

These things should be on the public record, clearly and completely, for ourselves and for the future. Yet here we have not a word.

There seem to be two choices open at present. On the one hand we can sit back and wait for the announcements that Richard Nixon has been named the new ambassador to China, Patrick Gray has been appointed to direct a Presidential Commission on the Rule of Law, Henry Petersen has been elevated to the presidency of Brown University, and Haldeman, Ehrlichman, Mitchell, and Mardian, all winning their cases on appeal through legal technicalities, are brought back into the bosom of the Republican party and are top candidates for cabinet positions in the second Ford Administration. (Don't laugh: look at John Connally, now a potential presidential candidate, and Earl Silbert, just recently made the US District Attorney in Washington.)

On the other hand we can bring pressure to enforce the special prosecutor's original mandate—there is still a prosecutor's office and it's expected to be in business for another two years—and see to it that a new *final* Final Report is prepared giving the public the information to which it has a clear right. Congresswoman Elizabeth Holtzman is already at work trying to persuade the House Judiciary Committee to reopen the issue and pass legislation which will make the special prosecutor release all his material relat-

[2] If a large cache exists, it could contain portions of the $500,000 in leftover 1968 campaign funds, $3 million in secret money floating around in the 1970 campaign, the $350,000 "Haldeman fund," $1.5 million unaccounted for from the White House Special Projects Fund not returned to the Treasury as promised, and the $20 million in secret and untraced funds sent into the 1972 re-election committee.

ing to Nixon—including investigations, tapes, and the recent grand jury deposition—subject only to the provision that ancillary figures named in the material have the right of elaboration and reply.

The Congress might also direct that another report be delivered detailing all the cases *other* than Nixon's, with the same rights of elaboration and reply. It might provide for the impaneling of another grand jury with a specific mandate to issue a blue-ribbon report, with due safeguards for individual rights, on investigations made and unmade. Or it might empower the national archivist to open the most relevant parts of the special prosecutor's papers within months after receiving them, providing only that raw files be excluded.

But if any of these steps are to be taken soon there has to be much more public agitation than has been evidenced so far. Does there have to be a decade's time lag here too, as with the Warren Report, before there are widespread demands for a full and public accounting? Or might we hope that a Mikadoesque passion for the fitness of crimes and punishments will produce such a demand now? □