

Rush to Judgment

In World War II, Houston attorney Leon Jaworski prosecuted a group of black American soldiers. In a hurried-up trial, they were court-martialed and sentenced to hard labor. The verdict was probably wrong. And Jaworski had a lot to do with that.

BY JOSH HARKINSON
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In Seattle's Fort Lawton, American staff sergeant Grant Farr was dozing in his bunk as three Italian prisoners sprinted past his window at top speed. A few minutes later, Farr thought he heard a distant crash but dismissed it. He was drifting off to sleep when his door flew open. "Negro troops!" an Italian yelled. "They are going through the barracks!"

Rocks and lumps of coal pounded the outside walls. A window shattered.

It was a dark summer night in 1944, and Farr, a translator, had been working with a select group of Italian prisoners who were employed by the U.S. Army as cooks, mechanics and cleaning people. The Italians were stationed for their own safety in a separate area at Fort Lawton, which just happened to be next to the base's other segregated encampment: the "Colored Area," where black soldiers were kept separate from whites. The army's segregation strategies were now dramatically breaking down.

Farr stepped out of his bedroom into his office and dialed the sergeant of the guard while more than a dozen Italians poured in. Many cradled bruised limbs. As Farr hung up the receiver, a brick slammed near the phone, missing his head by inches. Black soldiers stormed inside, hurling rocks, sticks and a stool. "I am an American soldier! Stop this!" yelled another translator. He was decked with a tent pole.

By now, the two-acre Italian area swarmed with African-Americans. Some, such as Les Stewart of Austin, would later say they merely walked down to check out the ruckus. Others, such as Houstonian Arthur Hurks, would say they tried to turn their comrades back, but without much luck. In Barracks 708, black soldiers battered Nicola Correa with clubs, poles and fence pickets. Beneath Barracks 709, they lunged for Vittorio Bellieni with a board and a knife. Italian Private Guglielmo Olivotto dashed for cover in the woods. He would later be found dangling beneath a tree from a noose.

Back at Farr's office, the rioters axed through the door. A tall black soldier stood in the doorway and tried unsuccessfully to hold back the throng. They clubbed Italian First Sergeant Agosto Todde and slashed his face with a knife. Stepping forward, Farr again yelled that he and many other whites inside were Americans. A knife missed an Italian next to him and plunged into Farr's upper arm. He gasped as the man was smacked to the floor and booted in the face.

Now fearing for his life, Farr rushed forward and stood jowl to jowl with the tall black soldier. In his loudest voice he roared, "I...am...an...American...soldier!" The black soldier clenched Farr's good arm. "You come with me," he said. "We're not after you." He pulled Farr out of the building as beery groups of soldiers angled toward them. "We done here now," he proclaimed. "This man, he is American. You let him be now, let him be, I say."

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By the time military police re-established order, 26 Italians were hospitalized and one was dead. Slipping through the grip of army censors, news of the riot outraged the Italian government and prompted fears in the United States of a scarred rapprochement. The U.S. Army's top brass called for swift justice. They brought in one of their best military prosecutors, Houston-based Colonel Leon Jaworski.

In what would become the largest and longest court-martial of World War II, Jaworski prosecuted 43 soldiers. All came from the Colored Area and many -- more than any other grouping -- hailed from Houston. More than half of them were convicted and sentenced to terms of up to ten years of hard labor.

Jaworski's success in the closely watched trial helped him launch a career that would include trying Nazi war criminals in Europe, serving as President Lyndon Baines Johnson's personal attorney and prosecuting the Watergate case that ousted President Richard Nixon, a case that earned Jaworski the respect of a generation of Vietnam-era idealists. Founder of the prestigious Fulbright & Jaworski law firm, he is unquestionably Houston's most successful, renowned and apotheosized lawyer.

But Jaworski's three autobiographies make little mention of the Fort Lawton court-martial -- probably for good reason. An investigation spanning two decades by a dogged Seattle-based journalist recently uncovered how Texans Stewart and Hurks, as well as many other black soldiers, were probably wrongly convicted, becoming scapegoats for the army's own incompetence. The surviving veterans of the court-martial and

their relatives are now calling for justice. Far from being a hero in the final days of World War II, they argue, Jaworski was a man who put his own interests ahead of defending justice.

