

Special Prosecutor Bill Clears Hurdle in House

11/3/73 By Mary Russell
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A bill to establish a court-appointed Watergate special prosecutor cleared its first hurdle in the House yesterday when it was passed by a House Judiciary subcommittee. The full committee will take it up today.

Under the bill, the judges of the U.S. District Court here would choose from their ranks a three-judge panel which would then appoint the special prosecutor. The prosecutor could be removed only by the three-judge panel for gross impropriety, gross dereliction of duty, or mental or physical incapacity.

The bill also provides for a quick court test of the constitutionality of the legislation, and for congressional

funding of the Office of the Special Prosecutor, which at present is financed from the Justice Department's budget.

The bill passed the subcommittee by a 5-to-4 party-line vote—Democrats for it, Republicans against. A similar party-line vote is expected in the 38-member full committee today.

The Senate Judiciary Committee is also expected to meet today on a similar bill sponsored by Sens. Philip Hart (D-Mich.), Birch Bayh (D-Ind.) and Edward M. Kennedy (D-Mass.), but the Hart bill is assured the votes of only eight of the nine Democrats on the 16-member committee.

See PROSECUTOR, A9, Col. 1

PROSECUTOR, From A1

If the ninth Democrat, Sen. John McClellan (Ark.), votes with the Republicans against the court-appointed prosecutor, an 8-to-8 tie would result and the attempt to report the Hart bill would fail.

Should an alternative bill calling for presidential appointment of the special prosecutor with Senate confirmation—or no bill—come out of the committee, Hart bill proponents will try to get a floor vote on their court-appointed prosecutor proposal by several alternative routes.

They may seek an immediate vote on the House's bill when it reaches the Senate. They may introduce a new independent prosecutor bill and seek a floor vote by procedurally bypassing the normal referral to the Judiciary Committee. Or they may seek to attach either the House bill or the Hart bill to a bill which would reduce the pay of the Attorney General in order to allow Sen. William Saxbe (R-Ohio) to be confirmed in that post.

The pay reduction bill is necessary to Saxbe's confirmation because the Constitution says no member of Congress can be appointed to an office for which he voted to raise the pay. Saxbe voted in February of 1969 to raise the pay of Cabinet officers from \$35,000 to \$60,000.

The bill reducing the pay for Saxbe to \$35,000 will go first to the Post Office Committee, but then could be referred to Judiciary, where attaching the special prosecutor bill as a rider to the pay bill would make it difficult for President Nixon to veto. The President has not announced he would veto the special prosecutor bill, but Acting Attorney General Robert Bork has said he would advise him to.

The bill passed by the House Judiciary subcommittee yesterday allows the court-appointed special prosecutor broad jurisdiction, allows him to seek help from the FBI and other federal investigatory agencies and mandates that those agencies turn over pertinent files to him unless excused by the court for a good cause.

Since experts in constitutional law disagree as to whether it is constitutional to allow a court to appoint a prosecutor, who normally comes under the executive branch, a quick court test is provided for so that any Watergate convictions could not be ruled invalid on grounds the appointment of the prosecutor was unconstitutional.

Under the bill the prosecutor would be appointed for a three-year term and nothing would disqualify the present presidentially sanctioned prosecutor, Leon Jaworski, from being considered for the post.

Jaworski was appointed to succeed Archibald Cox, whom the President fired when Cox refused to accept the President's compromise on turning over presidential tapes.