

Recollections of Teapot Dome

A special prosecutor is a rare item in American politics. He is the outsider who is brought to Washington because people no longer trust the insiders. His job requires him to investigate the administration of which he is, technically, a part. There is only one serious precedent in our history for this kind of prosecutor, and it was in the Teapot Dome affair.

Teapot Dome was a simpler kind of crime. Its only purpose was the conventional one of making money for its perpetrators. But that fragment of history illuminates the issues now facing Archibald Cox, the Harvard law professor who is now the designated prosecutor in the Watergate case. In recent weeks, the Senate has been struggling with several resolutions attempting to guarantee the Watergate prosecutor's independence. But Teapot Dome suggests that the real guarantee is not only in the wording of his formal authority. It also lies in his relationship with Congress and his personal reputation for moral stamina.

The Teapot Dome prosecutors had one great and obvious advantage over their successor, Mr. Cox. They were dealing with a President who had not been in office when the fraudulent oil contracts were signed in April 1921. President Coolidge did not come into office until President Harding died in August, 1923. By that time the man who had signed the contracts, former Secretary of the Interior Albert B. Fall, had long since resigned and left Washington for his ranch in New Mexico. But Harding's Attorney General, Harry Daugherty, was still at the Justice Department.

Mr. Cox, in contrast, will be dealing with a new Attorney General and a President who was in the White House during the whole Watergate episode. Mr. Nixon has a record to defend. Coolidge, in that election year of 1924, had no interest in the investigation but to demonstrate his own detachment.

The demand for a special prosecutor came first from Sen. Thomas J. Walsh of Montana, the dominant figure in the Senate investigation that, by early 1924, was rapidly picking up momentum. "... There is a widespread suspicion throughout the country directed against the Attorney General," Walsh argued. "Whether that is his fault or his misfortune, I do not undertake to say. It is immaterial here. But aside from that, these two gentlemen, the present Attorney General and the late Secretary of the Interior, have long been associated politically and as intimate members of the President's family, an intimacy which has grown up between them that would make the action of the Department of Justice in this matter, if unfortunately the result should be unfavorable to the government, subject to general criticism. It seems to me the Attorney General would welcome an opportunity to be relieved of the conduct of such litigation."

A few days later, under mounting pressure, after a frantic Saturday night meeting at the White House, Coolidge put out a statement at midnight barely in time to catch the Sunday newspapers. He assured the country that the law would be enforced and, in the operative sentence, he said, "As I understand, men are involved who belong to both parties, and enforcement of the law."

... I propose to employ special counsel of high rank, drawn from both political parties, to bring such actions for the enforcement of the law."

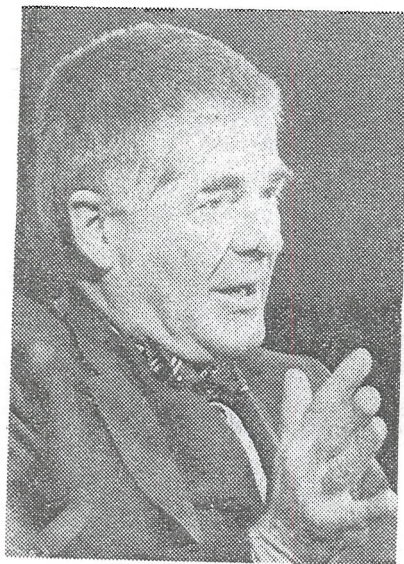
The reference to "both political parties" was disingenuous, for the public officials in the case were all Republicans. The Democrats, if any, were private citizens in the oil business. But it was an effective countermove (and one which, incidentally, President Nixon has been using in the current case).

Walsh's resolution, passed the week after Coolidge's statement, used language a good deal sharper than anything in the current Senate Resolutions. It directed the President to appoint special counsel "who shall have charge

and control of the prosecution of such litigation, anything in the statutes touching the powers of the Attorney General of the Department of Justice to the contrary notwithstanding." Although Walsh was a Democrat, and the Democrats were in the minority, his resolution passed the Senate 89-0 and the House 120-4. It is a good deal easier, of course, to cut the Justice Department out of a case than to cut out the White House and an incumbent President.