In 1987, television reporter Jack Hamann visited Seattle's Discovery Park on a thankless assignment to cover the expansion of a sewage treatment plant. Bored, Hamann chatted with a park ranger about the former military base's most mysterious attraction: In a separate plot inside the old Fort Lawton cemetery, a single Roman-style column was inscribed in Italian. Curious, Hamann copied the date on the headstone -- 14 Agósto 1944 -- and decided to investigate.

A search of newspaper articles from the period revealed the bizarre tale: an Italian prisoner of war lynched by a mob of rioting black soldiers. "It was shocking," Hamann says. Most people in the Pacific Northwest thought lynchings had happened only at the hands of Southern racists.

A former lawyer, Hamann was intrigued and researched the incident for nearly a year. When his piece flashed onto television screens in two half-hour segments, it featured his interviews in Texas with convicted black veterans who still pled innocence. "Les Stewart just looked me in the eye and said as simply as can be, 'We didn't do it,'" Hamann recalls. But, he adds, the denials clashed with the story's hard evidence. "I think someone might have watched that and thought, 'Well, of course that's what they're going to say.'" "

Hamann wasn't so sure. Fifteen years later, Stewart's unflinching claims of guiltlessness still haunted him. He decided to dig deeper.

In 2002, Hamann visited the National Archives in College Park, Maryland. His wife, Leslie, spent weeks rifling through disheveled crates, until one afternoon she pulled out three fat folders: the Cooke Report. Declassified in 1981 but never unearthed, the independent investigation of the riot included Brigadier General Elliot Cooke's interrogations of 160 officers and suspects. It would become the basis for Hamann's book, *On American Soil*. Winner of this year's prestigious Investigative Reporters and Editors book award, it shows how Jaworski's seemingly iron-clad case should have been torpedoed:

- Almost all the physical evidence of the riot had been destroyed at the scene by the military's own police and senior officers.
- Anecdotal accounts of the riot, which provided the sole basis for most convictions, often came from witnesses who may have been trying to get the best possible deals for themselves on plea bargain. Several of their statements to Cooke contradicted key parts of their subsequent court testimony.
- Some soldiers not charged by Jaworski clearly should have been, including a white man who would have been a leading murder suspect.
- The statements of several witnesses supported a theory that white soldiers, instead of a group of alleged black ringleaders prosecuted by Jaworski, had incited the riot.

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- Jaworski won convictions of black soldiers whom numerous witnesses had described as peacemakers during the riot.
- The Cooke Report, a 1,500-page piece of evidence, was never released to the defense attorney.

Nobody disputes that the riot took place or that black soldiers were involved. Indeed, the conflict still can be traced to the poor judgment of a single black private in the Colored Area: Willie Montgomery hurled drunken slurs and charged at Guiseppe Belle as the Italian returned from a night on the town. Belle swung at Montgomery in self-defense and knocked him cold. Many black soldiers at the scene, thinking Montgomery had been seriously injured, charged down a hill into the Italian Area seeking revenge.

But the drunken fight was only part of the story. No more than ten days before the riot, the black soldiers, who were set to ship off the next morning to help fight the war in New Guinea, had been shown a propaganda film, *Baptism of Fire*, in which soldiers were exhorted to "Kill or be killed." Yet after the screening, measures were never taken to buffer the soldiers from the Italians whom they'd just been exhorted to massacre.

Instead, some of the few official keepers of the peace on duty that night fanned the violence, witnesses told Cooke. Black soldier William Jones said he thought he saw a white military policeman chasing Italians around the barracks. Willie "Slick" Curry, a black soldier from Shreveport, told an investigator that a white MP handed a flashlight to Herman Johnson, a black corporal, as he stood outside the door of an Italian barracks, and told him, "Go in and flush them out." Johnson and Curry went inside and beat every Italian they saw. Another black soldier said he saw a white MP in a jeep tell a black soldier, "You done a damn good job and saved us a job."

