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Jaworski's

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THE MOST startling aspect of the resignation of Leon Jaworski is his accompanying statement that he was able to step aside now because the "bulk of the work" of his office had been discharged. In fact, a realistic appraisal of what has been accomplished leads to a rather different conclusion: the ITT task force has produced almost nothing, the campaign finance group has barely scratched the surface of the problem, and at least three separate investigations—the tapes erasure, the Hughes-Rebozo matter and possible fraud in the preparation of President Nixon's income tax returns—remain incomplete. Moreover, while the performance of the special prosecutor's office has been generally excellent, there are a number of matters on which its record has not been wholly satisfactory.

The status of the remaining matters and the question of the overall effectiveness of the prosecutor's office are not merely items of academic interest to be discussed in making a judgment about Jaworski's performance; rather, they bear directly upon the choice of his successor. If the office has performed up to expectations, and all that remains to be done is to clean up a few loose ends, there is no reason to quarrel with Jaworski's suggestion that his deputy, Henry Ruth, should succeed him. If, on the other hand, the work of the office is not nearly over, and if there are doubts about its performance in certain areas, then the selection of a new special prosecutor is almost as critical as it was a year ago when Jaworski took over. To answer these questions, it is necessary to examine each of the office's five task forces and to ask two questions: How has it performed? What remains to be done?

The Presidential Pardon

JAWORSKI is almost certainly correct in his appraisal that the work of the so-called "plumbers" task force is almost finished. Many of the persons involved in the Ellsberg break-in and related activities pleaded guilty to significant felonies, and the rest were convicted in July. Only the appeals remain.

The same situation applies to the "dirty tricks" task force: all those apparently involved have entered guilty pleas or been convicted.

The Watergate task force is now trying its major case and has previously obtained pleas of guilty from many others who were deeply involved in the cover-up plot. In the process it has, with the office of counsel to the special prosecutor, achieved an historic victory in the Supreme Court that produced vital evidence for the cover-up trial and played a key role in the forced resignation of Richard Nixon.

There are, however, other aspects of the Watergate matter that put the office in a far less favorable light. Consider the matter of the presidential pardon. In the current cover-up trial, there were reports that many prospective jurors were unwilling to consider charges of conspiracy to obstruct justice because the person whom the alleged conspiracy was intended to protect had been pardoned and will never even have to stand trial, let alone go to jail.

Although the pardoning of the President is not a legal defense for the others, it will be a powerful psychological weapon in the hands of defense counsel without their even having to mention it. Historically, the American jury has exercised mercy where a prosecution is deemed unjust, and there is a real likelihood that at leaast one of the jurors may refuse to convict on that basis alone.

Leaving aside the issue of whether the pardon should have been challenged after it was issued, it is still legitimate to fault Jaworski for his failure to urge President Ford not to pardon Mr. Nixon, at least until the jury had been sequestered and hopefully not until the cover-up trial was concluded. An experienced attorney such as Jaworski, armed with a large and able staff, should have immediately requested an opportunity to discuss the matter with the President in order to

Unfinished Job

By David Suter for The Washington Post

explain the problems that a pardon would present in the cover-up trial, problems which President Ford appears to have overlooked.

In fact, there are lawyers, including some close to the case, who fully expected an indictment of Richard Nixon before the cover-up trial was scheduled to begin so that he could be tried with the others. However, based on Jaworski's interview with the Wall Street Journal last week, the special prosecutor never considered taking this course of action. Had he done so, it would have been much more difficult to do what John Ehrlichman has done and point an accusing finger at Richard Nixon, the absent co-conspirator. While others felt it would be unfair to try the remaining defendants with Mr. Nixon, that surely was an option that the special prosecutor should not have allowed President Ford to foreclose without at least making him fully aware of the situation.

It does not require 20-20 hindsight to suggest that as soon as Mr. Nixon resigned, the special prosecutor should have written President Ford asking for full consultation before any action of any kind was taken concerning Mr. Nixon, And surely, once President Ford requested a list of possible crimes for which Mr. Nixon was under investigation, the likelihood of a pardon increased significantly, and the reply to that request, which was prepared by the man Jaworski has suggested as his successor, should have sought an immediate audience with the President.

It may be that convictions will be obtained in the cover-up trial, but the case has been unnecessarily complicated by the special proseuctor's failure to obtain at least a postponement of the pardon so that it would not interfere with the trial of the others.

Then there is the pending investigation of the 18-½ minute erasure on the June 20, 1972, tape of the conversation between Mr. Nixon and H. R. Haldeman. The experts' report has been submitted, but that ought not to be the end of the matter. Doesn't the special prosecutor plan to put Mr. Nixon under oath before the grand jury, and if not, why not? The pardon covers any role that he may have had in the erasure, and thus Mr. Nixon must tell all he knows, or face possible charges of perjury or contempt of court. Given the revelations contained on the June 23 tape, one can only speculate about how much more incriminating the June 20 one must have been to cause someone to commit a crime by erasing it. The matter clearly cannot be allowed to end at this point.

