

# Congress and the Special Prosecutor

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THE SHOCK and dismay that attended President Nixon's firing of Archibald Cox on October 20, quite naturally—and admirably—led many members of Congress to consider ways in which they might guarantee the independence and professional longevity of whoever succeeded him as Special Watergate Prosecutor. It is worth recalling that those were the days before Leon Jaworski had come upon the scene and before it was evident that the Special Watergate Prosecution Force was not destined to go the way of the dodo bird. So, in the aftermath of the October 20 "massacre," as it was known, a certain number of bills were introduced in the House and Senate seeking to create a pressure- and intimidation-free prosecutor's office. Now they are coming to a vote in each chamber, and the question is whether intervening events have not rendered them at best obsolete and at worst positively harmful to the prospects of Mr. Jaworski's success. We think the answer is that this legislation has in fact been made both unnecessary and undesirable by what has occurred in the past several weeks.

In an article elsewhere on this page, Rep. William Cohen, a Republican from Maine, argues the case against what is apparently the most popular of these bills: a measure authorizing the U.S. District Court to name a Special Watergate Prosecutor who is wholly insulated from Executive Branch manipulation and answerable only to itself. We think Mr. Cohen is right. From the point of view of those who are genuinely committed to the vitality and effectiveness of the Special Watergate Prosecutor's office, it is probable that the best thing that could happen to this legislation—if it is passed—is that it be vetoed. That is because it has such an enormous potential for mischief, deliberate and inadvertent.

At a minimum, and in the best and most innocent of worlds, the mere creation of a wholly new prosecutor's office would be bound to delay and complicate the present prosecutor's job, to generate obstructive legal challenges and otherwise to dissipate the momentum Mr. Jaworski has gathered. In a less innocent world, which seems to be the one we live in, enactment of such legislation could be taken by the White House as a pretext to get rid of Mr. Jaworski, or at least to hamper and undermine his work. A President so inclined would not veto the legislation—he would welcome it.

Mr. Jaworski's record in his brief time in office is a crucial element in this calculation. He has by all accounts demonstrated himself to be determined, independent and, generally speaking, equal to the job. The White House has already begun to put out stories concerning its dissatisfaction with some of his activities. In the House, an alternative measure to the court-appointed prosecutor bill which is known as the "Dennis substi-



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tute" and would merely strengthen Mr. Jaworski's tenure and independence is being supported by Representative Cohen and others. While this approach sounds preferable to us, it is our general view that the best result would be enactment of no legislation at all at this time—including legislation which we have previously supported making the prosecutor's appointment subject to Senate confirmation and strengthening the statutory basis of his independence.

We think Mr. Jaworski is doing just fine. We think the enactment of legislation affecting his office, even that mandating relatively modest changes in his charter, puts his continuance in office and his effectiveness at risk. And we think that very large body of congressmen and senators who have committed themselves to the creation of a court-appointed prosecutor, along with those who are committed to the passage of less drastic measures, should be seeking ways to leave these votes in abeyance for the moment. Traditionally, after all, Congress is known for a certain skill at putting off and putting over what it does not wish to bring to a final vote. Finding ways to do just that in this matter should not strain its inventiveness.