

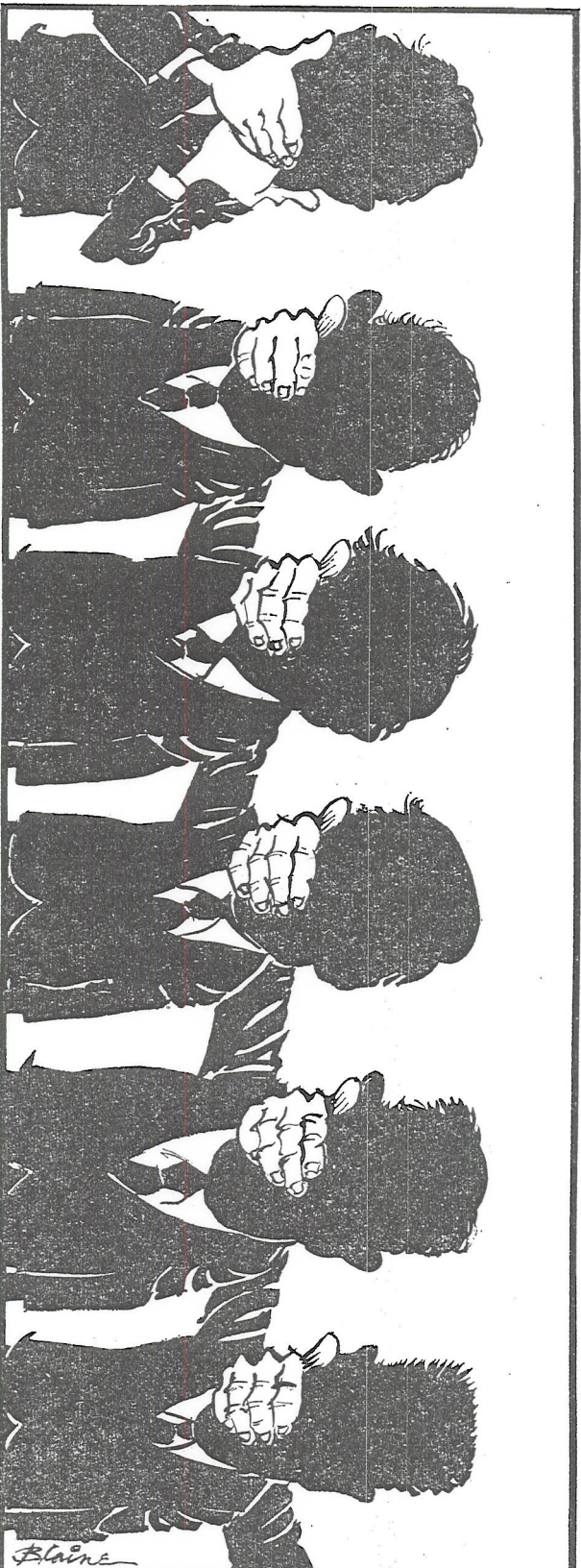
APR 24 1973 Needed: A Special Prosecutor for Watergate

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By Joseph A. Califano Jr.

WASHINGTON — Justice rendered and justice perceived are the indispensable first steps in the journey of a thousand miles back from the political espionage and sabotage understatedly characterized as the Watergate affair, to a plateau of national decency and integrity. The starting point for that long journey is a thoroughly penetrating and totally objective investigation recognized as such by our citizens. Only a special prosecutor, free of Justice Department and White House influence and armed with an independent staff, can avoid the nagging suspicion of corruption uncovered and crime unpunished in the highest levels of our Government.

In a sense, the civil suits of the Democratic party and Common Cause have the character of broad-based public interest actions; but in the context of justice for our society, the interest and legal capabilities of the litigants in those suits are relatively narrow. The Democratic party has asked for \$6.4 million in damages and an injunction against dissemination of material obtained through illegal wiretapping. It is quite within the power of the Committee for the Re-election of the President to pay the \$6.4 million, accept the injunction, and the law suit and, perhaps even more importantly from their point of view, block any further depositions and testimony under oath from a variety of potentially embarrassing witnesses. Democratic



party Chairman Robert Strauss, who has the most influential voice in the Democratic class action, was on the brink of settling for \$525,000 last week, because the party has no funds and, as he told *The Times*, he can do so with the acquiescence of three Democratic leaders on Capitol Hill, Senators Mansfield and Ervin and House Speaker Albert. Pressures from a variety of Democrats and concern about how it would look for him to cut a deal with John Mitchell eventually forced Strauss to back down. Even if the Democrats pursue their civil case, the American people have a distinctly political perception about a law suit between the two major parties.

John Gardner, the chairman of Common Cause, flatly refused to settle with Mr. Nixon's money man Maurice Stans when Stans proposed to reveal only those contributors who would permit release of their names and wanted to avoid telling how he spent the estimated \$10 million hidden by the best facade his lawyers and accountants could devise. Common Cause, so long as it is led by Gardner and has the resources to maintain the litigation, is not likely to settle; but the interest and litigating power of Common Cause are in political campaign financing, and not in justice for all the people. Here again, for reasons utterly unrelated to the public interest and perhaps very much related to his own problems, Stans could decide to accede to the legal demands of Common Cause and shut off that avenue of public disclosure.