In the days leading up to the riot, white soldiers had clashed with Italians in the Post Exchange and elsewhere. Defense attorney William Beeks knew this but, lacking access to the Cooke Report, couldn't connect the incidents to the riot. He didn't know that the white soldier who had started the fight in the Post Exchange was Tex Stratton of Dripping Springs. Or that the MP who had responded was Stratton's friend, Clyde Lomax. A lot of evidence from the Cooke Report pointed to Lomax as the riot's out-of-control white MP.

A swamp boy from Louisiana prone to calling black people "niggers," Lomax was the first person to discover trouble brewing at the black barracks. He claimed that he heroically carried an injured African-American soldier to safety, notified his command and returned with a carload of MPs to quell the riot. But Lomax's story was contradicted in the Cooke Report by numerous other witnesses, Hamann says. The corporal of the guard that night said he wasn't notified of the riot by Lomax, but instead by the phone call from Farr. Lomax didn't show up until a half-hour later. Indeed, none of the other MPs who responded to the riot recalled seeing Lomax in the area. Five hours later, it was Lomax who directed a jeep through the woods to the remote spot where

Olivotto's body was discovered hanging from a noose. The Cooke Report strongly recommended that Lomax be court-martialed.

Instead, Lomax became a flawed star witness for Jaworski's prosecution. His recollections of the black soldiers' call to arms were parroted the next day in the press, which had no reason to suspect his credibility. "They've got one of our boys and we're going to mob them!" the Seattle Post-Intelligencer quoted. The paper described Lomax's testimony as a "fitting climax" to the second week of the trial.

Lomax might have been a more apparent suspect if Fort Lawton officials hadn't hopelessly bungled the post-riot investigation. Savaging the conduct of the fort's senior officers and their MPs, the Cooke Report found they had made no effort to detain or even identify rioters; they had ordered that the smashed barracks be cleaned and repainted before fingerprints could be collected; and within hours of discovering the body of Private Olivotto, they had allowed more than 100 exercising soldiers to jog straight through the crime scene. In the ensuing months, several of them would be quietly replaced or kicked out of the army.

Given such incompetence, most of Jaworski's case hinged by necessity on the testimony of eye witnesses. Yet a lot of this testimony was coerced; Jaworski was famous for his ability to scare witnesses into plea-bargaining. Beeks hammered away at the issue in trial, but he could never prove the harsh methods could have altered the soldiers' stories. The Cooke Report could.

For example, Corporal Willie Ellis of Houston singled out fellow Houstonian Arthur Hurks during the trial as one of the rioters. Yet testifying to Cooke, Ellis had initially implicated another four soldiers, but then admitted under pressure that he'd been lying. Hamann believes Ellis was making up his story in an effort to win a lighter sentence. "Ellis was a real snake," he says. "He was doing anything he could to get himself off, and that included fingering Hurks."

Hurks, in fact, had been named in the Cooke Report by a half-dozen witnesses, both black and white, both soldiers and MPs, as someone who never went to the Italian Area, as a hero who instead stayed in the black barracks and tried to dissuade his fellow soldiers from joining the riot.

He wasn't the only soldier convicted despite an alibi. Testimony in the Cooke Report points to John Hamilton of Houston, a man later sentenced to eight years of hard labor, as someone who should have instead been praised for rescuing Farr, whose description of his savior matches Hamilton's height and prominent ears. Farr's version of events almost exactly corroborates Hamilton's own statements at the time, as well as Hamilton's interviews with Hamann years later in Houston, when the veteran recalled, "I told them he was an American."

Clearly, the Cooke Report would have turned the trial upside down had Jaworski, the only man who'd read it, followed his duty to release it.

At the outset of the trial, Beeks was told that the contents of the Cooke Report were top secret and not available to either attorney. In reality, Jaworski was not only intimately familiar

with the report but he had even sat in on many of the original interrogations.

Near the end of the trial, Beeks finally suspected that Jaworski had been misleading him. Jaworski brazenly used testimony straight from the Cooke Report in court, prompting Beeks to turn to his rival and demand a copy of the investigation. Jaworski claimed Beeks didn't have the proper security clearance and would have to petition the secretary of war. "And if you can get the same authority, you can get this," he said. "But don't ask me. I have no authority to turn it over to you."

