

The President and the Prosecutor (Cont.)

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IN A LETTER on the opposite page today, Acting Attorney General Robert Bork takes strong exception to an editorial that appeared in this space on Thursday. In it we expressed some concern about a modification which was recently written into the charter of the Watergate Special Prosecutor, Leon Jaworski, by Mr. Bork. The modification provides for consultation with eight congressional leaders—and their consensus—before the President can act to limit the independence of the prosecutor; it thus applies the same procedure for congressional concurrence to any limitation on Mr. Jaworski's activities as had earlier been applied to any move by the President to discharge him. This modification was made to correct an earlier drafting error, Mr. Bork says, and from his vantage point he sees it as an additional safeguard against presidential intrusion into the work of the Office of Watergate Special Prosecution Force. We are pleased to record his reassurances on this score, as set forth in the concluding paragraph of his letter today:

The plain fact is that there has been no White House effort to limit Mr. Jaworski's freedom; I am confident there will be none; and I would not, in any event, be a party to any such tactic.

Well, that is fair enough. But we are obliged to observe that it is also beside the point—just as it is beside the point to recall that Mr. Bork was party to the firing of the former Special Prosecutor, Archibald Cox, after Attorney General Elliot Richardson and his deputy, William Ruckelshaus, had resigned rather than be a party to it. The point, in short, is not Mr. Bork. It is the President. For it was Mr. Nixon who ordered the firing of Mr. Cox—without the slightest effort to meet the requirements of his charter which precluded his removal “except for extraordinary improprieties.” And Mr. Cox, it should be remembered, had a grant of “absolute authority” from Mr. Richardson, who in turn had a public promise of the President’s “full support.”

So it doesn't really matter whether the latest modification of Mr. Jaworski's charter was intended by Mr. Bork as “the first move to legitimize presidential intrusion into the jurisdiction of the Special Prosecutor,” for we are not dealing here with the intentions or the motives—and still less with the integrity—of Mr. Bork. Rather, we are dealing with the stark and simple fact that a procedure for presidential intrusion has been legitimized in Mr. Jaworski's charter where there was none in the case of Mr. Cox. We are dealing with an assertion by Mr. Bork of a constitutional right on the part of the President to dismiss the Special Prosecutor where no such assertion was made before. And we are dealing with all this in the face of a Federal District Court judgment that the firing of Mr. Cox was illegal, and against a clear record, not only of the firing of one prosecutor, but of a sustained presidential effort to restrict and circumscribe the prosecutor's role.

Mr. Cox's firing did not come in a vacuum. As a matter of fact, it came after even stronger assurances about Mr. Cox's independence than those contained in Mr. Bork's letter. In his first “Operation Candor”—the famous statement on Watergate issued last May 22—Mr.

Nixon said: “With his selection of Archibald Cox . . . as the special supervisory prosecutor for matters related to the case, Attorney General-designate Richardson has demonstrated his own determination to see the truth brought out. *In this effort he has my full support.*” It wasn't much later, however, that Mr. Nixon and his agents in the White House began attempting to get Mr. Richardson to limit Mr. Cox's jurisdiction. Mr. Richardson testified that as early as July 3, Mr. Nixon called him personally and told him to order Mr. Cox to put out a press release saying that he was not investigating matters dealing with the President's properties in Key Biscayne and San Clemente. Mr. Cox did put out the press release because he was not, in fact, investigating those matters, but the incident does demonstrate a certain predilection on the part of the President for setting limits on the investigations.

By September, after other White House questions about the Special Prosecutor's jurisdiction, Mr. Nixon was talking about “getting rid” of Mr. Cox, according to Mr. Richardson. And then, of course, there is Mr. Nixon's more recent statement of his definition of the Special Prosecutor's jurisdiction. “I told Mr. Petersen,” Mr. Nixon said to the Associated Press Managing Editors at Disney World, “that the job he had—and I would have said the same thing to Mr. Cox—was to investigate the Watergate matter, that national security matters were not matters that should be investigated, because there were some highly sensitive matters involved, not only in Ellsberg, but also another matter so sensitive that even Senator Ervin and Senator Baker have decided that they should not delve further into them.” So, Mr. Nixon would have put the Ellsberg burglary off limits for the investigators—and presumably a lot of other plumber activities as well. Yet, Egil Krogh pleaded guilty in the Ellsberg burglary on Friday precisely because he had decided that “national security” was not an argument he could honestly make in his own defense.

Recently, there has been other evidence of Mr. Nixon's hostility to the Special Prosecution Force. On Monday and again on Tuesday Gerald L. Warren, the President's deputy press secretary, suggested that the prosecutorial staff might have been responsible for news leaks which he deemed serious. Then, on Thursday, Press Secretary Ronald Ziegler launched an angry attack on Mr. Jaworski's staff. “They have a visceral dislike for this President and this administration,” Mr. Ziegler said. In a further indication of the White House mood, Mr. Ziegler accused some persons of wanting to “scavenge through and ravage all the President's conversations.”

These are not unfamiliar sounds from the White House. The record indicates that they have to be taken seriously. That does not mean, however, that Congress should set up some new Special Prosecutor or require the courts to do so. From all indications, Mr. Jaworski and his staff are moving ahead vigorously and effectively on all fronts. Thus, what is needed is not a whole new cast of characters, but rather, the strong protections which Senator Percy argues for elsewhere on this page, for the jobs of the people now at work and for the independence they need.