

# 'Nothing... Curtails The... Right of Pardon'

Following are letters sent by Special Prosecutor Leon Jaworski to Attorney General William Saxbe in which Jaworski resigns and spells out the status of the prosecution:

Dear Mr. Saxbe:

With the prosecution of United States v. Mitchell, et al., now in progress under the guidance of Associate Special Prosecutor James F. Neal and his assistants, the Watergate special prosecution force is beginning to address itself to the completion of remaining investigations and to such prosecutions as are still to be conducted. The bulk of the work entrusted to the care of this office having been discharged, I am confident that such of our responsibilities as remain unfulfilled can well be completed under the leadership of another special prosecutor. A part of the unfinished matters relates to the area of "milk fund" investigations, and as to these, I filed a letter of recusal shortly after becoming special prosecutor. Accordingly, after serving since November 5 of last year in this office, I tender my resignation effective October 25, 1974.

By separate letter, I am forwarding to you an interim report giving a resume of the work of this office to date. In that letter, I am also submitting some additional observations relative to the work of the special prosecution force.

When you testified at your nomination hearings, you made it clear that you did not intend to interfere with the operation of my office and that you would permit me to act independently and without hindrance. You abided by this assurance and I express to you my appreciation for having permitted me to proceed with my responsibilities as I saw them.

I would appreciate receiving from you a communication accepting this resignation effective on the date indicated.

Dear Mr. Saxbe:

Along with my letter of resignation I beg to hand you herewith a copy of our latest interim report which reflects the principal activities of the special prosecutor's office to date.

Two of the results achieved relate to the mandate directed to this office to investigate allegations involving the President. Both are without precedent.

One is the extensive grand jury report on the involvement of Richard M.

Nixon in Watergate cover-up activities, prepared for the grand jury by this office and sent to the House Judiciary Committee last March, after successful litigation through the trial and appellate courts. While the grand jury report, which presented the chain of evidence in detail, has not been published, I am informed that it served as a major guide for the staff and members of the committee in the development of the presentation leading to the Articles of Impeachment.

The second involved the successful litigation of a trial subpoena for tape recorded evidence in the hands of the President of the United States. The Supreme Court's unanimous decision supporting the subpoena of the special prosecutor compelled the former President to release among others, the tape recording of June 23, 1973, which served as a forerunner to his resignation.

Although not appropriate for comment until after the sequestering of the jury in United States v. Mitchell, et al., in view of suggestions that an indictment be returned against former President Richard M. Nixon questioning the validity of the pardon granted him, I think it proper that I express to you my views on this subject to dispel any thought that there may be some relation between my resignation and that issue.

As you realize, one of my responsibilities, not only as an officer of the court, but as a prosecutor as well, is not to take a position in which I lack faith or which my judgment dictates is not supported by probable cause. The provision in the Constitution investing the President with the right to grant pardons, and the recognition by the United States Supreme Court that a pardon may be granted prior to the filing of charges are so clear, in my opinion, as not to admit of doubt. Philip Lacovara, then Counsel to the Special Prosecutor, by written memorandum on file in this office, came to the same conclusion, pointing out that:

"... the pardon power can be exercised at any time after a federal crime has been committed and it is not necessary that there be any criminal proceedings pending. In fact, the pardon power has been used frequently to relieve federal offenders of criminal liability and other penalties and disabilities attaching to their offenses even where no criminal proceedings against

the individual are contemplated."

I have also concluded, after thorough study, that there is nothing in the charter and guidelines appertaining to the office of the Special Prosecutor that impairs or curtails the President's free exercise of the constitutional right of pardon.

I was co-architect along with Acting Attorney General Robert Bork, of the provisions some theorists now point to as inhibiting the constitutional pardoning power of the President. The additional safeguards of independence on which I insisted and which Mr. Bork, on former President Nixon's authority, was willing to grant were solely for purposes of limiting the grounds on which my discharge could be based and not for the purpose of enlarging on the jurisdiction of the Special Prosecutor.

Hearings held by the Senate Judiciary Committee subsequent to my appointment make it clear that my jurisdiction as Special Prosecutor was to be no different from that possessed by my predecessor.

There was considerable concern expressed by some Senators that Acting Attorney General Bork, by supplemental order, inadvertently had limited the jurisdiction that previously existed. The hearings fully developed the concept that the thrust of the new provisions giving me the aid of the Congressional "consensus" committee were to insulate me from groundless efforts to terminate my employment or to limit the jurisdiction that existed. It was made clear, however, that there was no "redefining" of the jurisdiction of the Special Prosecutor as it existed from the beginning. There emerged from these hearings the definite understanding that in no sense were

the additional provisions inserted in the Special Prosecutor's Charter for the purpose of either enlarging or diminishing his jurisdiction. I did stress, as I argued in the Supreme Court in U.S. v. Nixon, that I was given the verbal assurance that I could bring suit against the President to enforce subpoena rights, a point upheld by the Court. This, of course, has no bearing on the pardoning power.

I cannot escape the conclusion, therefore, that additional provisions to the Charter do not subordinate the constitutional pardoning power to the Special Prosecutor's jurisdictional rights. For me now to contend otherwise would not only be contrary to the interpretation agreed upon in Congressional hearings — it also would be, on my part, intellectually dishonest.

Thus, in the light of these conclusions, for me to procure an indictment of Richard M. Nixon for the sole purpose of generating a purported court test on the legality of the pardon, would constitute a spurious proceeding in which I had no faith; in fact, it would be tantamount to unprofessional conduct and violative of my responsibility as prosecutor and officer of the court.

Perhaps one of the more important functions yet to be discharged relates to our final report. It is contemplated that this report will be as all-encompassing as the authority granted this office permits, consistent with the prosecutorial function as delineated by the American Bar Association Standards for Criminal Justice. While this report will be cast in final form subsequent to my term as Special Prosecutor, I will be available to the authors for such contributions and consultations as they deem advantageous.

You are aware, of course, of the position this office has taken regarding access to former President Nixon's White House materials for all remaining investigations and prosecutions. Legislation now pending, if enacted, will solve the problem. If not enacted, I shall continue to be available, to whatever extent my successor desires, for counseling on reaching a solution to this problem so that all relevant materials will be forthcoming.

My Deputy, Henry Ruth, and most of the other members of the staff have worked together since the creation of the office. Mr. Ruth has a familiarity with all matters still under investigation as well as those still to be tried. He has been in charge of all "milk fund" matters, in view of my recusal. I trust that you will not mind my offering the suggestion that he be given consideration to serve as my successor, thus permitting the unfinished matters to continue without interruption.