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## Book Review

Fernand N. Dutile

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## RECENT BOOKS

### BOOK REVIEW

*Confession and Avoidance.* By Leon Jaworski with Mickey Herskowitz, Garden City, New York: Anchor Press/Doubleday, 1979. Pp. 325 (including index). \$10.95.

*Reviewed by Fernand N. Dutille\**

We have grown accustomed in the United States to the person who shuttles in and out of public life depending upon his availability, the political party in power and the nature of the current crisis. Like Clark Clifford and Averell Harriman, Leon Jaworski represents this type at its highest form of development. Such public servants, who typically have independent careers (or at least independent incomes), represent a valuable resource to the country not only because they can be called upon according to the particular talents required by the moment but also because they present a certain independence and breadth of experience not typically possessed by the "career" government employee.

During more than a half-century "in the courtroom," Jaworski has been firmly anchored in private practice in Houston, Texas (where he is a senior partner in the 250-lawyer firm of Fulbright and Jaworski). He has sallied forth from this setting on a fairly consistent basis to participate in such visible matters as the war crimes prosecution in Europe, a Texas election suit in behalf of then-Senator Lyndon Johnson (whose running for both the Senate and the vice-presidency simultaneously was being challenged in court), the prosecution of Mississippi's former governor Ross Barnett for alleged contempt in connection with his resistance to the desegregation of the University of Mississippi in 1962, the Warren Commission investigation of the assassination of President John F. Kennedy, the Watergate prosecutions (which contributed most to his fame) and, most recently, the investigation of Korean pay-offs to various members of Congress.

*Confession and Avoidance*<sup>1</sup> deals with all of these matters (and more). Since each could itself provide the basis for a full book, it is not surprising that *Confession and Avoidance* is more anecdotal than deep. None of the events is dealt with comprehensively. The volume, in short, is not written for the lawyer or, for that matter, for the historian (although both will enjoy it). Written for the average reader, it is, as they say, a "good read."

The volume is a testimonial to service. On many occasions when convenience surely would have dictated otherwise, Jaworski sacrificed a relatively secure situation to serve the public weal. Indeed, this was true not only of his enlistment into the military during World War II but more especially of his decision to extend his stay in the military ("long enough to help prepare the

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\* Professor of Law, Notre Dame Law School and Member of the Maine Bar; A.B., Assumption College; J.D., Notre Dame Law School.

<sup>1</sup> Jaworski chose this title to his memoirs based upon its legal meaning, namely, that the defendant performed the conduct but should be, for legal or moral reasons, excused.

case against those in charge of the Dachau concentration camp . . .') despite having already earned discharge eligibility.

Much of his devotion to the public good centers about the importance of obedience to law. With regard to his participation in the prosecution of Ross Barnett for contempt, he observes:

A more dangerous issue than the social implications of the [James] Meredith case was at stake. Put simply, it was: Can a state, or a public official, or a mob, defy the authority of the United States of America? Is the federal government indeed sovereign and paramount, or can the orders of its courts be ignored and the authority to enforce them resisted? In this context, the Meredith case went far beyond the issue of integration versus segregation. It reached to the very soul of our system and, indeed, brought into question whether we had a government at all.<sup>3</sup>

His strong respect for civil authority seems even to exclude the legitimacy of civil disobedience. Rather than honor those who, willing to pay the price of the civil penalty, choose the way of conscience over that of a conflicting civil authority, he states:

The idea that a person can choose which laws or court orders to obey, and which to defy, is dangerous, even poisonous to our system of government. To say that, if one's conscience speaks to the contrary, one is justified in ignoring the law is the same as saying that the rule of law is not to be the yardstick of our society's conduct. If a civil rights leader disobeys a law because it offends his moral belief of what is right, then will a segregationist not feel free to do the same? And if an exception is tolerated, where is the line drawn? A conscientious objector to the income tax, for example, might find such a philosophy quite appealing.<sup>4</sup>

