

RECOMMENDATION XXIII

A permanent Office of Special Prosecutor should NOT be created for the purpose of investigating or prosecuting wrong-doing by the Executive Branch staff.

(Adopted by narrow margin)

Commentary: The Conference rejected the proposal to establish a permanent Special Prosecutor's Office, such as the one that came into being during the Watergate investigation.¹ Some Conferees believed that there were adequate resources within the U.S. Justice Department capable and trustworthy to perform whatever investigatory or prosecutorial duties were required relative to any illegalities on the part of the Executive Branch, and that unusual situations would better be handled *ad hoc*, as in Watergate.²

1. Professor J. David Greenstone noted that a permanent office would no longer be "special." He added that "special" prosecutors should be appointed — as in Watergate — only under special circumstances.

2. Professor Yarmolinsky would add that "the investigative function of Congressional committees supplements the function of the Dept. of Justice."

Professor Anthony A. D'Amato comments, "initiative and vigilance in the Dept. of Justice might be sapped if there were an independent Office charged with such matters. However, it should be stressed that the Dept. of Justice represents the government as a whole and not simply the Executive."