

Two Investigations; Two Different Goals

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It is unfortunate, it seems to us, that the Ervin committee hearings into the Watergate affair are getting under way before a special prosecutor has been chosen to take charge of the criminal aspects of the situation. The interplay between the public Senate hearings, the actions of the grand jury, and the ultimate criminal prosecutions is a delicate matter, fraught with dangers on every side. There is, for example, the problem of trading immunity from prosecution for testimony—a decision in which the special prosecutor's judgment would be important. In his absence, the Senate committee must be doubly careful not to foreclose his options with the grand jury or in the courts before he even takes office.

We share the concern of attorney Ronald Goldfarb, expressed elsewhere on this page today, that Sen. Ervin's zeal for "getting the whole sordid story" of Watergate entails a risk of "prejudicing the judicial and prosecutive process." And we agree with Mr. Goldfarb that this would be "wrong and sad."

Problems of this type always occur when two investigations into the same facts run concurrently. But usually the prosecutors have a better idea of where they are headed than the congressional committees do. In this instance, the key figure in the prosecution has yet to be chosen. The two investigations, of course, have quite different goals. The Ervin committee is out to educate the public and to determine if new legislation is needed. The grand jury is out to see that justice is administered to those who broke existing laws. The goals, while not incompatible, do conflict in some crucial respects. Because neither clearly outweighs the other in value to the country, the advice of the special prosecutor would be helpful in keeping the balance true.

But the fact is that the public hearings do start today. Thus, the need for getting on with the criminal aspects of the matter become even more pressing. That, along with the testimony of Mr. Richardson in recent days, leads us to believe that the Senate ought to go ahead and confirm his nomination as Attorney General as soon as possible. The sooner the new team is in the Department of Justice, the better.

There is still an argument to be made, of course, that the Senate should hold up confirmation in hopes of forcing the creation of a special prosecutor's role that would be totally free of Mr. Richardson's influence. We would have preferred that the prosecutor have that kind of independence. But several factors suggest that the time for that argument is over and the time to get things moving—on Mr. Richardson's terms—is here. One of these is the mere passage of time since the President chose not to go for a totally independent prose-

cutor and during which Congress has done nothing about it but talk. Another is the obvious respect for Mr. Richardson that exists on Capitol Hill and elsewhere. Still another is the way in which Mr. Richardson has explained the role he expects to have in the investigation and prosecution.

As we understand it, Mr. Richardson has said he will give the special prosecutor free rein unless he believes the prosecution is running amuck. There are, we suppose, two objections to this. One is that Mr. Richardson will be able to hobble the investigation if he should decide to. The other is the appearance to the public of Nixon administration influence on the special prosecutor. The first of these objections seem to us insupportable. Whoever he may be, the special prosecutor will be a person of extraordinary clout in Washington. If he is strong—and none of those whose names have been tossed about is weak—the special prosecutor will have the political power, if not the legal power, to run things the way he thinks they should be run. A reluctance anywhere in government to let him have the people or the documents or whatever he wants could be overcome, we suspect, by a brief conversation between him and Senator Ervin or between him and the press corps. Any sign from him that a further coverup is under way would blow the place apart. And, if he hit a stone wall somewhere in his work, his resignation would tumble more than just a wall. In other words, the special prosecutor does not have to be fully independent in technical terms to be a tiger, as long as he has strength and integrity. He can report to the Attorney General, as Mr. Richardson has said he must, but his political claws will be sharper, if he needs them, than Mr. Richardson's ever can be.

The other objection is more difficult. Senator Hart put it well on Monday when he said that "the real problem is if the facts don't involve the President, who will believe Elliot Richardson when he says they don't." That, too, can be overcome if Mr. Richardson picks a good man, gives him what he wants, stays out of the way, and lets him take the honor and the glory. The other half of Senator Hart's statement was that he was confident "that if the facts led to involvement of the President, Elliot Richardson, whether he had a special prosecutor or not, would name the President." However it might have been done differently and better, and as difficult as it may be in these days when it is hard to know whom to trust, we have now reached the point when the Senate and the public have to start trusting someone to clean up this mess pretty soon. We have very little choice but to start by trusting Mr. Richardson.