"Well, I think the court has the authority to make that available," Beeks countered. Although the judges didn't have the report, a sympathetic adjudicator pledged to seek it for Beeks. Jaworski was apoplectic. "Oh, no, that is entirely improper!" he blurted. Jaworski was the only person involved in the trial who knew anything about the report's testimony. The next morning, he approached Beeks and offered a deal: If Beeks would drop his request for the report, Jaworski would share select portions of any testimony he used. Beeks agreed, having no idea that he was bargaining away 1,500 pages of documents that could have blown a hole in Jaworski's case.

In reality, as the trial judge advocate, Jaworski was bound to volunteer the report in its entirety. "While his primary duty is to prosecute," states the 1928 Manual for Courts Martial, "any act (such as the conscious suppression of evidence favorable to the defense) inconsistent with the desire to have the whole truth revealed, is prohibited."

Jaworski would later brag with impunity about complying with the same court-martial rules that he'd apparently broken. "I traveled across the country to other commands, at their request, to serve as trial judge advocate," he wrote in Confession and Avoidance. "In the Army, at that time, this position compared to that of a prosecutor, except that the trial judge advocate was sworn to divulge all the facts in his possession, no matter which side was helped."

Rutgers law professor Beth Hillman, author of *Military Culture and the Cold War Court Martial*, says Jaworski undeniably crossed an ethical line. "It seems clear that his actions in that case violate the code that binds prosecutors," she says. "There's not much doubt about it. Having that big report is a problem."

Harris County District Attorney Chuck Rosenthal agrees that the duty of prosecutors to turn over evidence is normally crystal clear. "Anything that comes to our knowledge that's exculpatory, we've got to give to the defense," he says, "and there's no exception to that."

Before Hamann researched *On American Soil*, he never thought Jaworski would intentionally subvert justice. Like many people of his generation, Hamann grew up idolizing Jaworski as the conscience of power and the bearer of truth in an age of duplicity. "Jaworski's reputation is pretty much unsullied," he says. "He was viewed as an amazing leading light, and this book is the first I know of that casts any aspersion on his reputation and record. In this book, Jaworski behaves just abominably."

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In March 1974, while Jaworski was in Washington, D.C., pressuring the Nixon administration to release the president's secret tapes, Robert Draper left Houston to stay with his grandfather in his suite at the Jefferson Hotel. The 16-year-old idolized Jaworski. "He was a great guy to hang out with, really a wonderful grandfather, who taught me to throw a curveball," he says. "But also, he really provided a kind of template for achievement for a kid growing up. In other words, the idea of obtaining success and fame was not a fiction; I actually witnessed it take place, and not by dint of luck but rather by hard work and, for that matter, personal convictions."

Draper, a former Houston-based staff writer for Texas Monthly who now covers Washington politics for GQ, defends Jaworski with the same diplomatic petulance that his grandfather probably would, accusing Hamann of tackling a noble subject sloppily. He says Hamann negligently failed to interview any of Jaworski's surviving relatives, and could have tracked him down by simply Googling "Jaworski" and "grandson." "It seemed a bizarre omission," he says. "We could have given the author some perspective on Jaworski and what motivated him."

Jaworski was motivated in the early days by blinding ambition, Hamann argues. The author accuses Jaworski of ramming through the 1944 court-martial in an effort to impress the military's top brass, who he hoped would appoint him to the prestigious job of prosecuting Nazi war criminals. Jaworski confessed in his memoirs to lobbying hard for the assignment. Hamann later connected the dots, finding a letter Jaworski wrote to his wife at the outset of the court-martial. "Honey, this is a really big job I am on," the lawyer wrote. "It's being watched closely in Washington." Later he wrote to his brother-in-law "Boots" Trautschold: "Boots, I am up to my ears in the biggest job I ever tackled. I hope I can prove equal to it. It will be the biggest trial the War Department has had in this war." The letters led Hamann to conclude that Jaworski was preening. "He saw this case as the big way he was going to get that plum assignment."

Draper suggests his grandfather could have just as well been motivated to withhold the Cooke Report for more innocent reasons, such as deference to higher military authorities -- an understandable impulse during a sensitive time of war. Yet legal scholars are less forgiving. Court-martial expert Hillman points out that Jaworski effectively declassified the report when he used sections of it in the trial. "Once he used that information," she says, "it doesn't seem reasonable to continue to not disclose the rest."

