

THE SATURDAY NIGHT MASSACRE

by Elliot Richardson

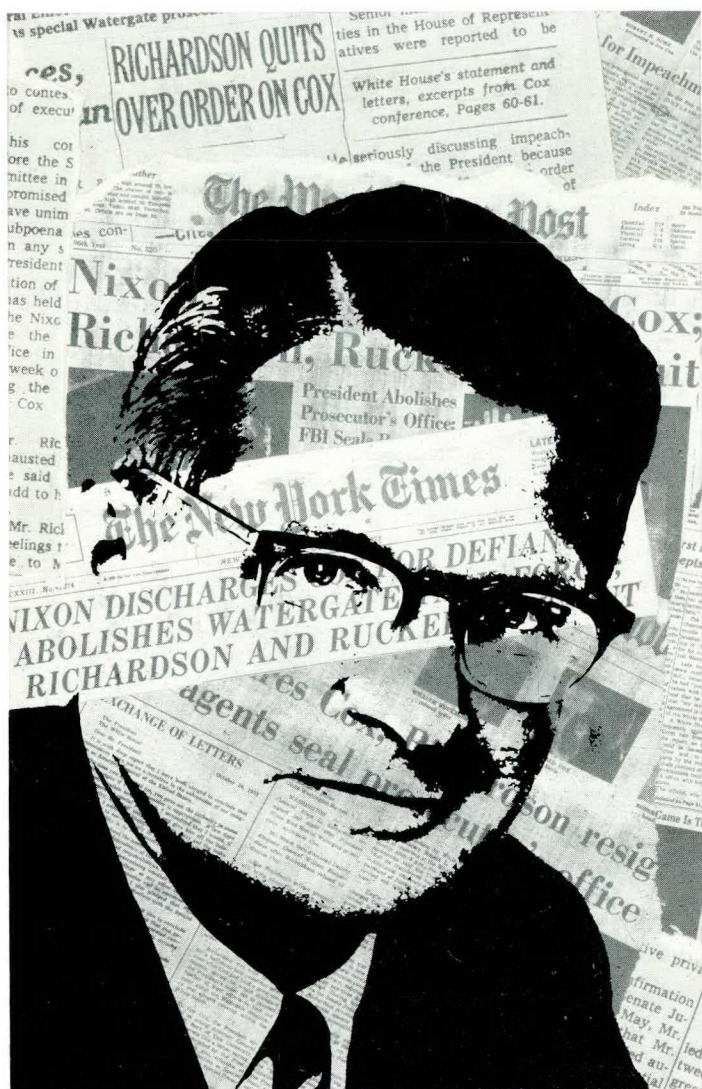
Said President Nixon: "Brezhnev would never understand it if I let Cox defy my instructions." Said Attorney General Elliot Richardson: the Cox "position was not only defensible but right." The clash of wills between these two tough-minded men, over the diligence of a third, equally tough-minded man, Special Prosecutor Archibald Cox, produced a political showdown unprecedented in this nation's history. One of the participants tells the story as he remembers it.

"Good looks after fools, drunkards, and the United States of America." This old saying was fulfilled again in the case of Watergate. For beyond its own sordid confines, Watergate has been redemptive—a disguised stroke of good fortune for the United States of America. That good fortune may yet turn to ashes, but I am one of those whom H. L. Mencken called the "optimists and chronic hopers of the world," and I see gain for this country in the reassertion of old ideals and the renewal of governmental processes.

America was also fortunate in that the evils of Watergate were brought to light while it was still possible to correct them. The abuse of power is a corrupting precedent for those who later hold power. For those who are subject to it, its continuing abuse can appear to be the natural order of things. For both, the effect is addicting. And the discovery that the habit of abuse has taken hold may come too late for cure.

