

# Cox Details Data Kept From Him

## Bork List Grows

*Pgx 10/30/73*  
By Susanna McBee

Washington Post Staff Writer

Acting Attorney General Robert H. Bork continued his efforts yesterday to find a new special Watergate prosecutor but without success.

Bork would not say how many rejections he has received, but he did not deny that some candidates have said no. He has called about 20 persons, including prospective nominees, about the job, several sources said.

Bork said that he was calling "friends and attorneys" and as a result, taking some names off his list of possible appointees and adding others to it. He said some people he has called suggested reasons why certain nominees should not be considered and then recommended another candidate or two.

"So my lists grows by the day," he said.

Bork became acting attorney general Oct. 20 after he agreed to follow President Nixon's order to fire special prosecutor Archibald Cox—an order that both Attorney General Elliot L. Richardson and Deputy Attorney General William D. Ruckelshaus refused to obey. They resigned instead.

The President ordered the

See PROSECUTOR, A4, Col. 1

## Disputes Haig

By George Lardner Jr.

Washington Post Staff Writer

Ousted Watergate Special Prosecutor Archibald Cox yesterday disclosed a lengthy new list of documents that the White House has been holding back despite its public claims of cooperation with his investigations.

He predicted that it would take "a very large number of subpoenas" to secure the records and other crucial evidence for the inquiries he had undertaken before President Nixon fired him.

Testifying before the Senate Judiciary Committee which thought it had hammered out a sufficiently independent charter for him just five months ago, Cox said he now favored legislation providing for appointment of a successor by the federal courts.

He said "total independence" from the Nixon administration was vital and, his own experience had shown, "cannot be had with someone answering to the Attorney General and the President."

Cox reiterated his charges of "frustration and delay" by the White House in meeting his requests for evidence and took sharp issue

See COX, A4, Col. 1

# Bork Presses Hunt for Prosecutor

**PROSECUTOR, From A1**  
firing of Cox when the prosecutor refused to halt his court pursuit of nine tapes of presidential conversations on the Watergate scandal. Last Friday night the President, in announcing that Bork will appoint another prosecutor this week, said the White House would cooperate fully with the new investigator but would not expect him to go to court, as Cox did, to force production of other presidential tapes and documents.

Bork, however, has said he thinks the prosecutor should be free to go to court if necessary. He also has said his own position would be "intolerable" if the new prosecutor is not granted full independence.

At the same time, Congress is considering legislation to reestablish the office of special prosecutor, which Mr. Nixon abolished, and guarantee its independence.

Last Thursday, when Bork met with White House aides Alexander M. Haig Jr. and J. Fred Buzhardt, between

40 and 50 names of prosecutor candidates were discussed, according to Justice Department spokesman John W. Hushen. Most of them, including some of the half dozen names that Bork put forward, were rejected, Hushen said.

But Bork denied news reports that his own top choice was rejected by President Nixon, stressing that the President has not yet gotten into the decision making process.

Instead, Hushen said, Bork and the White House aides began discarding names for a variety of reasons: "They were perceived as too politically partisan on one side or the other; they did not have enough prosecutorial experience; they were not thought to be able to manage an operation of the magnitude of the prosecution force."

One source familiar with Bork's search for a prosecutor said, "He knows he's in a terribly difficult position and he's trying to do the

right thing. He feels strongly that the prosecutor must have independence and if he can't get that—if he's backed into a corner—he'll resign." He said Bork remarked the other day that he would "get shot" with criticisms regardless of whether he stays at Justice or leaves.

Another source, who works in the Justice Department, recalled that Bork himself considered resigning after he fired Cox. But as Bork told fellow staffers last Tuesday night, three days after the firing, "Somebody ought to obey the President. Whether you think he's right or wrong, the Constitution gives him the authority to fire anyone in the Executive Branch."

If Bork had not stayed on in the department, this source said, "there would have been no one in a position of leadership. The department, for example, could not have brought an antitrust suit because no one could have signed it."

When the Cox firing occurred, there was no order

of succession beyond the solicitor general, a job Bork still holds. Last week Bork signed an order setting up a line of succession.

Another source close to him said, "Undoubtedly he sees the box they're headed into. Even if he could find the best possible man and could negotiate a deal whereby the White House had no strings on him, no one's going to believe it."

"His chance of being able to come up with someone with guarantees of freedom credible to Congress is zilch. Bob is tied in with the loss of credibility that has affected the President.

"Assuming Congress then passes a bill creating a really independent prosecutor, what's Bork going to do? Advise the President to veto it?"

"The special prosecutor named under the congressional bill would supersede the prosecutor named by the administration. And Bork and the White House would be left standing like a bunch of peeled bananas. It's a no-win game."



The Senate Judiciary Committee prepares to hear testimony from Archibald Cox. From left are Chairman Eastland, Sens. Hruska and Scott.

By Joe Heiberger—The Washington Post

## COX, From A1

with White House chief of staff Alexander M. Haig Jr. who disputed his complaints in a television interview Sunday on CBS's "Face the Nation."

