

# V. Conclusion

This Final Report brings to a conclusion events that have now become part of history. For only the second time in our nation's history a President of the United States was impeached (and, for the second time, acquitted). For the first time a President was held in contempt of court, and for the second time a prosecutor was obliged to face the daunting task of determining how to resolve allegations of criminal conduct by a President. All will no doubt agree that the decisions recounted in this Report form an indelible part of the American historical record.

But there agreement is likely to end. In the search for the definitive meaning of this investigation, there remains the understandable quest for some larger message and clearer understanding.

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The operation of this Office stands comfortably within the operating principles of prosecutors and the work they do across the country to enforce the rule of law. The historical legacy of this independent counsel should be no different from that of any other prosecuting official. If this investigation leaves any meaning at all behind, it is the same one that should be derived from the work of any prosecutor's office—a conviction in the legitimacy of law enforcement and the judicial system, a commitment to liberty, an understanding of the proper role a prosecutor plays within our country, and a firm belief that justice is done when the law and the best interests of the public are satisfied.

Unfortunately, we have seen how cynics and political opponents too readily can impugn the integrity of those charged with investigating high-level government officials. This trend is symptomatic of a broader and more fundamentally destructive cynicism that threatens to grip the public—what *USA Today* has called a “poisonous national political atmosphere.”<sup>188</sup> The resolution of this Office's investigation should, in part, be seen as a rejection of that cynical view and a reaffirmation of the legitimacy of the courts, the political process, and the rule of law. It is far too easy to say that the outcome of a case turns on the politics of a prosecutor or a judge. The resolution of a criminal case should never be a partisan matter.

So too, we must realize that justice and truth are not found only in a prosecutor's office. They are found, far more readily, in the minds, attitudes, and sentiments of the American people. As Judge Learned Hand said many years ago: “Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it.”<sup>189</sup> Nor, one might add, can any Office of the Independent Counsel. In fulfilling our jurisdictional mandate, we bore in mind Judge Hand's admonition to all Americans: “The spirit of liberty is the spirit which is not too sure that it is right.”<sup>190</sup> Criminal investigations are not the proper venue

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<sup>188</sup> Editorial, *USA Today*, Nov. 27, 2000, at 25A.

<sup>189</sup> Learned Hand, *The Contribution Of An Independent Judiciary To Civilization, in The Spirit of Liberty* 155, 155–65 (I. Dilliard ed., 1953).

<sup>190</sup> *Id.*

to search for moral certainty—they are instead an effort to obtain just results within the narrow confines of the law.

If any one lesson is to be learned from this Office's experience, it is that a prosecutor can serve only one function—to seek justice under the criminal law. He or she cannot be, and should not be tasked as, an independent arbiter of ultimate truth. The institution and the nature of a prosecutor's office make him ill-suited to that task. When such a responsibility is conferred upon any official, it creates unreasonable and unrealistic expectations. And in asking the prosecutor to act beyond the normal ambit of his or her powers, we challenge the public trust and confidence in the prompt, effective, and fair administration of justice.

Simply stated, the ultimate role of a federal prosecutor is to serve the national interest by remaining, always, a public servant. As Attorney General Robert Jackson once said, a prosecutor at his best is one who “tempers zeal with kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.”<sup>191</sup> He must maintain the integrity of his office and his actions while doing justice as he deems fit. In concluding this investigation, we have acted as we thought just and as we thought the nation's interests demanded.

In the search for meaning from this episode in American history, two observations of former Watergate Special Prosecutor Leon Jaworski have special resonance: “From Watergate we learned what generations before us have known: our Constitution works.”<sup>192</sup> And, as Jaworski also said, we have reaffirmed the principle and the spirit of the law that “no one—absolutely no one—is above the law.”<sup>193</sup>

A generation later, let it also be said so here.

Respectfully submitted,

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<sup>191</sup> Attorney General of the United States Robert H. Jackson, Address at Second Annual Conference of United States Attorneys, at the Department of Justice, Washington, D.C. (Apr. 1, 1940).

<sup>192</sup> Leon Jaworski, *The Right and the Power* 279 (1976).

<sup>193</sup> *Id.*