In dealing with and even drawing new strength from Watergate, our system of government has shown its basic soundness. Watergate can fairly be regarded as demonstrating the failings of men and the resiliency of a constitutional system. John Adams, who drafted the language of the Massachusetts Constitution of 1780, declaring that separation of the powers of government is "to the end it may be a government of laws and not of men," later wrote:

... that law proceeds from the will of man, whether a monarch or people; and that this will must have a mover; and that this mover is interest; but the interest of the people is one thing—it is the public interest; and where the public interest governs, it is a government of laws, and not of men; the interest of a king, or of a party, is another



thing—it is a private interest; and where private interest governs, it is a government of men, and not of laws.

The Watergate revelations arrested a process which was beginning to substitute the interest of a President for the interest of a people. We saw how vulnerable to the abuse of power is even our system of checks and balances. And once again, though in starker terms than ever before, we were warned that eternal vigilance is essential to the survival of liberty.

Two Saturdays in 1973—one in April and one in October—gave me considerable occasion to think about the implications of Watergate as regards the need for more adequate safeguards of the interest of the people against the abuse of power. The first of the two Saturdays was April 28. I was then a Watergate spectator from across the Potomac River at the Pentagon—an outsider absorbed in military affairs. In the middle of a Father's Day morning at my daughter Nancy's school, my friend and former chief, Secretary of State William P. Rogers, got through to me by telephone. His first words were, "Are you sitting down?"

The President, he said, wanted me to leave the Department of Defense and take over the Department of Justice.

Almost a year had passed since the break-in at Democratic national headquarters. It had been a long time since anyone had tried to laugh it off as just another political caper. The press was filled with reports that former Attorney General John N. Mitchell had authorized hush-money payments to the Watergate burglars and that the money had come from funds held at the White House by H. R. Haldeman, President Nixon's chief of staff. Some reports had it that the burglars were linked to still another burglary—that of the office of Daniel Ellsberg's psychiatrist in Beverly Hills, California—which had taken place after Ellsberg was indicted for releasing to the *New York Times* a secret report on the Vietnam War. The President's counsel, John W. Dean III, had announced darkly that he did not intend to be a scapegoat in this ramifying affair.

Bill Rogers told me that Attorney General Richard G. Kleindienst was about to resign, not because of any personal involvement in Watergate,

but because others with whom he had been closely associated—Mitchell, Dean, and Robert C. Mar-dian—were implicated. The President was also about to accept the resignations of Haldeman, Dean, and John D. Ehrlichman, his principal assistant for domestic affairs. A new attorney general was urgently needed—one who could restore public confidence in the leadership of the Department of Justice. The President had turned to Rogers for advice. Rogers had proposed me. He said the President had agreed that I was the best possible person in the circumstances.

I had been sworn in as secretary of defense on January 30, only three months earlier. I was deeply immersed in my Defense Department job and had no wish to leave it. The prospect of having to take over the Watergate investigation was not pleasant. I said I would go home, talk to my wife, Anne, and call back after I had had a chance to think about it.

I told Nancy that an emergency had arisen, apologized to the headmistress, and went directly to my home in McLean. Anne and I agreed that I should avoid the assignment if I could, but that this might prove impossible. I then telephoned two of my oldest friends. We concluded that the objective of restoring confidence in the Department of Justice would be better handled by bringing in a new attorney general who had not been part of the Nixon Administration. But we were aware that time pressures argued for filling the job swiftly. The President might wish to announce a replacement for Kleindienst as soon as possible. A talent search for an outsider—for a qualified and independent person in whom the President had confidence—might well involve an unacceptable delay. Because of this, even though I was reluctant, I decided that if the President insisted on naming me, I would acquiesce. But first I would convey to him my belief that I was not the right person for the job.

Rogers relayed this concern to the President, then called back to say that both he and the President were convinced that despite my long association with the Nixon Administration, I would be universally regarded as capable of independence. I agreed to discuss the matter with the President at Camp David early the next afternoon.