In his writings Jaworski would later deny that he'd ever had any prosecutorial motive other than to seek justice. "I wouldn't try a prisoner of war nor any accused without the conviction that he was guilty," he wrote in his autobiography. "I just wouldn't do it! Either I had the goods on him, or I just wouldn't try him."

Draper concedes that the words ring somewhat hollow. He recalls his grandfather once describing the court-martial to him as a "very unfortunate case," and leaving the matter at that. "I do think he was a very moral person," he says, "but I also think his morals flinched now and again, as do ours all. He just was not particularly given to admitting that, and was in

fact at times instead given to asserting the opposite. And Jack's got him there."

Jaworski's imperfect morality also extended to racial issues. Himself a victim of discrimination -- he was denied admission to the Houston Country Club because his name sounded Jewish -- Jaworski also defended it, representing the University of Texas, for example, in its fight against campus integration. But in other cases he battled racism, even when it meant offending his neighbors. As a young attorney in Waco, he vigorously defended a black murder suspect in the face of pressure from clients who intimated to take their business

elsewhere, anonymous threats of violence against his family and taunts from longtime friends. And he later prosecuted Mississippi Governor Ross Barnett for flouting a federal court order demanding that he admit black students to the University of Mississippi. Taking on the job made Jaworski so unpopular in Houston that

police were assigned to guard his home. "The so-called friends wailed in anguish," he wrote. "Strangers denounced me, the cranks threatened."

Jaworski's success in such cases also shows that the court-martial was not a make-or-break moment for his overall career, Draper argues. "It's disingenuous to suggest that but for this case Leon Jaworski would have toiled forever in obscurity," he says. "This was a very, very talented, driven and ambitious individual."

Even if ambition drove Jaworski over an ethical line, he shouldn't be singled out as the sole target of blame. Hamann and Draper agree that the judges in the case could have used their authority to compel him to hand over the report.

Still, even Draper ultimately qualifies his defense of Jaworski. "The conclusion that I drew about my grandfather a long time ago was that he was a great man but also greatly flawed," he says. "And that's probably the only kind of great man there is."

Michael Stewart measures his father's greatness by the number of strikes against him. The Jim Crow South. The lack of college. The dearth of connections. Eleven kids to feed in his two-bedroom house on the wrong side of the tracks. He was a man who always worked two or more jobs to make ends meet -- repairing cars, driving cabs, snapping photos in nightclubs, humping a rifle for the National Guard. And still he never complained. Indeed, the biggest strike against Les Stewart might have been the one he kept secret, even from his sons, until the day in Austin when Hamann showed up.

Hamann's visit in 1987 triggered feelings that Stewart had repressed for decades. Hamann recalls his bitterness -- the most he had seen in any of the veterans -- as he told his sons for the first time the story of the riot, painfully recalling how he had remained on the sidelines while the chaos of the riot raged around him. "It hurt him to be wrongly accused," says Michael Stewart, a cherubic southwest Houston postal worker. "It hurt his heart more than anything, because my dad is a man of integrity."

During the court-martial, Stewart had been identified by only two men. One was Farr, who grew up in Utah and had admitted he'd seen few black men before joining the army. He

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identified Stewart by the “upright” hair on his head, yet a photo taken of him near the time of the riot showed his hair as close-cropped. Stewart’s other accuser was Italian prisoner Agosto Todde. Hamann later discovered that Todde had been identified at a prison camp as a fascist sympathizer and had been sent to join the lightly supervised Fort Lawton group by mistake. Todde had suspiciously identified a whopping 17 black rioters, even though the night had been dark and other victims had been able to finger only one or two.

Sentenced during the court-martial to eight years’ hard labor, Stewart served two years and opted back into the army under a program that allowed him to earn an honorable discharge. He served nearly six years’ active duty, including a stint overseas. On his way back from a posting in Korea to his home in Austin, his train was stopped at the Texas border, he told Hamann. The black soldiers on the train were commanded to disembark and head toward the back to a car reserved for Negroes.

