

NYTimes

MAY 1 1973

Government by Example

By Arthur J. Goldberg

WASHINGTON—Almost fifty years ago, Mr. Justice Brandeis, dissenting in the famous wiretapping case, *Olmstead v. United States*, said: "Our Government is the potent, the omnipresent teacher. For good or evil, it teaches the whole people by its example."

He was joined in dissent by Mr. Justice Holmes, who described wiretapping as a "dirty business."

Now, government is not an abstraction; it is people, elected or appointed to serve our body politic. What Justice Brandeis said of government is, therefore, equally applicable to the individuals who run the Government—"for good or evil, they teach the whole people by their example."

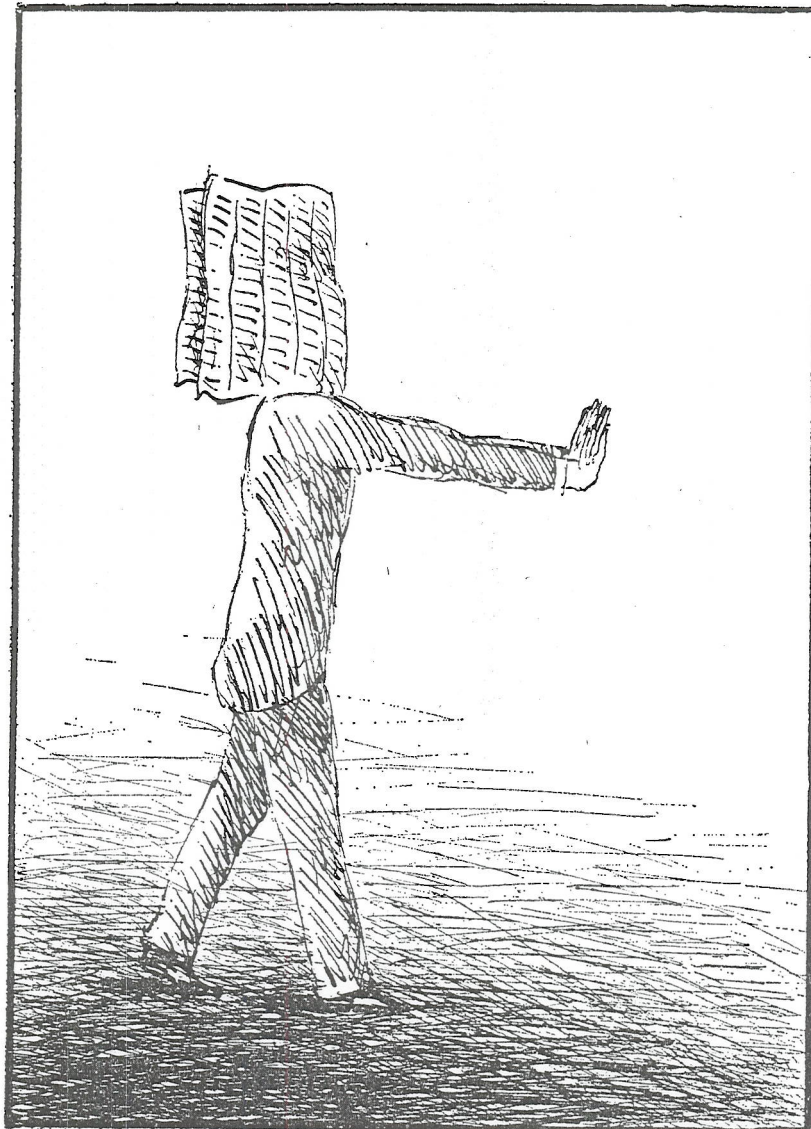
Chief Justice Warren, in *Reynolds v. Sims*, the great one-man, one-vote case, said that "the right to vote freely for the candidate of one's choice is of the essence of a democratic society." And the Chief Justice went on to say that any debasement of that right strikes "at the heart of representative government . . . just as effectively as by wholly prohibiting the free exercise of the franchise."

Watergate, on the basis of the court record of those already convicted, justifies Holmes' characterization of wiretapping as dirty business. Watergate, on the basis of the same court record, is a sordid and unprecedented example of debasement of the right to vote freely striking, in Chief Justice Warren's words, at the very heart of representative government almost as effectively as wholly prohibiting the exercise of the franchise.

Watergate involves allegations that high-ranking Government officials authorized and participated in illegal bugging, illegal disruption of the political process, perjury, cover-up and the obstruction of justice. If these allegations are proved in court, grave crimes were committed by persons participating in the running of our Government. Such crimes constitute more than dirty business or a threat to the freedom of the vote; they undermine the premise which has been fundamental to our legal system since Magna Carta, that government is under, not above, the law.

Exactly who is responsible and who is innocent or implicated only by association, are questions which must be decided in a court of law. It would be inappropriate for me, a lawyer and former judge, to ascribe guilt to any particular person, high or low, inside or outside our Government, before indictment, trial and conviction. Although the presumption of innocence must apply to all mentioned in what has occurred, it is not inappropriate, but a responsibility, to emphasize the enormity of the apparent offenses and their far-reaching implications.

Watergate and its aftermath appear as the teaching of evil aggravated by the fact that the teacher is govern-



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ment—in Justice Brandeis' words, the omnipresent teacher.

Today we are celebrating Law Day. This day cannot be allowed to pass without reflecting on these profound implications of Watergate, for law will not endure nor justice be attained if the Government itself has both flouted the law and sought to hide its crime.

All who believe in the rule of law must agree that every person responsible for the heinous crimes which have been charged must be brought to justice without fear or favor. It has been said that this is the time for compassion. I would put it another way. It is a time for profound sorrow, regret, concern and outrage that our Government seems to be so embroiled. The time for compassion will be when those who are indicted, tried and convicted must be sentenced. At that time a judge will be able to determine the degree of their complicity and weigh any exculpatory or mitigating circumstances.

Now is the time for truth and justice—for vigorously pursuing, to use Mr. Justice White's words in a recent case, "the interest in maintaining the rule of law and in demonstrating that those who defy the law do not do so

with impunity." Now is the time for bringing justice to all the people, whose right to honest government and a free vote appears to have been imperiled. This is not the time for vengeance, but it is for righteousness—that righteousness which we are admonished by the scriptures to pursue in all aspects of our life.

The theme of Law Day this year is "How to Help the Courts." I have a very simple suggestion. The very best way to help the courts is for government, the omnipresent teacher, to obey and to enforce the law in letter and in spirit. To paraphrase Judge Learned Hand, a society so riven that those in power feel free to violate the law cannot be saved by courts; a society dedicated to the proposition that government is under, not above, the law need not be saved by the courts.

Arthur J. Goldberg served as a justice of the U.S. Supreme Court and as Secretary of Labor.