Sunday, April 29, 1973, was a beautiful spring day. The Maryland countryside was gentle and serene below the helicopter which took me to Camp David. The President greeted me on the terrace of his lodge. He seemed strained and depressed. He had just asked Haldeman and Ehrlichman to resign—"the toughest thing," he said, "I

Elliot Richardson, recently confirmed as secretary of commerce, is the only man in American political history ever to occupy four Cabinet positions. This material is adapted from his forthcoming book, *The Creative Balance*.

have ever done in my life." Kleindienst had left only a few minutes before I arrived. The President, visibly holding himself under tight control, told me I was needed more at Justice than at Defense. As attorney general I would have full control of the Watergate investigation; it would be my "specific responsibility to get to the bottom of this. Anybody who is guilty must be prosecuted, no matter who it hurts." It would be up to me whether I appointed a special prosecutor; as possibilities, he suggested Wilmot R. Hastings, who had worked with me in the attorney general's office in Massachusetts, at State, and as general counsel of HEW; John J. McCloy, a distinguished New York lawyer and public servant; and J. Edward Lumbard, former chief judge of the General Circuit Court of Appeals. He would like me to remain a member of the National Security Council. And I *must* believe that he had not known anything about White House involvement in Watergate until he began his own investigation in March. "Above all," he concluded, "protect the presidency—not the President, if he's done anything wrong."

Department of Defense issues had been taking all my time, and I was too unfamiliar with the details of Watergate to know what follow-up questions to ask. I did, however, say to the President that I hoped he would call on me in the future on matters of judgment even though they did not directly involve my department. Feeling, I suppose, that he now needed me as he never had before, I added, "And I hope you will respond to the crisis of confidence that Watergate has created by opening up your Administration and reaching out to people in a more magnanimous spirit." I had said much the same thing to him before, both in person and by memorandum, and it was a point I had made several times in conversations with members of his staff. I now found the courage to express the other half of this thought.

"Mr. President," I continued, "I believe your real problem is that you have somehow been unable to realize that you have *won*—not only won, but been re-elected by a tremendous margin. You are the President of *all* the people of the United States. There is no 'they' out there—nobody trying to destroy you. Even the people who didn't vote for you want you to succeed."

His expression did not change as I spoke. I do not recall his saying anything at all.

I have tried to understand what brought about the abuses of power that came to a head in Watergate. Knowing all that I now know, I think I can discern three principal contributory ingredients. One was Richard Nixon's own distrustful style, a

compound of his personal insecurity and his reaction to the reality of bitter attack. A second was the amoral alacrity to do his bidding of a politically inexperienced, organization-minded staff obsessively driven by the compulsion to win. A third was the aggrandizement of presidential power and the tendencies toward its abuse that had already been set in motion before Nixon took office.

Only dimly perceiving that I might be touching on a fatal flaw of character, I alluded to the first of these ingredients when I said to Richard Nixon at Camp David, "There is no 'they' out there." I had, it is true, caught glimpses of a suspicious and manipulative streak in him, but I had no way of knowing how deep it ran or how much it widened below the surface.

I regretted his unwillingness to trust senior civil servants who would gladly have given him their full loyalty if he had but shown that he was ready to meet them halfway. His instinct for the manipulation rather than the education of public opinion bothered me, as did his assumption that his relationship with the Congress could never be genuinely consultative.

The second ingredient of Watergate—an amoral alacrity to do the President's bidding—was traceable less to flaws in his own character (though it was reinforced by them) than to the political and cultural evolution of twentieth-century America. It was, in significant ways, a symptom of the times.

The heads-up, get-ahead, go-along organization men recruited for the White House staff were not uniquely evil. American politics, business, sports—in fact many, if not all, of the enterprises to which Americans turn their hands—are riddled with the same type of organization man. He takes on the coloration and the value system of whatever organization—whatever game—he happens for the time being to be associated with.

When this characteristic is joined with an uncritical belief in the rightness of one's own patriotic motives, it is hardly surprising that a by-product should be the gut feeling that anyone who questions or obstructs the chosen path toward these enlightened aims is "the enemy." In Richard Nixon, the White House staffers had a boss who, instead of restraining these attitudes, reinforced them.

