

Preventing Future Watergates

A year after the Watergate scandal toppled Richard Nixon from the presidency, Congress has begun considering what it might do to see that it can't happen here again. Happily, this time the approach is more cautious and sensible than that first great flight of post-Watergate congressional morality, called the Federal Election Campaign Act of 1974.

Last week, the Senate Government Operations Committee started hearings on a bill embodying the main recommendations of the Select Committee on Presidential Campaign Activities—the Watergate investigating committee headed by former Sen. Sam Ervin (D-N.C.).

The bill contains a number of provisions, but its keystone proposal is to make permanent the office of special prosecutor—or, as it calls the post, public attorney—to carry on the independent investigatory work on corruption in the executive branch pioneered in the Watergate period by Archibald Cox, Leon Jaworski and now Henry S. Ruth Jr.

The argument seems so simple and straightforward: Cox and his successors brought out the truth about law-breaking in the Justice Department and the White House, because they were free from the political pressures of ordinary presidential appointees. Therefore, to prevent or expose future Watergates, preserve the office of special prosecutor.

That proposition was so self-evident it appealed to Sam Ervin and to Sen. Lowell P. Weicker Jr. (R-Conn.), the most morally indignant of the old Watergate investigators, and to Samuel Dash, the law professor who was the chief counsel of the Ervin committee.

All of them have testified or will testify on behalf of the measure. Dash said failure to create a permanent public attorney's office would "practically leave the country in a condition where it is unable to prevent a future Watergate and create the very real risk that an independent special prosecutor will not be appointed when he is most needed."

Obvious, right? As obvious as it was to Congress last year that if Watergate arose from massive and illegal campaign contributions, as some believe, the answer was to provide public financing and strict spending limits for future presidential campaigns.

That quick reflex reaction has run into increasing criticism—as the constitutional and public policy problems of public finance and spending limits have emerged in argument and litigation. But Congress, unfortunately, did not pause long enough to weigh these issues before enacting its first bit of Watergate reform legislation.

This time, because the passions have had some time to cool, the legislative response looks more sensible. Fundamental questions about the wisdom of having a permanent special prosecutor have been raised by Jaworski and Ruth, among others. And Sen. Howard H. Baker Jr. (R-Tenn.), vice chairman of the original Watergate committee, has joined with Sen. Charles H. Percy (R-Ill.) in proposing another and perhaps better way of accomplishing the same goal.

Instead of creating a special prosecutor, named by three retired circuit court judges and confirmed by the Senate, as the Ervin committee proposed, Percy and Baker would create a division of government crimes within the Justice Department, to be headed by an assistant attorney general named by the President and confirmed by the Senate.

The difference between the two plans may seem slight, but it is crucial in terms of constitutional principle and practical effect.

The independent special prosecutor would be accountable to no one during his five-year term; his exercise of the vast powers of his office would be subject to none of the checks and balances of the constitutional system.

As Henry Ruth, who is in his final months as the Watergate special prosecutor, testified: "Lack of accountability of any public official on a permanent basis carries a potential for abuse of power that far exceeds any enforcement gains that might ensue."

Percy and Baker, on the other hand, by proposing that investigations of government crime be kept in the Justice Department, preserve the constitutional design. Their plan makes the President, as chief executive, meet his assigned duty to "take care that the laws be faithfully executed."

At the same time, they provide safeguards for the independence of the new assistant attorney general, by requiring that whenever he is overruled, that fact must be promptly reported to Congress, and his removal to be justified in writing to Congress.

The debate between these plans shows that Congress is weighing its responsibilities carefully—more carefully than it did on campaign finance reform—as it continues the necessary work of preventing future Watergates.