

For the People

By Orville H. Schell Jr.

For too long the reins of the Watergate investigation have been held in the hands of the very people being investigated. The people of the United States have a right to demand that the investigation immediately be put into the hands of an independent, able, special counsel who will act for the people, in whom they can have full confidence and who will have full authority to look down every dark alley of the whole affair.

President Nixon's decision to place absolute authority to make all decisions bearing on the Watergate case in the hands of his new Attorney General, including the authority to name a "special supervisory prosecutor" if he wishes, does not meet the crisis. It leaves the matter where it has been for the last eleven months: entangled in a serious issue of conflicts of interest and professional ethics. For special counsel, however competent, if appointed by the Attorney General and brought under the Department of Justice, will still be the President's man, the President's lawyer and not the people's lawyer.

Whether we like it or not, the President himself may be involved, and at least 50 per cent of the people are reported to suspect that is the case. If, then, the President and his Administration must be investigated, it cannot be done by his own lawyers. No matter how well known, competent and honest the Attorney General and his special counsel may be, when everything is said and done, the conflict of interests in this situation will leave a suspicion of their integrity in the minds of many people.

A man cannot serve two masters. This obvious truth from the Sermon on the Mount has been part of the tradition of the Anglo-Saxon legal system for centuries. It is presently embodied in Canon 5 of the Code of Professional Responsibility which sets forth the principles by which lawyers should be guided in practicing their profession. That Canon specifies that "A lawyer should exercise independent professional judgment on behalf of a client," explaining that "the professional judgment of a lawyer should be exercised within the bounds of the law, solely for the benefit of his client, free of compromising influences and loyalties."

We must conclude that the President's program will not provide the thorough and impartial investigation which the people can reasonably expect. If the President will not take the action that is needed, Congress must move immediately and decisively to exercise its constitutional powers and provide a plan of action which should include the following points:

The President should be authorized and directed to nominate, after consultation with leaders of the national bar, an eminent member of the bar as special counsel to handle all aspects of the Watergate affair.

The individual so nominated should be confirmed by the United States Senate after public hearings on his qualifications.

The special counsel should have the broadest possible powers, including all the powers of the Attorney General, but should in no way, shape or form be part of the Department of Justice or responsible to the Attorney General.

While as a matter of constitutional law it appears that the President must appoint such special counsel, it would be desirable that the President's subsequent contact with that individual be at an absolute minimum until he has completed his mission. At that time it would be appropriate for him, after all prosecutions, if any, have been completed, to submit a final report of his activities to the President.

In addition to reporting to the President, the special counsel should assist the grand jury in preparing a public report of whatever noncriminal misconduct, malfeasance or misfeasance on the part of public officers or em-

ployes is uncovered during the course of the grand jury investigation. (Provision for a similar report is made under the Organized Crime Control Act of 1970.) While admittedly Senator Ervin's committee will explore many of these matters, it would surely do well to have the grand jury look into these questions as well.

The activities of special counsel should be adequately funded to enable him to have an effective staff with which to accomplish his task in fullest manner and in the shortest period of time.

So far, as the President has well stated, credit for the disclosure of Watergate should go to one courageous judge and to a devoted and hard-working, albeit much maligned and hampered, press. Now it is Congress' turn. The people of the United States need a lawyer.

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