Despite the unflagging racism and the two-year hole in his life, Stewart, who died in 1992, remained a faithful military man. He served for 25 years as a reserve officer in the National Guard. He wore his uniform “like a badge of honor,” his sons recall. He even talked up the military as a career move, “a great opportunity for somebody to be a man.”

With his father’s blessing, Michael Stewart enlisted in the army in November 1985 and graduated from basic training three months later at Fort Leonard Wood, Missouri. Four years later his tall and muscular brother Mark joined him. “To me it was to prove something to [Dad],” Mark Stewart says. To show him that “I can go out and do it and be successful.”

Yet the brothers quickly found that army life didn’t meet their rosy expectations. Mark Stewart was sent to Operation Desert Storm in Iraq, where he says white soldiers were given preference over him and other blacks for trips home. Michael Stewart believes that, at a base in Germany, he was unfairly disciplined for a work absence by a racist white officer. “To be honest,” he says, “I dealt with prejudice pretty much my whole active duty career.”

Sour personal experiences with race in the army have made the Stewarts strong supporters of a bill in Congress that, 60 years after the fact, would reopen the books on the court-martial. Sponsored by Representative Jim McDermott (Democrat, Washington), House Resolution 3174 would reinvestigate the riot with an eye toward compensating any soldiers who were wrongly convicted. “I think there is reason to believe that some of these soldiers may have been victims of racial injustice,” McDermott says. “We need to know, and we need to redress any error or injustice.”

The bill is stalled in the Armed Services Committee behind pressing legislation dealing with Iraq, but has the backing of many members of the armed forces, some of whom see eerie parallels with the modern Abu Ghraib court-martial, in which senior officers have been accused of a cover-up. “Most general officers, they would say that if justice was done incorrectly, we should correct it,” says Bud Ray, a Fort Lawton-based officer who handles equal opportunity issues

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for the army across the Pacific Northwest. “Of course, they are not going to stand up and say right off [the black soldiers] were railroaded, but of course, all the evidence suggests that’s exactly what happened.”

Would Jaworski have agreed? The answer might be beside the point. “I’m sure he got pressure from higher-ups, too,” Michael Stewart says, with a surprising lack of bitterness, “but where do you draw the line? Apparently, his career came first.”

Sentenced to hard labor for rioting along with 28 other black soldiers in 1944, Samuel Snow, 88, is now one of only two who are still alive. But his memories of the riot and his conviction -- wrongful, he says -- remain vivid.

As the riot gathered force in 1944, Snow walked down a hill to the Italian Area to retaliate against the Italians for punching out a friend. Before he made it very far, however, he was knocked out by a blow or a rock that came out of nowhere, he says.

Snow later confessed to being involved in the riot, but only after an investigator threatened him with death if he remained silent. The officer laid a noose on the table in the interrogation room, he says, and evoking the threat of the lynch mobs that were still common in Snow’s native Florida, suggested that Snow would be dangling from it if he didn’t admit his guilt.

“They just scared them boys in all kinds of ways,” he says. “They was cruel to us, very cruel.”

Journalist Jack Hamann found that no witnesses on the night of the riot ever saw Snow attack anyone. Even so, Snow was sentenced on the force of his confession to a year of hard labor.

He was forced to march on long drills and pick up trash. “They say, ‘Do this and do that,’ that’s what I did,” he remembers. “I didn’t pay no attention. But lots of them boys, they kicked against it, and I been knowing, you can’t kick against a parade.”

After serving his sentence, Snow was released on dishonorable discharge.

The stigma made it hard for Snow to find a job; he was ineligible for government positions and ultimately landed work as a janitor at a whites-only Methodist church.

Snow persevered, sending his two sons on to college. In the ‘50s, he convinced army officials to change his discharge record to honorable, qualifying him for veterans’ benefits.

He now says the army owes him pension back pay for the period after the war. He hopes House Resolution 3174, a congressional bill that would reopen the books on the court-martial, will help him get it.

Overall, Snow’s memories from the war are bittersweet. “I know I came from a segregated community, and I found I was in a segregated army, but I loved it,” he says. “I wanted to do everything I could for it. All them guys who were in that segregated army, they loved it, but they wasn’t treated right.”

-- Josh Harkinson