Coolidge's selection of counsel got off to a bad start. His first two choices shortly were revealed to have done a good deal of work for oil companies. One of the nominees, a former Attorney General in the Wilson administration, had unfortunately neglected to tell Coolidge that he had been working for one of the companies deeply involved in the Teapot Dome case itself.

Bruised and mistrustful, Coolidge



Archibald Cox



Owen J. Roberts

1932 photo

pany, and sold it oil at \$1.50 a barrel. They then bought back the same oil at \$1.75, creating a vast and unaccountable fund beyond the reach of the United States government or, for that matter, their own stockholders. That fund was the source of the hundreds of thousands of dollars in Liberty Bonds used to bribe Secretary of the Interior Fall.

The Senate committee also discovered, to its great dismay, that another \$300,000 of this fund had been covertly donated to the Republican National Committee in preparation for the 1924 election. All of this came out, of course, in another presidential election year, 1928.

Several points of the Teapot Dome case invite reflection at this stage of the Watergate investigation. Although Teapot Dome was very much a public topic in both 1924 and 1928, Republi-

finally picked, as the Democrat, Atlee Pomerene of Ohio, a former senator who had recently been defeated. After another delay, Coolidge then nominated Owen J. Roberts of Philadelphia, a Republican lawyer of no political experience. Roberts quickly emerged as the leader of the two.

Roberts brought two young lawyers from his Philadelphia firm to serve as his legal staff. But, facing a question that will also face the Watergate prosecutor, he needed investigators as well. The FBI's reputation had fallen very low. Daugherty, as Attorney General, had been using it vigorously to investigate people who made public charges against him or his friends. Roberts took his dilemma to President Coolidge, who gave him Secret Service men.

In another test of authority that the Watergate prosecutor may also face, Roberts and Pomerene had great difficulty getting some of the documents in the case. They had to obtain an executive order from Coolidge to open up the Navy Department's files. The Interior Department, still run by Fall's associates, at first refused to give the prosecutors even the original copies of the oil leases around which the whole case revolved. Roberts finally got them by threatening another appeal to the President. Examination of the originals showed that some pages had been drawn up outside the Department. (To whom would a Watergate prosecutor appeal if denied access to White House documents on grounds, say, of "national security?")

The relationship between the Teapot Dome prosecutors and the Senate investigating committee is a model for the Watergate counsel. Although Senator Walsh mistrusted Roberts at first, he turned over all of his massive collection of evidence without reserve. In 1928, when some newspapers began to press for exposure of the financing of the scandal, Roberts declined to pursue it on grounds that the question lay beyond his authority. Walsh then took it up, and traced the money back through a fake corporation in Canada.

Several oil men had set up the com-

cans won both elections. In both years the Republicans managed to persuade most Americans that they were prosecuting the case in good faith, and were giving Roberts and Pomerene a genuinely free hand.

Political scandals tend to lead to very lengthy prosecutions. Both the special counsel and Congress need to be prepared for the probability that the Watergate trials will go on for many years, well after Mr. Nixon leaves office. It was 10 years from the first rumors of impropriety in the Teapot Dome contract to the day in 1931 when, at last, Albert Fall went to jail.

Finally, it is worth keeping in mind the drastic effects, upward or downward, of great national scandals on men's personal careers. Not only Fall went to jail but also Harry Sinclair, the multimillionaire oil man who had hoped to make \$100 million out of Teapot Dome. He was never convicted of a crime. But he served several months in Washington's jail for contempt of Congress, after refusing to answer Walsh's questions. He stayed there for several more months on a separate charge of contempt of court, for having hired detectives to shadow the jurymen in his conspiracy trial.

But Harlan Fiske Stone, whom Coolidge drafted as Attorney General to clean up the Justice Department before the 1924 election, went the following year to the U.S. Supreme Court. He was joined there, in 1930, by the special prosecutor, Owen Roberts.

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