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Politics and the Prosecutors

ONE OF THE important questions underscored by the transcripts recently released by Mr. Nixon, is the role the original Justice Department prosecutors played (intentionally or not) in the Watergate cover-up. At the urging of Sen. Sam J. Ervin, the Senate Judiciary Committee has made a timely decision to explore that complicated question by enlarging its hearings on the pending nomination of Earl J. Silbert to be U.S. Attorney for the District of Columbia. Mr. Silbert, who headed the local prosecution team in charge of the Watergate investigation until the Special Prosecutor was named in May 1973, has already been quizzed extensively by Sen. Philip A. Hart and others. Now the Judiciary Committee wants to hear from former Attorney General Richard G. Kleindienst and Assistant Attorney General Henry E. Petersen, who should be able to shed further light on what pressures and influences Mr. Silbert and his team were subjected to.

Previous testimony has already shown that the prosecution efforts during 1972 and early 1973 were marked by a pronounced deference to people in high places and a willingness to focus on the Watergate break-in as an isolated crime. Thus Maurice Stans was permitted to give a private deposition, rather than being summoned before the grand jury in the summer of 1972, after John Ehrlichman had complained to Mr. Petersen about the political impact of adverse publicity. Thus Mr. Petersen told Mr. Silbert not to pursue Donald Segretti's "dirty tricks" and his ties with the President's lawyer, Herbert Kalmbach, because that was unrelated to Watergate. Thus the prosecutors downplayed testimony linking the financing of the break-in to John N. Mitchell and Mr. Stans. And thus Mr. Silbert, in his summation to the jury, even asserted that G. Gordon Liddy and James McCord "were off on an enterprise of their own."

Mr. Silbert defends the conduct of the probe by arguing, essentially, that his team was faced with a stone wall of silence and lies, and that the only way to break the larger case was to convict the original "Watergate seven" first and then compel them to testify. However logical and proper this approach

might seem when viewed by itself, the fact is that it coincided in effect, if not intent, with the schemes of containment and cover-up. The question is whether this was merely coincidence. John Dean suggested one answer when, according to the March 21 transcript, he told President Nixon that Mr. Petersen "believes in you . . . I don't think he has done anything improper, but he did make sure that the investigation was narrowed down to the very, very fine criminal thing which was a break for us."

That conversation, in which Mr. Dean also called Mr. Petersen "a soldier," is one of several transcripts which raise questions about the assistant attorney general's performance. On the strength of his long career record and his testimony before the Watergate Committee last August, Mr. Petersen has been widely applauded as a tough, incorruptible prosecutor. He was the one who said, for instance, that "prudence" had led him to counsel against giving the FBI's raw reports to Mr. Dean. But the transcripts suggest that he was, at the least, imprudent or naive in giving Mr. Dean so much other information as the early probe progressed, and in working so closely with President Nixon later on. During the crucial days of mid-April when the cover-up was coming apart, Mr. Petersen, the good soldier, was talking very frankly with his commander-in-chief, and Mr. Petersen was being spun. As one example, on the night of April 16, Mr. Nixon assured him that "anything you tell me, as I think I told you earlier, will not be passed on . . . because I know the rules of the grand jury." So Mr. Petersen related what the grand jury had done that day—and the next morning Mr. Nixon discussed it all with H. R. Haldeman and Mr. Ehrlichman.

The Judiciary Committee can perform a great service by asking hard questions and insisting on straight answers about these tangled events. It may emerge that Mr. Petersen and Mr. Silbert acted in good faith and that their greatest flaw was excessive trust in the rectitude of their superiors. But the real lesson here may be that good soldiering and good prosecuting sometimes cannot mix—whatever the committee may conclude about Mr. Silbert's fitness to be U.S. Attorney.