

The Final Accounting on Watergate

"GETTING OUT the full story of Watergate" has been a battle cry for so many people for so long that too little attention has been paid to what elements the "full story" should encompass and how it should be "gotten out." Special Prosecutor Henry S. Ruth Jr. and his predecessor, Leon Jaworski, addressed those problems the other day in testifying before a House Judiciary subcommittee on bills that would require the special prosecutor to make a final public report laying out all he knows about former President Nixon's involvement in the whole array of Watergate crimes and scandals. Messrs. Ruth and Jaworski oppose such legislation. Their arguments should be considered carefully—both in terms of what they said about the special prosecutor's proper role and for their insights into the larger question of how much more information any public agency or official can release about the offenses of the Nixon years without, in the process, misusing official authority or trampling on individuals' rights. The problem they illuminated, in other words, is that of wrapping up Watergate without committing Watergate-type offenses along the way.

The idea that the special prosecutor's final report should be a vehicle for definitive disclosure goes back to the days before the Nixon cover-up had been so thoroughly discredited—before the Senate Watergate hearings and report, before the House impeachment study and its volumes of evidence, before the tapes decision, before the cover-up trial and convictions. It was an idea that we also believed to have much merit at the time of the pardon and prior to the revelations in court and subsequent developments concerning the release of taped evidence. But the sum of all these events has been to place so much material in the public domain that almost no one has been able to read, much less digest, it all.

It seems likely that even more will become available. Mr. Nixon's attempts to control the use and disposition of his papers and tapes, efforts which many saw as the ultimate cover-up, have now been nullified by a new law putting all those materials in the protective custody of the government. Moreover, in a ground-breaking decision last week, District Judge Charles R. Richey ruled that all the tapes and papers relating to Mr. Nixon's conduct of the presidency are government property, and that executive privilege may be claimed only by incumbent Presidents, not former chief executives. The complex litigation over the Nixon materials seems likely to go on for some time, and covers a number of issues which we will not explore today. The key point is that both the new law and Judge Richey's ruling, unless overturned, will severely limit Mr. Nixon's ability to withhold information—or to tamper with or ultimately destroy this material—and will give the Ford administration and Congress the clear power and responsibility to decide how much more should be made public—and how and when.

This brings us back to Mr. Ruth's concerns. He told the subcommittee that, given all that has already come to light, an exhaustive evidentiary report about Mr. Nixon's role would provide little new information of significance—and the price for a few dollops of detail would be very high. In addition to cumulative evidence about offenses already well known, a "full" report would have to include some very sensitive material: information about people not charged with crimes; evidence ob-

tained under promises of confidentiality; and kinds of documents—specifically grand jury transcripts and raw investigative files—which have traditionally been treated very tenderly and not disclosed. Any such undertaking "would be almost surely enveloped in extensive litigation," Mr. Ruth testified. More important, it would raise basic questions of "fundamental fairness" and due process of law, and would expand the prosecutor's role from that of advocate, subject to control by the courts to that of all-powerful, unchecked accuser and judge.

Those are powerful arguments for a circumscribed report. Indeed, the members of the House Judiciary Committee, who did so much last year to uphold the Constitution and the rule of law, should appreciate most keenly the need to keep any investigation, no matter how important, within proper bounds and to avoid trampling on the basic rights which Mr. Nixon and all other citizens possess. In other words, in large part we agree with Mr. Ruth. His final report should be limited—but not quite as limited as he seems to suggest. Mr. Ruth proposes to describe the history of the special prosecution force, explain its policies on matters such as immunity and plea bargaining, summarize the work of each task force, and offer some "evaluations." Along the way, we hope he will explain as far as possible not only what the office did but what it did not do and why, particularly with respect to the ITT affair and illegal campaign contributions. Those are the aspects of Watergate which have received the most modest airing in insert a court.

The public record would be especially enriched if Judge Sirica would release one key document, the grand jury's report which was turned over to the House Judiciary Committee last spring. That report, which was such a catalyst for the impeachment inquiry, presumably presented the best systematic case which could then be made against Mr. Nixon as a co-conspirator. Most of the evidence underlying that report may have been aired since then by the committee or in court. That is all the more reason for the historic document itself to be released, either on Judge Sirica's own initiative or in response to a petition by the special prosecutor, in the interest of enhancing public understanding of how the case against Mr. Nixon was developed.

Finally, it is important to remember that the special prosecutor's report, whatever its scope, will not be the last word on Watergate. Assuming that the law safeguarding Mr. Nixon's tapes and papers is not overturned, scholars and journalists will be digging through all that material and publishing new analyses for generations to come. But by protecting those records, Congress has also insured that the problems of disclosure of raw data and protection of individual rights are not about to go away. On the contrary, such difficulties will loom larger when the issue is not a single, organized report by a highly professional prosecutorial force, but random inquiries by large numbers of curious citizens with varying skills and sensitivities. Under the new law, the Ford administration must propose access policies this spring for the Nixon materials including all of the tapes not yet released. Congress will then have 60 days to review those policies. Thus it is not too soon to start thinking quite seriously about the hard, legitimate conflict between full disclosure and other basic values which Mr. Ruth has summarized so well.