It would have been enlightening had Jaworski chosen to elaborate on this provocative paragraph. When is disagreement based on conscience (as opposed to political view, social view or even convenience)? Does it not make a difference what kind of civil authority is being disobeyed? There seem clear distinctions to be made among those who "civilly disobey" in a nonviolent context (*e.g.*, a sit-in to protest segregation, a failure to pay taxes) as a matter of conscience, those who commit violence as a matter of conscience and those who refrain from commanded violence as a matter of conscience. Relevant to this last category would be the principle clearly established in the war crimes trials, namely, as Jaworski himself puts it, "that every individual must take responsibility for his or her actions, even while carrying out the orders of a higher authority . . ."<sup>5</sup> Not only does this principle seem to endorse the *right* of a person to disobey civil authority that is morally wrong, but even the *duty*. The book does nothing to reconcile the apparent tension between Jaworski's civil disobedience views and the principle he so commendably enforced in the war crimes setting.

Other inconsistencies in the book are troubling. He justifiably inveighs

2 L. JAWORSKI, *CONFESSION AND AVOIDANCE* 112 (1979).

3 *Id.* at 148.

4 *Id.* at 157.

5 *Id.* at 74.

against the abuses of power by the Nixon crowd in connection with Watergate and impliedly praises Judge John Sirica who “alone, raised it beyond the category of a third-rate burglary.”<sup>6</sup> He fails to consider the possible similarities, in terms of the end justifying the means, in the conduct of the Nixonites and that of Sirica who, after all, could be argued to have manipulated the trial rights of the defendants and adjusted his duties as a trial judge to deal with the larger issue, as he saw it. (That we might prefer his “end” to that of the Nixon people does not negate the issue.) Indeed, it is interesting to note, in a comparatively trivial context, to be sure, Jaworski’s rationalization of his own misleading conduct, his own “the end justifies the means” attitude. Fearing that his World War II military commission might be delayed due to concern about his blood pressure and heartbeat, Jaworski visited his family doctor prior to additional military tests that had been ordered. The family doctor, feeling that Jaworski’s condition was due to overwork in clearing his desk prior to entering upon active duty, gave Jaworski pills “that would, as he put it, ‘slow me down.’”<sup>7</sup> At his subsequent military checkup, his blood pressure, due presumably to the two pills he had recently taken—without the knowledge of the military technician—was almost too *low*. He was accepted. Explains Jaworski:

It had not occurred to me that I had outfoxed the Army . . . Uncle Sam needed you. In my case, I knew I was healthy. The numbers had been deceptive; not me.<sup>8</sup>

On another occasion in the book, Jaworski states that he believes the death penalty should only apply to those who kill law officers or hostages, or to convicts who kill while attempting an escape. In the paragraph immediately preceding this observation, Jaworski says of a client, who did *none* of these things, “If anyone ever deserved capital punishment, it was [he].”<sup>9</sup> (It must be added, however, that Jaworski’s tireless, creative, and compassionate defense of that very client makes for an edifying and inspiring account, indeed.)

Not surprisingly, the most interesting part of the book concerns the author’s observations on Watergate. Here, for the first time, Jaworski publicly reveals his belief that Nixon himself erased the missing part of the famous June 20, 1972, tape:

[O]nly the President had access to both the tape and the machine. And only he knew what was on the tape, and what portion might be incriminating.<sup>10</sup>

Here, too, are Jaworski’s explanations of some of his controversial Watergate decisions and his reaction to David Frost’s Nixon interview.

Although *Confession and Avoidance*, due perhaps to its more anecdotal style, is occasionally disjointed and although it fails, for the same reason, to probe

<sup>6</sup> *Id.* at 225.

<sup>7</sup> *Id.* at 77.

<sup>8</sup> *Id.* at 78.

<sup>9</sup> *Id.* at 44-45.

<sup>10</sup> *Id.* at 237.

some of the fascinating issues involved, it does provide a fast-moving and exciting account of the professional life of a dedicated lawyer who, admitted to the Bar of Texas at the age of nineteen, undertook matters of great importance and controversy, matters which occasionally earned him the antagonism of large segments of the public. While providing us with many valuable insights into other public figures, Jaworski wittingly and unwittingly affords us a meaningful view into himself, a person who, while surely not a god, as the pettiness and humanity of some of his observations reveal, nonetheless established himself as a truly great lawyer, the title by which, one guesses, he would most like to be remembered.

## BOOKS RECEIVED

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