But even the combination of presidential distrust and staff amorality might not have been enough to bring about Watergate if it were not for the accumulated momentum of recent history. For two generations the "strength"—and hence the "greatness"—of Presidents had been expressed in terms of a zero-sum game with the Congress and the Cabinet. Nixon undoubtedly wanted to be per-

ceived as a "strong President"—all the great Presidents were "strong." For Nixon, maximizing this demanded exploitation of every available means of influence, and these, by the time he became President, had been expanded far beyond anything within the reach of the great predecessors whose ranks he yearned to join. So also, in the previous decade, had been established the precedents for secrecy in the conduct of foreign policy, deception of the general public, the invasion of privacy by electronic devices, and manipulation of the legislative process.

During the several days following my meeting with President Nixon at Camp David, I gave a lot of thought to the question of appointing a special prosecutor. It became increasingly clear to me that the appointment would have to be made, and that I would have to be the one to make it. The investigation of Watergate, I felt, had to be independent in fact as well as in appearance. Public confidence in its integrity was essential. And though I believed I could meet the requirement of independence, I was serving in the fourth of four appointments by a President whose White House staff was under investigation and who might himself be implicated. I also knew myself to be a person in whom loyalty runs deep, and the struggle to preserve my independence would be painful. And so, on Monday, May 7, 1973, seven days after the announcement of my nomination, I stated my decision at a press conference at the Defense Department:

I have decided that I will, if confirmed, appoint a special prosecutor and give him all the independence, authority, and staff support needed to carry out the tasks entrusted to him. Although he will be in the Department of Justice and report to me—and only to me—he will be aware that his ultimate accountability is to the American people.

The person selected to fulfill this role will have to meet stringent standards of qualification. He must not only be an individual of the highest character and integrity but he must be widely so recognized. He must not have been associated with any of the persons alleged or suspected to have had a part in the matters under investigation. He must be judicious in temperament and independent in spirit. He must have a proven record of outstanding competence as a lawyer, preferably including trial experience.

The search for a special prosecutor began immediately. My assistants and I asked for names from all parts of the country. We assembled some 250. To narrow down the field we made hundreds of

inquiries. The paramount criteria were integrity, legal competence, and, preferably, some prosecutorial experience. Though Nixon had suggested names at Camp David, he and his staff kept hands off the selection and the guidelines under which the new special prosecutor would work. Apparently it was as obvious to the President's staff as it was to me that there must be no basis for any later charge that the President had tried to influence an investigation that might implicate him.

My own nomination, as attorney general, went to the Senate Judiciary Committee for hearings. Though the committee had no "advise and consent" responsibility over the actual appointment of the special prosecutor, I offered to bring my nominee before it for questioning and to withdraw any name that the committee failed to approve.

Archibald Cox, my final choice, had not been a prosecutor, but as solicitor general of the United States he had for five years been responsible for all government litigation in the Supreme Court, including criminal cases. As a labor arbitrator and mediator of student protests he had shown, I thought, unfailing fairness and firmness. And because I knew him to be a man of unshakable integrity, I regarded as unimportant the circumstances that he was identified as a Democrat and had been appointed solicitor general by President Kennedy—except to the extent that they precluded the questions that might have been asked had I, a Republican, appointed another Republican.

The original terms of the special prosecutor's charter were my own; its final terms were worked out between Archibald Cox, members of the Senate Judiciary Committee, and myself. They provided that I, as attorney general, would delegate to the special prosecutor "full authority" over the Watergate investigation, leaving to the attorney general only his "statutory accountability for all matters falling within the jurisdiction of the Department of Justice." I had insisted on this clause because it seemed axiomatic that no one who delegates authority can thereby rid himself of all responsibility for its exercise. For this reason the charter also reserved to the attorney general the power to remove the special prosecutor, but only in the case of "extraordinary improprieties on his part."

All three of these key provisions—the full authority of the special prosecutor, the ultimate accountability of the attorney general, and the terms of removal clause—were to play a crucial part in the events of Saturday, October 20, 1973.

