

Special Prosecutor...

Possibly the most important legislation pending in Congress today is the bill to establish an independent prosecutor in the Watergate case. Until such an office is established under protection of the District Court of the District of Columbia, the files assembled at direction of former Special Prosecutor Archibald Cox are in jeopardy. With each passing day, there is a growing risk that the able staff that Mr. Cox organized may become demoralized and its work brought to a halt. Mr. Nixon's attempt at this juncture to intrude a prosecutor agreeable to himself into the proceedings can only be regarded as a disruptive maneuver.

Leon Jaworski, whom Mr. Nixon nominated yesterday as special prosecutor, is in an anomalous position, somewhat like that of Senator John Stennis in his ill-conceived mission as an intermediary between the White House and the Senate with regard to the Watergate tapes. Mr. Jaworski's personal integrity is not in doubt, but he is fatally handicapped from the outset because he enters the Watergate investigation as the President's man.

Early action in the Senate to set up an independent prosecutor is assured since the bill introduced by Senators Hart of Michigan and Bayh of Indiana now has the co-sponsorship of 53 other members, eight Republicans and 45 Democrats. Hearings on the bill are under way in the Senate Judiciary Committee.

But the House Judiciary Committee under chairmanship of Representative Rodino of New Jersey has been shockingly irresponsible in failing to act upon similar bills introduced in the House. The inquiry into a possible impeachment of President Nixon that the committee has undertaken is in no sense a substitute for creation of an independent special prosecutor. While the committee is pondering the impeachment question, the investigation and prosecution of the numerous crimes and conspiracies must go forward.

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A constitutional question has been raised against the Hart-Bayh bill because traditionally the prosecuting power has been solely under the control of the Executive. But the Constitution clearly states that "Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments."

When the Executive is conspicuously failing to enforce the law, Congress has a duty to assist the courts in seeing that the rule of law is upheld. The doctrine of the separation of powers was never intended to be a strait-jacket.

The Hart-Bayh bill is likely to be amended to provide that the special prosecutor be appointed by all the judges of the District Court rather than by Chief Judge John J. Sirica alone. Once that improvement is made, President Nixon himself could hardly oppose such a bill on grounds of principle inasmuch as he introduced a similar bill when he was a member of the Senate in 1951.

Ideally, the House would now be moving on a parallel course with the Senate. Unless the House acts, Mr. Nixon will have triumphed after all in the Cox affair. He has yielded the tapes—some of them, anyway—that are almost certainly not conclusively incriminating, and he has rid himself of the special prosecutor who was looking into so many dark corners of his Administration.

Mr. Nixon must not be allowed to succeed with his coup. The public has a right to an independent prosecutor. The public has a right to ask Speaker Albert and Chairman Rodino: Why are you failing to perform your duty in this matter?