

Quis Custodiet?

By Anthony Lewis

WASHINGTON—The original indictment of the Watergate burglars came down on Sept. 15, 1972. The next day George McGovern called it a white-wash. Who ordered "this act of political espionage?" he asked. Who paid for it? Who made the \$114,000 contribution that went through the Nixon campaign committee to one of the accused? The questions not even raised in the indictment, he said, were "staggering."

The Nixon Administration's answer to Senator McGovern was issued that day over the name of Assistant Attorney General Henry E. Petersen. He called the criticism "completely unfounded." This investigation, he said, has been "among the most exhaustive and far reaching in my 25 years in the department"; the F.B.I. had followed up 1,897 leads and conducted 1,551 interviews.

To put it politely, the Petersen statement was misleading. That exhaustive investigation had somehow failed to reach a number of key witnesses. Others—Administration figures—had been questioned with solicitous politeness, if not gullibility. And of course the investigation did not discover the criminal activities of Jeb Magruder and John Dean, just to mention two of those who have since admitted their felonies.

As we learned later, the scope of the grand jury inquiry had been carefully limited in conformity with White House wishes. Some of the details of the financing of Watergate began to emerge only when grand jurors them-

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selves began asking questions that the prosecutors avoided. One must conclude that in issuing that reply to Senator McGovern Mr. Petersen, a career civil servant, allowed himself to be used for political purposes.

The reason to recall this history is not to embarrass Henry Petersen again. It is to point to the larger institutional problem that Watergate has framed: What do we do when those charged with faithfully executing the laws prove lawless themselves?

However honorable and dedicated Mr. Petersen was, he was plainly bedazzled, by respect for his superiors—and especially for the President of the United States. To expect otherwise of most public servants runs against experience and human nature. For someone inside the system to trace a burglary to the White House or challenge a fishy Presidential tax return requires heroism, and we cannot count on heroes.

These are not abstract legal issues but ones that deeply affect the health of our political society. Doubts about the integrity of our law enforcement system when it encounters official wrongdoing contribute much to the pervasive cynicism about public men in our country today. When we get past Watergate—if we do—what general reform can we undertake to restore confidence that the law will be enforced against the holders of power?

Some say the answer is to make existing institutions work better. Elliott Richardson was reforming the Justice Department in that spirit when his service as Attorney General was cut untimely short. He was taking steps to insulate the department from political pressures, make better appointments, encourage oversight by Congressional committees. But such steps depend on leadership, and it is already evident that Mr. Richardson's successor, William Saxbe, is not interested in them.

Another idea that has been discussed is to make the Justice Department legally independent of Presidential influence, either through insulating it by law or by having the Attorney General elected. But the former seems unrealistic: Such law enforcement matters as civil rights and antitrust law rightly should reflect Administration policy. And electing the Attorney General of the United States would politicize the office even more.

In this dilemma a number of persons have talked about creating a new office outside the Justice Department, one dedicated to preventing and punishing official wrongs. The idea was put forward last year by Professor Paul Mishkin of the University of California Law School at Berkeley. He suggested creating an office of Counsel General of the United States, with a broad warrant to "investigate and respond to complaints of abuses of official power."

Lloyd Cutler, one of the most thoughtful Washington lawyers, has just made a detailed proposal along similar lines at a conference held by the Committee for Public Justice. He would create a permanent special prosecutor, with jurisdiction to prosecute crimes committed by present or former Federal officials while in office, and by officers of the political parties. To that task he would add enforcement of the election laws.

There are precedents for that idea, Mr. Cutler notes. One is the Controller General, the agent of Congress in overseeing the legality of expenditures, who is appointed for a single 15-year term. Mr. Cutler suggests that the President appoint the continuing special prosecutor for a six-year term, subject to removal for cause.

It is early days to be thinking of such long-term reforms, but not too early. There is no magic in structural change; we shall always need wise and decent officers of state. But after our current trauma we would be foolish to dismiss suggestions for new protective institutions.