

# Special Prosecutor's Unit: Permanent or Temporary

By JOHN M. CREWDSON  
Special to The New York Times

WASHINGTON, Oct. 18—When allegations of wrongdoing are made against an incumbent President, who should investigate? Should it be the Attorney General, who has been appointed by the President? Or should it be an independent prosecutor such as those named in the Watergate affair?

The question arose anew during the current campaign because of an allegation that some union funds might have been laundered in a previous campaign of President Ford's. The Watergate special prosecutor, Charles F. Ruff, announced last week that he had found no culpability on the part of President Ford, but the political tensions generated by his two-month inquiry underscored a running debate over whether to establish the prosecutor's office in legislation.

An assessment of the political effect of the investigation of Mr. Ford in the weeks before the election, and the injection into the campaign by Republicans of questions about Mr. Ruff's motives in making the investigation, will doubtless play a major role in the debate over how to handle charges of high-level wrongdoing.

Virtually every major figure of both parties favors establishing a special prosecutor's office, but they differ on whether the office should be permanent or created on a temporary basis when a need arises.

## The Background

One of the principal recommendations made by the Senate Watergate committee two years ago was for legislation that would establish a permanent special prosecutor within, but technically independent of, the Department of Justice.

That proposal grew largely out of the committee's discovery that two of President Nixon's Attorneys General, John N. Mitchell and Richard G. Kleindienst, had allowed partisan political considerations to moderate the Justice Department's pursuit of facts about the darker side of the Nixon Administration.

When Edward H. Levi became Attorney General early last year, he opposed the institutionalizing of the special prosecutor's office, contending that part of his mission was to restore impartiality within the Justice Department and the trust of the public in its ability to fend off political pressures.

Mr. Levi set about making some internal reforms. He created an Office of Professional Responsibility that would look into charges of malfeasance on the part of Justice officials and a Public Integrity Section that could investigate alleged crimes by Federal, state and local government employees where a conflict of interest in their prosecution seemed evident.

But reformist sentiments, encouraged at least in part by partisan considerations, were also high among Congressional Democrats. One of them, Senator Abraham A. Ribicoff of Connecticut, introduced a bill that would establish—along the lines of the Watergate committees' recommendations—a permanent special prosecutor, freed from political constraint, who could inquire into specific crimes allegedly committed by the President, Vice President, Cabinet-level officials or other high aides in the executive branch.

## Against Permanent Office

Archibald Cox, Leon Jaworski and Henry M. Ruth, the three former special prosecutors, all have spoken against a permanent prosecutor.

Their arguments varied. Mr. Ruth, for example, was concerned about the potential for abuse should such prosecutorial autonomy be accorded to a single individual on a long-term basis. He believes that the prosecutor's effectiveness would depend largely on the stipulation that he could be dismissed only for "extraordinary improprieties" and would be free to pursue at will any charges coming before him that fell within his limited jurisdiction.

Mr. Jaworski argued that a permanent prosecutor of the type envisioned in the Senate bill would simply not have enough work to keep busy, and that the office therefore might not attract lawyers of the high caliber that such a calling demands.

A case in point is Mr. Ruff's office, to be closed next January. The legal staff has been reduced to two because its lawyers, less than entranced at the prospect of preparing appeal briefs and tying up loose ends of campaign finance investigations, have left in droves for more attractive jobs.

Last month, as debate on the proposal shifted from the Senate to the House, Mr. Cox, a professor of law at Harvard, argued against going "too far in substituting laws for character," and echoed his earlier opposition to a

permanent prosecutor. His opposition was founded in part on his belief that no President was "so untrustworthy that we have to have a constant investigator looking into his activities."

Another proponent of the "temporary" version of the special prosecutor's office said that the office had been conceived to deal with high-level executive scandals like those that caught up Sherman Adams, Robert G. Baker and former Vice President Agnew—the kind, he said, that happen "once or twice a year" in Washington.

## For Permanent Office

Earlier this summer, the Senate almost voted to approve a legislative proposal for a mechanism that would make the appointment of a special prosecutor automatic when an allegation against a President or other high official arose that demanded a prosecutor's attention.

But then Mr. Levi, who had resolutely opposed any argument for a Federal prosecutor independent of the Justice Department, surprised everyone when he rang in with the Administration's support for the original, permanent Ribicoff version. This provided for a prosecutor who could not succeed himself, to be appointed for a three-year term by the President and confirmed by the Senate.

The Justice Department had before it, Mr. Levi said, at least six and as many as 40 cases of the sort that might each require the appointment of a special prosecutor. He maintained that the establishment of a permanent office would prevent such a potentially unwieldy situation.

Mr. Levi later told the House that a temporary, or "trigger" appointment of a special prosecutor would enable "any individual to convert a private allegation against a high government official into a highly publicized investigation." This, he argued, would take on the proportions of a "media event" in which the charges, however spurious, would be "dignified by the process established by the bill."

He also expressed fears that the role proposed for the courts in reviewing, and in some cases overriding an Attorney General's decision on whether to make such a temporary appointment was "of highly questionable constitutionality."

With the backing of Mr. Ford, who at a news conference on July 19 had abandoned his previous opposition to the idea—a signal that, if such a measure should clear Congress it would surely be signed by the President—Mr. Levi's support for the permanent version caused a last-minute turnaround in the Senate. By a vote of 91 to 5, the Senate approved a bill that was nearly identical to Mr. Ribicoff's.

## The Outlook

The bill under consideration in the House when it adjourned, however, called for the establishment of a temporary, rather than a permanent, special prosecutor. Furthermore, key senators have made it known to their House counterparts that they would accept in conference whatever version the House ultimately adopted.

But the House Judiciary Committee, to the mystification of observers in the Senate, failed to raise a quorum to consider the bill, and its members apparently were not encouraged to appear by Peter W. Rodino, Jr. Democrat of New Jersey, the committee's chairman, who was described by one Congressional aide as "not wildly enthusiastic" about the matter.

It is a certainty, as certainties go in Congress, that some proposal for a special prosecutor—whether for the temporary or permanent version is unclear at this point—will be reintroduced in the Senate early in the next session.

### Election Could Lead to Shift

What will happen after that is less clear. The upcoming Senate is expected to be of the same ideological makeup as the present one, but a Democratic takeover of the White House could lessen the enthusiasm there for a special provision to investigate wrongdoing by the President and his top aides.

But the bipartisan support the measure received the first time around, coupled with a good deal of public commitment by Democrats to a reform of the political process itself, might well carry the proposal a second time.

Although there is apparently some sentiment in Congress that reform is best taken by degrees, there is not yet enough psychic distance between the nation and the trauma of Watergate for the electorate to have lost its skepticism about politicians, even those it chooses to lead it. Given this mood of the voters, the special prosecutor is an idea whose time has not yet passed.