The immediate consequence of these provisions

was to place me in a peculiar no-man's-land between the special prosecutor and the President. My pledge to respect Archibald Cox's independence barred me from the attorney general's normal role as chief prosecutor for the government. Nor was it proper for me to serve as the President's legal adviser, a role also normal to the attorney general. The man investigating the President's actions was exercising powers that I had delegated to him, and for me to advise the President on legal matters would compromise that delegation of responsibility.

These inhibitions seemed to me to necessitate maintaining an arm's-length relationship with both sides. The issue arose at my first press conference as attorney general. In answer to a question, I said that if a conflict should develop between the special prosecutor and the White House, the President could not rely on the attorney general for legal advice but would have to hire his own lawyer. From various sources word percolated back to me that the President was "deeply disturbed" by this statement—an indication to me that he had not clearly grasped the new relationships.

As time went on, I began, in limited ways, to try to act as a "lawyer for the situation." Cox's efforts to gain access to White House documents kept encountering delays and roadblocks, and I tried to help remove them. General Alexander M. Haig, White House chief of staff, and J. Fred Buzhardt, White House counsel, constantly complained that Cox's investigations were exceeding his charter, and I found myself attempting to adjudicate jurisdictional boundaries. Nixon, meanwhile, was continually hearing from Republican loyalists and from his staff that Cox was a "Kennedy stooge" out to "get the President."

It was a difficult situation, of course, but no more than was to be expected from such an unprecedented and abrasive set of relationships. At the close of a session in the Oval Office on October 6, just after Vice President Agnew resigned, the President remarked, "Now that that's over, we can get rid of Cox." Whether this was an offhand remark or reflected a settled purpose I had no way of knowing at the time. It made no difference one way or another to what I had to do. I was aware that the circumstances were precarious. All I could do, as "lawyer for the situation," was to cope as best I could with each problem as it arose.

The way I felt was reflected in a wartime experience I described to Al Haig on the way out of his office a few minutes after the President's remark about getting rid of Cox. "This reminds me," I

told Haig, "of the first hard thing I had to do after my unit landed on the beach on D-Day. A soldier with his foot blown off by an antipersonnel mine was lying in a patch of barbed wire just back of the dune-line. He was in agonizing pain. Somebody had to get him. I stepped carefully across the barbed wire, picked up the wounded soldier, and retraced my steps. All I could do was put down one foot after the other, hoping each time that nothing would go off."

Even after I had resigned I continued to believe that the firing of Cox could be accounted for without attributing bad faith to the President, and I so testified early in November at Senate Judiciary Committee hearings. The President, I thought, could genuinely have felt that he had made a reasonable effort to find a workable compromise between the principle of confidentiality and Cox's claim of access to the subpoenaed tapes. And it seemed at least understandable, if wrongheaded, for Nixon to demand that Cox be fired because he would not accept the compromise. The first thing he said to me when I entered the Oval Office to resign was: "Brezhnev would never understand it if I let Cox defy my instructions."

It was not until May, 1974, when I tried to reconstruct the events of the week leading up to the "Saturday Night Massacre" for the benefit of counsel for the House Judiciary Committee, that I was finally forced to conclude that from the beginning of the week the name of the game had been get rid of Cox. Get rid of him by resignation if possible. But get rid of him. The facts, as I look back on them, are not susceptible of any other interpretation. The game plan had to have—and did have—two chief components. One: induce Cox to quit or, failing that, put him enough in the wrong so that firing him would seem justified. Two: induce Richardson to go along.

The second week of October was a tumultuous one. The Yom Kippur War had broken out in the Middle East on October 6. Four days later, Vice President Spiro T. Agnew pleaded no contest to criminal income-tax charges and resigned. On October 12, the Court of Appeals for the District of Columbia upheld Judge John J. Sirica's order to the President to turn over nine tape recordings that had been made in his office. That same night Nixon announced that Gerald R. Ford would be nominated as the new Vice President.