"It seems to me our efforts were very unsuccessful," Cox said. As a result, he protested, for him to have bowed to Mr. Nixon's demands that he stop using the courts in his attempts to obtain tapes, notes and other records of presidential conversations at issue in his investigations would have smacked "of almost a cover-up."

Ticking off documents that he and his Watergate special prosecution force were still trying to obtain when he was dismissed Oct. 20, Cox said some of the requests had been bottled up at the White House for almost two months.

For example, he said he had asked on Aug. 23 for:

- All records and logs of telephone calls made by former White House aides John D. Ehrlichman, David Young, Egil Krogh Jr., Charles W. Colson, G. Gordon Liddy and E. Howard Hunt between June 19, 1971, and Dec. 13, 1971, in connection with the secret activities of the White House "plumbers" in investigating news leaks of sensitive information.

- Logs of any meetings between them and the President during the same period.

- All records involving the "plumbers" investigations of the Pentagon Papers case and two other assignments cryptically labeled "Special Project No. M 1" and "Project Odessa."

- Records removed from Krogh's files at the Department of Transportation and placed in the President's files between Dec. 31, 1972, and May 31, 1973. After leaving the White House staff, Krogh served as under secretary of transportation until he resigned because of his role in the White House-sponsored break-in at the offices of Daniel Ellsberg's psychiatrist over the 1971 Labor Day weekend.

"Presidential files have a way of expanding," Cox said wryly.

Mr. Nixon's White House lawyers, Cox told the senators, even blocked the release of White House documents bearing on a controversial 1971 increase in milk price supports although those same documents had already been turned over to the Justice Department's civil division.

The civil division is defending the administration in a lawsuit brought by consumer groups who have charged that the higher price supports were a payoff for \$427,500 in campaign contributions by the dairy farm industry to Mr. Nixon's re-election effort.

Cox said he mentioned the records involving the milk producers several months ago to then-Attorney

General Elliot L. Richardson, who was forced to resign Oct. 20 when refused to fire Cox.

"I said that if the civil division can see them, I don't see why I can't," Cox recalled telling Richardson. "He agreed, then stopped and said, 'Well, I'd better tell the President's counsel.'"

"When he did tell them," Cox reported, "he was forbidden to turn it (the milk producers' file) over."

Cox said the White House had also failed to turn over any records involving a \$5,000 loan which Colson had requested of Washington public relations man William Baroody for unspecified reasons in late August of 1971. The money, it was recently learned, was used to finance the Ellsberg break-in. Baroody was repaid shortly afterwards by \$5,000 from the dairy industry's contributions.

Still other requests have been sitting around for weeks, Cox said. He said his office had asked on Aug. 27 for all White House records involving columnist Joseph Kraft and the reported bugging of Kraft's phone by White House operatives, but has yet to get them.

In addition, Cox reported, his prosecutors were still waiting for memos written by Ehrlichman between March 23 and March 27, 1973; any records that Young transmitted to Ehrlichman last April 30, and documents that had been dropped into "presidential

files" regarding Ehrlichman, Young and Colson. Finally, the former prosecutor said that he had also been waiting in vain for tapes and memoranda of other presidential conversations besides Mr. Nixon's nine talks with his aides about the Watergate scandal.

Cox said he had not pressed these requests while the Watergate tapes case was pending in the courts.

"Now that that question has been adjudicated," he told the committee, "I would expect the (Watergate prosecution) office would take out a very large number of requests and a very large number of subpoenas."

In seeking the documents, Cox emphasized that he did not mean to suggest that all are "necessarily evil" or incriminating. In fact, he said, some might help exonerate various individuals now under suspicion.

Speaking with newsmen after the hearing, Cox said Haig "was certainly inaccurate" in claiming that the White House had been cooperative. "I assume he was misinformed," Cox said. Even Howard Hunt's White House pass, he disclosed to the committee, was obtained only with the aid of a subpoena.

In connection with the "expanding" volume of Mr. Nixon's presidential files, Cox reported that a member of the White House staff, whom he identified only as "X," came into his office to report that he could expect his files to be subpoenaed

along with those of another White House aide because of the second aide's testimony before the Senate Watergate committee.

"X consulted with (White House special counsel J. Fred) Buzhardt," Cox testified, "and it was agreed that all of X's relevant files should be put in the President's files."

The ousted prosecutor said he thought it crucial to create an independent office of special prosecutor by statute. Cox said he had had serious reservations about the constitutionality of proposals requiring the U.S. District Court here to appoint a successor,

which he voiced in a television interview Sunday, but since then, he said that talks with other lawyers and study of some case law had changed his mind.

"It may be argued that this takes away powers from the executive," Cox said, "but I don't think the lines are that hard and fast."

"There is certainly nothing incongruous in having the court appoint lawyers to advise grand juries and prosecute" cases involving high administration officials, Cox said. "It's certainly far more incongruous to expect people to investigate themselves."

Eight of the 16 members of the Judiciary Committee have joined in sponsoring a bill that would leave appointment

of a new prosecutor to Chief U.S. District Judge John J. Sirica. Sen. John L. McClellan (D-Ark.) indicated that he might make it a majority if a provision were added requiring Senate confirmation.