

The Power to Prosecute—And Its Abuse

The power to prosecute, which above all other government processes should be free of politics, has been abused by a succession of attorneys general.

The disturbing habit of putting political expediency ahead of legal impartiality, moreover, has become more pronounced in the past 35 years.

These are the findings of a House Judiciary Committee study, which has traced the history of the Justice Department back to the beginning. Indeed the findings are so embarrassing that the study has now been suppressed.

However, we have obtained a bootleg copy, which was already in page proofs before Judiciary Chairman Peter Rodino (D-N.J.) ordered it withheld. A spokesman for Rodino said the study was "only a beginning . . . a lot more had to be done. The subject matter has been broadened," he said, "but the inquiry will continue."

The suppressed study declares bluntly that the Justice Department "has been vulnerable to political abuse and manipulation." Here are some of the worst abuses:

- There is an "absence of guidelines and monitoring procedures regulating . . . political officials, starting at the top with the President," who seek "to influence Department of Justice decision-making."

- The Justice Department lacks "safeguards to prevent its intelligence-gathering activities from being manipulated to serve political purposes."

- The department "must prosecute violations of law," yet at the same time serve "an administration sensitive to the political consequences of a vigorous prosecution."

- Regulations are lacking "to prevent high Justice Department officials from using their offices as bases for political activity."

- Congress has also failed to per-

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form "effective oversight . . . (of) improper political pressures applied to the department."

Ironically, the study was supposed to be a starting point for just such an oversight investigation. House Judiciary staff members, General Accounting Office investigators and Library of Congress research specialists were assigned to the project.

They have completed at least two reports. One is entitled "Politics and the Administration of Justice." The other analyzes what's wrong with the Justice Department's antitrust division. The research has already cost the taxpayers an estimated \$50,000.

Yet the publication of both reports has been blocked. By publishing the highlights, we may now be able to force them into the open.

As early as President Andrew Jackson's administration, the first report notes, the attorney general was subjected to White House pressure. Seeking legal justification for depositing government funds in certain banks, Jackson told his attorney general bluntly: "Sir, you must find a law authorizing the act, or I will appoint an attorney general who will."

"Nevertheless," declares the study, "the most eminent of the early attorneys general conceived of themselves foremost as law officers, with legal duties that were not compromised by nonjudicial considerations."

This noble concept changed when

the Justice Department was organized in 1870. For the previous 100 years, the attorney general had only a small staff.

After 1870, "many attorneys general appeared to take a different view of their obligations. (They) appeared to see their ultimate responsibility as being of service to the political needs of the White House."

Presidents also began to choose attorneys general "who were more distinguished for their past involvements in politics than for their eminence in the legal profession."

Of the 40 attorneys general who have served since 1870, the report identified only seven who could be "classified as men of solely or almost solely legal experience or distinction."

The department has become more politicized since 1940. During the past 35 years, the study found that "11 of the 14 men who served as attorneys general served either as managers, advisers, aides or campaign surrogates prior to becoming the nation's chief law enforcement officer."

Worse, many of them "allowed political considerations to shape their decisions," charges the report. "The casualties have been those who were prosecuted on nonlegal grounds."

Citing the Watergate investigation, the study warns that such probes, "whether involving violation of campaign laws or wrongdoing by persons of the Executive Branch, are vulnerable to compromising pressures if left

to the direction of Justice Department attorneys who serve at the President's pleasure."

Yet the appointment of special prosecutors hasn't assured impartial prosecution. Prior to Watergate, special prosecutors were appointed "to investigate allegations of malfeasance against the Executive Branch" in three instances—the Whiskey Ring, Teapot Dome and the Truman tax scandals.

Just as President Nixon fired his first special prosecutor, Presidents Grant and Truman "fired their special prosecutors when the direction and nature of the investigation proved politically embarrassing . . . In the eyes of the presidents who appointed them, the special prosecutors continued to act under presidential supervision."

Despite the obvious need for independent investigations of executive misdeeds, past scandals completely "failed to bring about enactment of laws" divorcing the special prosecutors from the executives they were supposed to prosecute.

When the lid blew off Watergate, therefore, "an implicated Executive Branch retained the responsibility to investigate and prosecute any wrongdoing that might have been perpetrated."

"It is ironic" concludes the report, "that the integrity of the agency charged with enforcing the law, the Department of Justice, continues to be vulnerable to the very forms of political pressure that have weakened it in the past."

By refusing to publish the study, the House Judiciary Committee offers little hope that the abuses will be prevented in the future. The public can restore integrity to the judicial processes, of course, by voting against the lawmakers who obstruct reforms.