

53 Back Bayh Bill On Probe

Measure Tells Sirica to Pick Cox Successor

By Spencer Rich

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More than half the Senate joined yesterday in sponsoring a bill directing the courts to name a new Watergate special prosecutor independent of the President.

The legislation, backed by 53 senators and introduced by Birch Bayh (D-Ind.), differs sharply from the arrangement announced by President Nixon at his press conference last night.

The Senate bill specifies that the new prosecutor would be selected by Chief Judge John J. Sirica of the U.S. District Court here, would be totally independent of any direction from the executive branch, and could be fired only by Sirica.

Under the President's intentions, a new special prosecutor will be named by the acting Attorney General and will be under the general supervision of the Justice Department. The President will retain the legal right to dismiss him.

Bayh, in a statement after the President's press conference last night, said he considers Justice Department appointment of a special prosecutor who can be fired by the President "totally inadequate" to insure an independent and thorough investigation. He said he will press for passage of the Senate bill, as will other key sponsors.

The same point was made earlier in the day by Sen. Philip A. Hart (D-Mich.), one of the leading sponsors. Hart said he was backing the independent prosecutor

bill in the full knowledge that Mr. Nixon probably would name a new prosecutor of his own.

He said the concept of a prosecutor under executive branch supervision and in a position to be dismissed by the President was no longer adequate to assure the American people that there will be a full, searching investigation of the Watergate situation and related allegations of crime.

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A number of Republicans and Democrats on Capitol Hill reacted angrily to the firing last Saturday of Watergate Special Prosecutor Archibald Cox by acting Attorney General Robert H. Bork under directions of President Nixon.

The President's decision to allow the acting Attorney General to name a new prosecutor appears certain to set off a battle in Congress over the character of the prosecutor's powers and his relationship to the President and the Justice Department. Many Republicans will rally behind the President's plan, arguing that it will assure an adequate investigation, and that the independent prosecutor isn't needed.

But Hart, Bayh and other leading sponsors of the bill are gearing up for a major effort to push the measure through within the next few weeks.

Among the cosponsors were five of the seven members of the Watergate committee and seven Republicans including Maryland's Charles McC. Mathias.

Under the bill, both the prosecutor and his deputy would be appointed by Judge Sirica. They would have a full congressional mandate to investigate the Watergate break-in, the allegations of "dirty tricks" during the 1972 election campaign and all related matters.

The prosecutor would be entirely free of presidential control and could be dismissed only by Sirica, and then only for "willfully" violating the provisions of the bill or committing extraor-

inary improprieties."

Bayh told the Senate that allowing the President to name a new prosecutor in Cox's old spot, and giving the President power to fire the new incumbent, would be an unacceptable alternative and wouldn't help stem the national erosion of confidence in the President and the process of justice.

Sen. John V. Tunney (D-Calif.) said he hopes the Judiciary Committee will bring the bill out in 10 days to two weeks.

The new prosecutor must be free of any White House control, Tunney said, to prevent the President from "removing a prosecutor who gets too close to the White House door."

In a statement from Brussels, where he is fulfilling a speaking engagement, Sen.

Edward M. Kennedy (D-Mass.)—like Bayh and Tunney a member of the Judiciary Committee—said the prosecutor must be court-appointed and “totally, completely and unquestionably free from White House influence,” because “it is the influence, interference and other actions of the White House and the President which have carried the nation to the brink of a constitutional crisis.”

Senate Majority Whip Robert C. Byrd of West Virginia, also a member of the Judiciary Committee and a cosponsor of the independent prosecutor bill, said he prefers the independent prosecutor bill to any plan to let the President appoint a new prosecutor who would be subject to presidential authority or ouster.

Sen. Philip A. Hart (D-Mich.), the senior Democratic liberal on the Judiciary Committee and the leader of the bloc sponsoring the independent prosecutor measure, was absent yesterday but reissued an earlier statement saying that the deans of 20 law schools had endorsed the constitutionality of the bill.

Most of the 51 senators sponsoring the bill yesterday are Northern Democrats. The seven Republicans are Mathias, Clifford P. Case (N.J.), Mark Hatfield (Ore.), Jacob K. Javits (N.Y.), Richard S. Schweiker (Pa.), Robert W. Packwood (Ore.) and Lowell Weicker (Conn.).

Weicker is the only Republican on the select Watergate committee to cosponsor the bill, but all four committee Democrats are sponsors: Chairman Sam J. Ervin Jr. (N.C.), Herman E. Talmadge (Ga.), Daniel K. Inouye (Hawaii) and Joseph M. Montoya (N.M.).

Sen. James L. Buckley (Cons.-R-N.Y.), taking a different tack, favors having the President appoint a special prosecutor, subject to Senate confirmation. (Under law, a special prosecutor appointed by the Justice Department, as Cox was, doesn't require confirmation.) Buckley said this would help restore public confidence in the investigation, even though he is confident the Justice Department could handle the job well.

In both the House and Senate, there had been broad support in recent days for the appointment of a new prosecutor to replace Cox, but most Republicans have backed the idea of having the President make the appointment and retain the power to fire the new man.

Most Democrats have favored making the new prosecutor a court appointee entirely independent of the President.

In the House, 112 Democrats and 14 Republicans, according to an Associated Press survey, have sponsored legislation calling for appointment of a special prosecutor of one form or another.