

# Special Prosecutor's Office—

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The office of Watergate special prosecutor, which yesterday gave itself about six months more to live, has been a phenomenon in American life, almost another branch of government.

Created from a limb of the Justice Department only 18 months ago, the prosecution force numbered 34 lawyers and took on a life of its own without any act of Congress to secure its legitimacy.

President Nixon helped to create it, then repeatedly tried to destroy it, but he managed only to give it more vitality and hasten his own destruction in the process.

Now, some serious students of government have suggested that such an office ought to be made a permanent national institution. Whether or not this occurs,

the office will go down as one of history's landmarks, a mechanism invented to bolster the system of justice when it seemed that even the Founding Fathers had not provided for such an eventuality as Watergate.

The crisis came when wrongdoing at the highest levels of government was suspected and the trail of evidence led to the White House and to the President. And the President was the man in command of all the law enforcement machinery at the disposal of the federal government.

Under those circumstances the regular machinery proved unable to cope. Criticism mounted over the actions of Assistant Attorney General Henry E. Petersen and his prosecutors of seven Watergate burglary defendants for failure to push the probe to the White House itself. They had

staunch defenders, too, but the then attorney general, Elliot L. Richardson, was the first to admit that a special prosecutor was essential to "the maximum possible degree of public confidence in the integrity of the process."

Richardson's own job became predicated on his ability to meet the confidence crisis. Only after he found his candidate, Archibald Cox, was Richardson confirmed by the Senate, and the pledge of Cox's independence he made to the senators became the basis for his resignation in the "Saturday night massacre" of October, 1973.

Conscious that they were witnessing the birth of an unusual agency, senators wondered whether Cox, a distinguished Harvard professor and constitutional scholar, could be afforded adequate independence

from the parent executive branch and whether he would exercise his powers fearlessly.

They pressed for assurances that he would resign rather than be compromised, assurances that Cox gave. Later, as White House pressures increased on his office, the opposite problem merged—could Cox continue to pursue the independent course he had taken and still be secure in his job?

Elaborate regulations were drafted and published to give assurances of independence. They provided that Cox would have the full cooperation of the Justice Department, but would decide for himself when and whether to consult with the Attorney General.

The Attorney General would not countermand Cox or interfere with him. Most importantly, "The special

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prosecutor will not be removed from his duties except for extraordinary improprieties on his part."

Then came the excruciating days of late October when Cox, victorious in the United States Court of Appeals in his claim for access to presidential tapes, was importuned to scale down his demands. During the tense bargaining that followed, the vaunted regulations were never mentioned. Mr. Nixon's firing of Cox, after the resignations of the Attorney General and his deputy who refused to perform the deed, was accomplished two days before the regulations were revoked.

Later a federal court ruled that so long as the regulations were in force, they had the binding effect of law that the executive branch must obey. The ruling came much too late to

safeguard the job for Cox.

Last July, a unanimous Supreme Court held that the regulations, revived when Cox's successor was chosen, had the same binding effect and formed an adequate basis for Leon Jaworski to ta President Nixon, his nominal superior, all the way to the high tribunal.

Throughout stormy fall of 1973, however, considerable uncertainty existed over how the prosecutor could be protected from yet another arbitrary firing. Bills to establish a totally independent officer, appointed not by the President but by the judges of the federal court here, sailed through Congress and were ready for floor action in both houses.

The backers of the legislation did not press for enactment, however, in the face of threatened constitutional

challenges to the law that might bog down the investigations and prosecutions. The bills were held in reserve in case of new threats to the prosecutor's independence.

Jaworski, the corporate lawyer and man of action, moved in to dispose of cases on the Watergate docket. His actions were scrutinized both for excessive leniency and for signs of excessive zeal.

Only his reputation for independence enabled Jaworski to withstand criticism of the plea bargain he struck with former Attorney General Richard G. Kleindienst, who got a suspended sentence for lying to the Senate.

Similarly, other controversial judgments by the Watergate force — such as its conclusion that the controversial ITT antitrust set-

tlements were not the product of a bribe — probably were accepted more easily than the same judgments would have been had they been handled by conventional Justice Department personnel.

James Doyle, Jaworski's spokesman, estimated yesterday that the Watergate force could clean up its work sufficiently in six months so that the normal law enforcement channels could be reopened.

Those who argue for a permanent office contend that there are other political hot potatoes that are beyond the capacity of ordinary presidential appointees to handle with full public confidence. If Congress considers setting up such an office, it can draw on both the triumphs and the shortcomings of the Watergate force for its raw material.