During this period I had taken the occasion at the close of several conversations with Al Haig to

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ask how things were going in the Middle East. One of my chief concerns as undersecretary of state had been the effort to achieve a Middle East settlement, and I was deeply interested in the current situation. When I walked into Haig's office on the morning of Monday, October 15, in response to an urgent weekend call intimating that he wanted to discuss with me some important aspect of the Middle Eastern situation, I was ready for almost anything.

Haig began with an elaborate account of the dire state of relations between the United States and the USSR over the developing crisis. To hasten the point I said facetiously, "I'm ready to go, Al. Shall I go home and pack my bag?" But the Middle East was only a curtain-raiser. The real topic was the proposition that the problems generated by Cox's investigation were causing an intolerable diversion of the President's time and energy from far more important matters. To bring things to a head, Haig said, the President was prepared to submit his own verified version of the subpoenaed tapes to Judge Sirica's court and—at the same time—fire Cox.

"If he does that," I said to Haig, "I will have to resign."

Haig called me early that afternoon with a new plan. It became known as "the Stennis proposal." The White House would prepare summaries of the tapes, have the summaries checked against the original tapes by Senator John C. Stennis of Mississippi, and then submit the summaries to the special prosecutor. If Cox went along with the plan, he would not be fired. Haig said he had, with the greatest of difficulty, sold the President on the Stennis proposal, that it had been "very bloody" for him, and that the President had angrily demanded that "this is it" for Cox, meaning that Cox would have no further access to presidential tapes or documents.

As applied to the tapes and documents then under subpoena, the Stennis proposal seemed to me reasonable enough to be worth my trying to persuade Cox to accept it. I deliberately chose, however, to leave out of my negotiations with Cox and my subsequent discussions with the White House during the next several days any restriction on future access.

Despite my best efforts to get Cox to go along with the Stennis proposal, he sent me a memorandum Thursday afternoon refusing to accept it. The memorandum spelled out his position in carefully reasoned terms.

That evening I went to Haig's White House office. In addition to Haig, the President's lawyers,

Fred Buzhardt and Leonard Garment, were there. So also, for the first time at any Watergate discussion at which I had been present, was Charles Alan Wright, constitutional law authority and professor at the University of Texas Law School, who had argued the President's side of the tapes case before Judge Sirica and the court of appeals. I gave them copies of Cox's memorandum.

Wright had just been told about the Stennis proposal, and seemed so thoroughly convinced of the generosity and wisdom of the President's willingness to cooperate with it that I urged him to try his own hand at selling it to Cox. The others agreed that if Wright did not succeed in convincing Cox to accept the proposal, Cox would be fired.

Believing that Wright was not likely to succeed in persuading Cox to change his mind, I went to my office at the Justice Department Friday morning prepared to resign. As soon as I learned that Wright had indeed failed, I called Haig and asked to see the President, knowing what I had to do. But that meeting with the President never took place. When I got to the White House Haig had still another proposition, and it seemed that my need to resign had again evaporated: the tapes as verified by Senator Stennis would be submitted *to the court* and *the court* would be told that this was as far as the President would go, but Cox should *not* be fired.

The previous evening's cast of characters now reassembled in Haig's office. One of them handed me a copy of a letter from Archibald Cox to Professor Wright. Cox's letter said that he could not accept the requirement that he "must categorically agree not to subpoena any other White House tape, paper, or document." I asked why Cox's letter addressed this issue. I pointed out that in my negotiations with him, I had never attached any such restriction to the Stennis proposal. There must be some misunderstanding. This muddled the record and put the President's position in an unnecessarily bad light.

When I urged that a new letter be written to Cox setting the record straight, no one pointed out that there was no misunderstanding. No one said that Cox's letter correctly reflected the restriction put to him by Wright the night before. Cox, however, clearly recalls that Wright did in fact put it to him. And confirming Cox's recollection is the fact that Wright's follow-up letter *did not* withdraw the restriction and closed with the words: "The differences between us remain so great that no purpose would be served by further discussion . . ."