Senator Ervin's committee is another

forum to which our citizens might at first blush look for justice in this case; but a Congressional investigating committee is geared more to klieg light exposure than to justice. The committee is divided along political lines, with three shrewd and able Republican Senators—Howard Baker and Edward Gurney to defend Republican interests if not necessarily White House interests and Lowell Weicker who flew high but had his wings trimmed by Republican colleagues. On the Democratic side, the only Senator so far to show any appreciable interest is Sam Ervin, whose record in the Senate is solidly founded, not in the kind of tough investigating that characterizes a John McClellan but rather on a consuming interest in constitutional issues like executive privilege, invasion of privacy and the rights of a free press.

The other Democratic Senators on the committee, Herman Talmadge, Joseph Montoya and Daniel Inouye have yet to evidence any deep interest in the Watergate affair although Inouye particularly is as capable as any Senator of conducting a tough investigation. In a politicized forum of this type, Republican and Democratic Senators inevitably have an interest in protecting Republican and Democratic interests. The American people are likely to perceive such an investigation as too political to achieve truth, much less justice. Finally, time is running against the committee, for as Senator Ervin has already indicated, he must in fairness to individual defendants defer any thorough investigation until issues of criminal liability are resolved by the grand jury and the Federal courts.

This turns American citizens in pursuit of justice to the criminal process now under way. Grand juries are notoriously subject to the influence of the prosecutors who are presenting evidence; in this case, Earl Silbert and Seymour Glanzer, aided by the F.B.I. Their record to date is far from auspicious. Their first Watergate investigation was so shamefully inadequate that Chief Federal District Judge John Sirica, an avowed Republican, repeatedly attacked them in the courtroom during the first Watergate crim-

nal trial. These prosecutors generously permitted high Nixon officials to submit written statements to the grand jury rather than subject them to even the possibility of embarrassing questions. A review of the transcript of the Watergate criminal case will lead any experienced trial lawyer to the conclusion that the Government attorneys repeatedly tossed cream-puff questions at witnesses like Jeb Magruder and Hugh Sloan to avoid the potential implication of anyone higher up. Last week, Washington attorney Peter Wolf filed papers with the Federal District Court indicating that he had informed prosecutor Silbert weeks ago that he represented a client who had eight cartons of material taken from E. Howard Hunt's office prior to the time the F.B.I. was given access to that office and Silbert expressed no interest in Wolf's client or his papers. Silbert denies Wolf's version, but admits he talked to Wolf some time ago.

Moreover, Silbert and Glanzer are Justice Department employes, assistant U.S. attorneys serving at the pleasure of President Nixon, who, distasteful as the thought may be, must be regarded as a suspect in the Watergate case. They are in the position of prosecuting and investigating present and former employes and colleagues. It is no solution, either in fact or in Americans' perception of their system of justice for Attorney General Kleindienst to disqualify himself because of "personal and professional relationships," presumably with Mitchell and other Justice Department and White House aides. That leaves us with Assistant Attorney General Henry Petersen, who if he was doing his job was involved in earlier Watergate Justice Department prosecutions and in the

F.B.I. investigation which now stands as the most monumental whitewash in the history of American law enforcement. Petersen was also an appointee of President Nixon, serving at his pleasure. Senate Majority Whip Robert Byrd has already questioned Petersen's ability "to conduct an independent investigation." On Sept. 16, 1972, Petersen in an attack on Senator McGovern, said that the early Watergate investigation had been "conducted under my supervision" and that "all aspects of the break-in and bugging were studied in detail including questions about the source and distribution of any funds relating to the incident." One need not impugn the integrity of Petersen, Silbert or Glanzer; one need only recognize their human natures and their bureaucratic positions.

It is incumbent upon the President to remove this matter from those agencies and Federal employes who are under his control. The Watergate situation and the corrupting cover-up, aided and abetted consciously or unconsciously by acting F.B.I. Director L. Patrick Gray and Justice Department attorneys, has now reached the point where someone whose interest is only the public interest, perhaps a distinguished lawyer in the twilight of his career, should be appointed by the President to be the special prosecutor in this case. The President should secure the wholehearted concurrence of the Speaker of the House and the Majority Leader of the Senate in his choice and give him power to conduct a full-scale grand jury investigation and prosecute in the courts those who are found to have violated Federal laws. For there are a host of criminal acts involved here: in addition to the antibugging, conspiracy, perjury and

obstruction of justice statutes, there are criminal campaign financing and mail fraud laws and a civil rights statute prohibiting interference with the electoral process; to say nothing of criminal tax violations, making false statements to F.B.I. investigators and misusing Government resources.

The Watergate affair presents a much more severe constitutional crisis than the fashionable issues of executive privilege and impoundment of funds; for it appears that the Presidential election of 1972 was infected by fraud and crime. The American people must be satisfied that there is no basis for thinking the unthinkable thoughts that have begun to percolate across the electorate in the wake of these revelations: that their own President was somehow personally involved in these heinous acts. No private litigants, no Congressional investigation and no Justice Department officials who serve at the pleasure of Richard Nixon and his White House aides can be relied upon to give us de facto and perceived justice in this situation. What is essential for the integrity of our system is that an independent investigatory and prosecutorial effort be launched. For Mr. Nixon to fail to do this is to brand his Presidency with the contemporary and historical stain that he could not do so because a totally independent investigation would stain his Presidency even more deeply. No one, not even the most recklessly partisan Democrat, wants to see the American Presidency so stained.

Joseph A. Califano Jr., a Washington attorney, was President Johnson's special assistant for domestic affairs and general counsel for the Democratic National Committee.