

Cox Backs Bayh Bill On New Prosecutor

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Former Special Watergate Prosecutor Archibald Cox said yesterday he favors a bill that would require appointment of a new prosecutor by the U.S. District Court here but admitted there are questions about its constitutionality.

Cox, who was fired by President Nixon Oct. 20 when he refused to cease his court pursuit of the White House Watergate tapes, said he thinks the measure would ultimately be upheld in the courts.

"But I have to say in honesty that there is room for argument on the other side, and the Congress will have to consider whether it is worth running the risk [of passing it] because if it is unconstitutional, there would be the further risk that indictments [will be] thrown out and justice would never be done," he warned.

Cox, who discussed the matter on NBC's "Meet the Press" (WRC), is scheduled to testify about it before the Senate Judiciary Committee today.

On Friday Sen. Birch Bayh (D-Ind.) introduced the measure, backed by 53 senators, that would direct U.S. District Court Chief Judge John J. Sirica to appoint a special prosecutor and a deputy who would serve two-year terms and who could be fired only by Sirica.

Cox's comments presaged a vigorous battle over the

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bill's constitutionality, as did a debate yesterday between Bayh and Sen. Marlow W. Cook (R-Ky.) on ABC's "Issues and Answers" (WMAL). Both are Judiciary Committee members.

At the same time, acting Attorney General Robert H. Bork was continuing his search for a new special prosecutor. The President said on Friday that Bork would appoint one this week.

Bork, reached at his home, said he was in a "mulling mood" and that he was "looking at a lot of files" on the background of possible nominees.

Over the weekend he sought advice from White House officials, academics and lawyers, he said, adding that he hopes to name a prosecutor within the week.

Cox did not specify the legal problems he sees with Bayh's bill except to say that he thinks there is a constitutional question "in vesting a permanent power of appointment in the United States District Court."

He added that he thinks the bill allowing the judicial branch to name what is essentially an officer of the Executive Branch would be sustained because the prosecutor must investigate the Executive Branch itself, he would not be enforcing laws that require "political judgment," and he has already encountered "difficulties" in pursuing an independent course.

But Cox said he would have "no hesitance" in predicting the constitutionality of a bill that "allowed for the appointment by the President with the advice and consent of the Senate,

He declined to say whether he had already asked anyone to take the job and, if so, how many had refused.

Cox, Bayh and Cook all expressed the view that Bork's appointment of a prosecutor under the guidelines set forth by Mr. Nixon in his news conference Friday night would not satisfy Congress or the public.

The President said then that the new prosecutor would be denied "presidential documents," as Cox was, and that he would not expect him to go to court for such documents or tapes, as Cox did.

Cox said yesterday he thinks it is "essential" that the office of special prosecutor "be established by statute and be given by statute guarantees of independence, guarantees of freedom to make his own decisions."

The former special prose-

and if it curtailed any power of dismissal by prohibiting dismissal by the President except for gross impropriety."

Cook's referring to Cox's comments, indicated that Congress might approve a measure calling for advice and consent of the Senate to any proposed prosecutor.

The Kentucky senator sidestepped a direct question of whether the President should still have the right to dismiss the prosecutor but finally said, "Somebody's got to be responsible to somebody around here."

Cox, while advocating a statute that protects the next prosecutor against dismissal, added, however, "I think there is a sort of built-in protection. These things don't happen twice in succession, so I don't put enormous stress on that."

Cox was asked if he

thinks the White House was right to invoke executive privilege to keep former Secretary of Agriculture Clifford Hardin from telling a Senate Watergate committee investigator about an Oval Office discussion in 1971 about milk price supports

"No," he replied, "we surely would have challenged that use of executive privilege."

Cox refused to answer questions about reports that Mr. Nixon fired him because his investigation was "getting close" to the President's friend, Miami banker C. G. (Bebe) Rebozo.

"There were occasions when I became aware that the White House was troubled about it thought, sometimes wrongly, I was doing," he said.

He added that he "gathered the impression"

from former Attorney General Elliot L. Richardson that he (Richardson) was occasionally subject to calls, and while he never put any pressure on me . . . from time to time he would raise questions which seemed to me must have come from the White House staff." Cox said Richardson "always respected" his judgement on those questions.

Asked about the nine tapes that Cox subpoenaed and the the President, after a three-month court fight, finally decided to turn over to Sirica, Cox said:

"I think it's quite possible that the nine tapes will turn out to be less important in a practical sense than they have been in a symbolic sense. They were clearly only the first step in seeking a great deal of important evidence from the White House. They apparently do

clarify some questions, but one can't know until he's heard them."

Cox was asked about suggestions that he accept an appointment to become the prosecutor again himself.

"I think it would be unsound," he said, adding that some friends told him it is all right to close the door on any offer but not to "lock it tight." Then he said, "It

would be unwise for anyone to offer it to me and unwise for me to take it."

Bayh and Cook appeared on the "Issues and Answers" program after former Deputy Attorney General William D. Ruckelshaus postponed his scheduled appearance until next week. An ABC spokesman said Ruckelshaus did not explain the postponement.