The Money Givers

IN THE AREA of campaign finance, which includes the milk fund investigation, the work of the special prosecutor's office has resulted in the reversal of one old maxim: It is no longer better to give than to receive. With the exception of Herbert Kalmbach, who has pleaded guilty, and John Connally, who has been indicted, all of the charges relating to illegal campaign contribution practices have involved the giver and not the receiver. Perhaps the work in this area has been completed, and indictments will be obtained now that the jury in the cover-up case is sequestered. But if there are no charges against any of the fund-raisers for the Nixon reelection campaign, one wonders what the 10 lawyers in this task force have been doing.

Even the most potentially significant action of this group — the indictment of John Connally on charges of accepting a bribe and perjury — may never come to trial because Jake Jacobsen, whose testimony is considered essential, may not cooperate. The problem is that the deal Jacobsen made with Deputy Special Prosecutor Ruth (Jaworski had excused himself from all participation in the milk fund cases) is running into serious trouble. Under the agreement, Jacobsen pleaded to a single bribery charge for which he was to testify in the Connally case and Ruth undertook to have an unrelated seven-count indictment involving bank fraud dismissed. However, the federal judge hearing the bank fraud case has refused to dismiss the charges and has ordered Jacobsen tried.

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In those cases that have been concluded, there are substantial grounds for faulting the performance of the prosecutor's office, some of which must be laid at the feet of Jaworski's predecessor, Archibald Cox. Take the matter of illegal corporate contributions. When the first pleas of guilty were announced just two days before Cox was fired, the prosecutor's office issued a press release indicating that there were other illegal contributions besides the ones specified in the charges, but no details were given. It has since become known that vast sums were contributed in addition to the publicly confessed amounts, and that many of these companies had been engaged in these practices for years. For example, the Watergate Committee report indicates that 3M diverted $125,000 in just three years for an illegal campaign fund, that it had been engaged in these practices for a number of years, and that two high corporate offices against whom charges had not been brought were directly responsible for the illegalities. Phillips Petroleum has advised its stockholders that, in addition to the original $100,000, it has made $585,000 in other illegal gifts. And just this month an affidavit in a stockholder's suit involving Northrup Corp. charged that the company had a $1.3 million illegal political kitty.

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Since many of these companies came forward voluntarily, it may have been appropriate to charge them with only a single violation. But it seems incredible that the prosecutors would have agreed to withhold from the sentencing judge the fact that in many cases the violations had been going on over many years and had resulted in the improper expenditures of hundreds of thousands of dollars of stockholders' money. It also seems difficult to understand the failure of the prosecutors to require full public disclosure to stockholders of the involvement of all corporate officers and directors, including a statement of all illegal contributions, as a condition of accepting a plea to a single misdemeanor count for both the corporation and its responsible officer.

Even more difficult to comprehend is the failure to pass along all of this information to the Securities and Exchange Commission so that at least that agency could insure that proper disclosures were made to stockholders. Yet as recently as a week ago, the SEC was seeking to obtain information about the extent of one corporation's activities from an attorney in a stockholder's suit involving that company, rather than from the special prosecutor who had all of this information. It is possible that some of the responsible officers may be witnesses against some of the fund-raisers, and hence the leniency of the prosecutors may be justified in that way. But at least to date, it is hard to understand why so little has been done to inform the public and the courts of the extent of the wrongdoing in this area.

In the Army there is an old adage that it is foolish to volunteer for anything, and the performance of the special prosecutor's office regarding corporate contributors bears this out. Archibald Cox originally announced that leniency would be afforded to those companies which came forward voluntarily, but that those which were caught would be dealt with severely. His purpose was to enlist the cooperation of the guilty, but unfortunately his plan has not proved very successful. The threat of multiple felony charges against the recalcitrant has not yet been carried out except in the American Shipbuilding case, and even that company's chief executive, George Steinbrenner, was allowed to plead to two of 14 counts and received only a fine as a sentence.

While 16 corporations have pleaded guilty, it simply makes no sense to believe that the Nixon fund-raisers stopped at these. If one assumes that the biggest were asked first, and even assuming that many companies refused, it is necessary to go far down the list of the Fortune 500 to reach the likes of First Interoceanic, Braniff, Ashland Oil, Carnation and Diamond International. It almost defies belief that others, especially in the regulated industries, did not also engage in these illegal activities, yet they have not been charged, and Jaworski has suggested that the bulk of the work is done. Unfortunately, the lesson to be learned from this is that while confession may be good for the soul, it is bad for the pocketbooks and reputations of the corporations and executives who stepped forward.