When I left the White House that Friday morning the idea of restricting Cox's right to pursue

other tapes and documents was still alive, though whether and how it was to be carried out was quite unclear. I had said that I thought Cox would resign if it were put into effect. As to what I might do myself I said nothing further; not having expected to leave the White House as attorney general, I had not yet had a chance to think through the implications of the new situation.

During the afternoon I called both Haig and Buzhardt to argue that the Stennis compromise should not be coupled with a restriction on Cox's future freedom of action, and to indicate my changed view that Cox would not be induced to resign by this device. My position was noted and I was told that there would be further consultation before any decision was reached. I had no reason, at the time, to think again of resignation.

At seven P.M. the same day, Haig read to me over the telephone a letter from the President which, he said, was already on its way to my office by messenger. The letter said: "I am instructing you to direct Special Prosecutor Archibald Cox . . . that he is to make no further attempts by judicial process to obtain tapes, notes, or memoranda of Presidential conversations . . ."

I was angry and upset. But it was not until my meeting with counsel for the House Judiciary Committee that I fully understood the significance of this sequence of events. The President, I finally realized, thought he had found a formula for getting rid of Cox without precipitating my resignation. I was not to know until the last possible moment that the restriction on Cox was an integral part of the White House plan. I was not told that the President had brushed aside my arguments against the restriction until his letter directing me to impose it was already on its way.

The plan confronted Cox with three possible choices. He would either have to acquiesce in the directive, which, from the President's point of view, would be fine; quit, which would also be fine; or refuse to obey the order, which would create a justification for firing him.

The letter itself arrived about twenty minutes after Haig's call. I telephoned Cox and read it to him, stressing the fact that I was merely informing him of it, not carrying out the instruction it contained. I telephoned him later that evening to let him know that I intended to release a brief statement making clear my objections to the President's instruction. (The statement was never released because I learned, after calling Cox, that the instruction had not yet been made public by the White House.)

After I returned home I discussed the situation

with Anne. It was clear that I could not carry out the instruction. To convey the idea of going out in style, she referred to being buried in a "mahogany coffin." Later that night, jotting down thoughts about what to do next, I captioned them "The Mahogany Coffin."

I spent most of Saturday morning translating my notes of the evening before into a letter to the President. Cox, meanwhile, announced a press conference, to be held at one P.M. My letter went to the White House just as it began. I caught Cox on the way into his press conference and read him the key sentences:

At many points throughout the nomination hearings, I reaffirmed my intention to assure the independence of the Special Prosecutor, and in my statement of his duties and responsibilities I specified that he would have "full authority" for "determining whether or not to contest the assertion of 'Executive Privilege' or any other testimonial privilege." And while the Special Prosecutor can be removed from office for "extraordinary improprieties," his charter specifically states that "The Attorney General will not countermand or interfere with the Special Prosecutor's decisions or actions."

Quite obviously, therefore, the instruction contained in your letter of October 19 gives me serious difficulty. As you know, I regarded as reasonable and constructive the proposal to rely on Senator Stennis to prepare a verified record of the so-called Watergate tapes and I did my best to persuade Mr. Cox of the desirability of this solution to that issue. I did not believe, however, that the price of access to the tapes in this manner should be the renunciation of any further attempt by him to resort to judicial process, and the proposal I submitted to him did not purport to deal with other tapes, notes, or memoranda of Presidential conversations.

With my close associates and friends I watched Cox's press conference in my sitting room at the Department of Justice. He took the third choice: he could not, he said, accept the Stennis proposal, and would go back to court for a decision on Nixon's apparent failure to comply with a court order. I did not have to wait long for Haig's call telling me that the President wanted me to fire Cox. I asked what time that afternoon it would be convenient for the President to see me.

My meeting with him was low-keyed but tense. Much was left unspoken. For me, by far the hardest part was having to refuse his urgent appeal to delay my resignation until the Middle Eastern crisis had abated.

