On Mr. Jaworski's Performance

By Richard A. Sprague

PHILADELPHIA—With a great deal of sorrow, I must criticize my fellow prosecutor, Leon Jaworski, for the manner in which he is conducting the investigations and prosecutions arising out of the Watergate and other sordid affairs.

Seven months ago, I watched with disgust as the former Vice President, Spiro T. Agnew, was permitted to plead guilty to a reduced charge instead of being properly prosecuted to the fullest extent on the real charges against him, bribery and extortion.

Through plea bargaining and the acceptance of a disposition of the case only on tax evasion, the public was deprived of the full facts and was treated to the charade of Mr. Agnew's continuing to protest his innocence. It was, as well, a disservice to our institutions of law-enforcement for Mr. Agnew to have received probation.

This disposition reiterated the long-held public belief that nothing happens to those at the top, that the bigger you are the lighter you fall and the more lenient your treatment.

What a frightful, unequal administration of our laws if others who have committed offenses of much less national significance receive more substantial punishment!

With the arrival of Mr. Jaworski, I had hoped there would be a greater recognition by public investigators and prosecutors of duty and responsibility to the public. Unfortunately, this has not occurred. Instead, what we have seen is plea bargaining at Monday-morning bargain rates with not much of anything happening, let alone revelation and punishment.

The most recent example concerns the former Attorney General, Richard G. Kleindienst. Testifying under oath before the Senate Judiciary Committee, he had stated: "In the discharge of my responsibilities as the Acting Attorney General in these [International Telephone and Telegraph] cases, I was not interfered with by anybody at the White House. I was not importuned. I was not pressured. I was not directed."

Evidence was developed that showed that Mr. Kleindienst had lied under oath to the committee. There can be no doubt that the crime was perjury. Yet Mr. Jaworski not only plea bargained but, in order to sell at the basement rate, perverted the law to find the most minimal charge, one that was in fact a fiction.

■

Title II, Section 192, of the United States Code is headed "Refusal of Witness to Testify," and states that "Every person . . . who . . . refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months."

How can it be suggested that Mr. Kleindienst refused to testify? Mr. Jaworski applied this statute to Mr. Kleindienst despite the fact that Mr. Kleindienst did testify.

The special prosecutor achieved this application of the statute by in effect illegally amending it to equate false testimony with incomplete testimony —that is, charging that Mr. Kleindienst did not testify fully. A United States District Court judge in Washington gave Mr. Kleindienst a suspended sentence of a $100 fine and 30-day jail term.

What right does Mr. Jaworski have to take the law into his own hands or to make up his own statute? Mr. Kleindienst did not refuse to testify. He spoke under oath. He lied. It is as much a perversion of the legal process for Mr. Jaworski to distort the law for his purposes as it was for Mr. Kleindienst to have deceived the Senate committee.

This is not a price to pay in order to achieve a token conviction. And, as in the case of Mr. Agnew, it was a disservice to decent standards of law enforcement for the sentence to have been suspended.

While the sacrifices through plea-bargaining of the interests of both society and the individual might have some justification in the context of a congested urban court system that otherwise could not dispense any form of justice at all, there is no justification for less than the best of which the justice system is capable in the case of criminal matters involving the highest levels of Government.

I thought Mr. Jaworski would have realized that, particularly in these sordid affairs, the emergence of the truth, unambiguous and unclouded, is essential to re-establish public confidence in Government and to heal the divisions among our people.

■

It has come to the public's attention that the Watergate grand jury under Judge John J. Sirica apparently wanted to indict President Nixon as a co-conspirator. It has further been indicated that it was Mr. Jaworski who advised the grand jury that an incumbent President could not be indicted as a criminal. As a result, the grand jurors, in their findings, referred to President Nixon as an unindicted co-conspirator.

If these facts are correct, Mr. Jaworski has misused and abused his position as special prosecutor. A grand jury is an arm of the court. Ultimately, the court is the final authority on issues of law for the grand jury. What law the grand jury receives is the law that the presiding judge provides as instruction.

When the question came up concerning the right of a grand jury to indict an incumbent President for criminal acts, it should have been determined not by Mr. Jaworski but by the presiding judge, Mr. Sirica.

Upon making a ruling and instructing the jury as to the law, he could then be held accountable through review by the legal appellate prosesses.

If Judge Sirica had instructed the jury that an incumbent President could not be indicted, anyone who had been aggrieved by the ruling could have taken an appeal. In this manner, the American legal system would have properly and openly decided the question.

The special prosecutor should not have indicated to the grand jury his interpretation of the law of Presidential criminal responsibility without carefully advising the grand jurors that in a question of such momentous and unprecedented national importance they were not bound by his opinion but should seek a definitive ruling from the court. Because of the very nature of this critical question, rather than rendering his own opinion Mr. Jaworski should have obtained from the court definitive instructions to the grand jury.

It may come to pass that although many individuals of high office were involved in the shabby, criminal acts of Watergate, those who now have the responsibility of enforcing the criminal justice system are committing acts that, in the course of history, may be considered as horrendous as those that they seek to redress.

This is the time for those law-enforcement officials who bear the heavy burden of responsibility to the public in the proper administration of our law to proceed by exemplary standards of prosecution for the benefit of the entire nation.

Richard A. Sprague is first assistant district attorney of Philadelphia and was special prosecutor in the Joseph A. Yablonski murder case in Washington, Pa.