Proof of this came a week ago when the Wall Street Journal reported that Greyhound had been treated as a volunteer in pleading to a single misdemeanor, even though the FBI had told the company — before it went to the special prosecutor — that it was under investigaton. If true, this raises questions as to who is not being treated as a volunteer and what reason there is for any company to come forward and admit its guilt. Even less justifiable is the failure to charge any Greyhound officer with a crime, contrary to the announced policy of the prosecutor's office and the result in every case except American Airlines, where George Spater was not charged because he

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was the first to admit his guilt. The alleged reason — the reliance by the responsible officer on an informal opinion of counsel — is ludicrous.

And what about ITT? The prosecutor's office has concluded that the settlement of ITT's antitrust cases with the Justice Department was not improper. Whatever the merits of that determination, much more than that settlement is under the jurisdiction of the ITT task force, and there is little in the way of accomplishment to show for it.

There is the question of how ITT obtained an unprecedented — and later reversed — tax ruling that was essential to its acquisition of Hartford Fire Insurance Co., one of the transactions

challenged under the antitrust laws. The origins of that ruling suggest possible tax fraud, but if Jaworski is correct in his assessment of the progress of the office, that matter will never be brought to court.

Even more important is the failure to obtain any indictments arising out of the Richard Kleindienst confirmation hearings, other than Kleindienst's and Edwin Reinecke's. Reinecke made the mistake when he was running for governor of California last spring of challenging the special prosecutor to indict or clear him, and was later found guilty of having lied to the Senate about his meetings with John Mitchell. But Reinecke was never more than a minor witness in the Kleindienst hearings, and since his testimony was identical to Mitchell's, it is strange that the former Attorney General has not been charged with perjury for that testimony, as well as for his often-repeated assertions that he had nothing whatever to do with the campaign or the ITT case while he was holding office.

As for the misdemeanor charge against Kleindienst — that he "did refuse and fail to answer accurately and fully questions" asked of him by the Judiciary Committee — enough has been written already which, added to the resignations of key staff personnel working on the case, leaves little room to doubt that he was let off far too easily. Perhaps even that leniency could be justified if Kleindienst had become the key witness in establishing the guilt of others who may have urged him to commit perjury, but no such charges have been made. Moreover, since the House Judiciary Committee did not accuse Mr. Nixon of having either directed or approved of the perjury, it seems fair to infer that Kleindienst made no such accusation. Last spring it may have been possible to assume that we did not know all the reasons behind the acceptance of the Kleindienst plea to a misdemeanor; now it is clear that, unless new charges are suddenly brought that will make his testimony crucial, the decision to allow him to plead as he did cannot be justified.

After the Kleindienst hearings, the Senate Judiciary Committee referred the matter of possible perjury to the Justice Department, which in turn sent it to the special prosecutor. Coupled with the latter referral was one from the SEC involving obstruction of justice charges in connection with that agency's independent investigation of the ITT antitrust settlement and of the original Hartford acquisition. These referrals also have produced nothing, and according to Jaworski, that is where they are likely to end. If nothing more develops from the ITT investigations, the performance of the prosecutor's office in that area must be judged a near-total failure.

And what about the investigation of tax fraud concerning the 1969 returns of Richard Nixon, on which he took a deduction for the back-dated gift of his pre-presidential papers? While he has been pardoned for any crimes he may have committed, there were others involved who have admitted being less than totally candid. And what about the Hughes-Rebozo connections and the diversion of campaign funds? Are those matters also to be dropped? If not, isn't the decision whether to call Mr. Nixon before the grand jury just the kind of judgment for which a man of Jaworski's stature is required? And if Mr. Nixon's testimony should be found at variance with that of others, wouldn't the decision as to who should be indicted be the kind of agonizing choice for which Jaworski is needed? We have yet to scratch the surface of these matters, and surely they are not yet nearly completed.

It may be that there are explanations for some of these actions and inactions, but none have been offered to date. The fetish which the prosecutor's office has made of secrecy has interfered with the public's right to know what was done and why. In particular, where investigations have been completed and no charges preferred, we should have a full explanation for such decisions. When a plea of guilty has been accepted, and the defendant is not needed as a witness, then it is appropriate to set forth the reasons for accepting a plea to a reduced charge.

One of the great lessons of Watergate is that the public is entitled to more rather than less information about what was done by the special prosecutor and why, but to date there has been nothing resembling such a public accounting. The American people have simply been asked to trust the special prosecutor and maintain the faith that his office is doing what is best for the country. Unfortunately, the record of that office, while outstanding in many respects, does not justify our total abdication until it is too late to do anything about the situation.

The appointment of a new special prosecutor affords one last opportunity to remedy this matter. Henry Ruth has been suggested by Jaworski, and from the standpoint of continuity there is much to be said for that appointment. But effectiveness, not continuity, must be the basis for filling the job, and the decision on a successor should be made in consultation with the relevant congressional committees.

Furthermore, there is one key question which must be asked of Ruth before he is appointed: Do you believe that the bulk of the work of the special prosecutor is completed? If he views his role in that manner, he should not be appointed to fill Jaworski's position, and someone who is not willing merely to tie up the loose ends should be chosen. There is, after all, a great deal left to do.