"I'm sorry," the President said, "that you insist on putting your personal commitments ahead of the public interest." I could feel the rush of blood

to my head. "Mr. President," I said in as even a voice as I could muster, "I can only say that I believe my resignation *is* in the public interest." Nixon backed off, acknowledging that it was our *perception* of the public interest that differed.

Deputy Attorney General William D. Ruckelshaus had also sent over a letter of resignation. The President refused to accept it and directed General Haig to fire him instead. Who, then, would be left to fire Archibald Cox? The solicitor general, Robert H. Bork, was next in line. He believed that the President had the right to order Cox fired, and had no personal compunctions about wielding the ax. He felt, however, that if he went through with it he should then resign himself. "I don't want to stay on and be perceived as an *apparatchik*," he said. Bill and I persuaded him that this should not in itself be a sufficient concern to justify the drastic loss of continuity at Justice that would result if he also resigned.

In retrospect, I have difficulty understanding how Richard Nixon and his advisers could have assumed that I could be induced to fire Archie Cox on the grounds that he had rejected a proposal for verification of the subpoenaed tapes that was tied to a restriction on his access to other presidential tapes and documents. His position was not only defensible but right. I could never have construed it as amounting to an "extraordinary impropriety on his part."

The President, having vainly sought to make it appear that he had no choice but to get Cox fired, left me no choice but to resign. It was not a hard decision. My commitment to the independence of the special prosecutor was a pledge to the Senate Judiciary Committee, to the Senate as a whole, and through the Senate to my fellow citizens. And although I could have foreseen that the firing and the two resignations would in combination produce a considerable public uproar, I could not have guessed that, all across the country, many others felt as strongly about the day's events. Three million messages descended on the Congress, the greatest outpouring of its kind that has ever taken place. In my travels since then, great numbers of people have told me that they spent hours attempting to send a telegram but could not get through to Western Union.

Part of this reaction came from outrage over the attempted frustration of an honest effort by the special prosecutor to dig out the truth. It was a protest against the breach of a commitment to his complete independence. Many hungered for a demonstration of willingness to draw the line on an issue of principle. As Oliver Wendell Holmes,

Jr. once remarked, "We live by symbols." That Saturday's events provided the symbolic focus for a declaration of conscience on the part of the American people themselves.

Little is said of it now, but during the interval immediately after the departure from the Department of Justice of Archibald Cox, Bill Ruckelshaus, and myself, presidential power was asserted more blatantly than at any other stage in the whole sordid history of Watergate. During that brief period the FBI, on Richard Nixon's orders, occupied Bill Ruckelshaus' and my former offices at the main Justice building and barred access by members of the Watergate special prosecution force to their own premises at 1425 K Street. The President then ordered that Cox's entire staff be disbanded and that all Watergate investigative responsibility be turned back to the Criminal Division of the Justice Department. No new special prosecutor was to be appointed. And although Judge Sirica's order directing the President to comply with the pending subpoenas of tapes and documents had become final at midnight the previous Friday, the President instructed his lawyers to appear in court the following Tuesday and announce that he did not intend to comply with the order. He would instead submit to the court his own edited transcripts of the tapes. A government of laws was on the verge of becoming a government of one man.

Then the fire storm broke. The American people showed with unmistakable force that they would not tolerate a further abuse of power. Acting Attorney General Robert Bork insisted that the Watergate special prosecution force must retain responsibility for the investigation and that a new special prosecutor must be appointed. The overwhelming power of public opinion supported the acting attorney general's firmness. President Nixon capitulated. On the Tuesday which was to have been the day when only his own versions of the tapes were produced, his lawyers surrendered to Judge Sirica the tapes themselves. (More precisely, seven of the nine were turned over, and one of the seven had the notorious eighteen-and-a-half-minute gap.)

At his press conference on October 20, Archibald Cox had said: "Whether ours shall continue a government of laws and not of men is now for Congress to decide and, ultimately, the American people." Professor Cox was right, with this difference: it was the American people first, and only then the Congress, who decided that ours will continue a government of laws and not of men. □

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