

Nixon and Bork Reported Split on Prosecutor's Role

Difference Over Access To Documents Could Delay Appointment

By JOHN M. CREWDSON

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WASHINGTON, Oct. 28—An apparent conflict between President Nixon and his Acting Attorney General, Robert H. Bork, over the independence of a new special Watergate prosecutor could delay the naming of a replacement for Archibald Cox unless it is resolved in the next day or two.

President Nixon announced at a news conference Friday night that Mr. Bork would appoint a new prosecutor early this week, but he added that the White House had no intention of providing him with "Presidential documents" such as those Mr. Cox had requested.

Mr. Bork, on the other hand, has let it be known that he believes strongly that whoever takes the job from which Mr. Cox was dismissed a week ago "ought not to have any strings on him from anybody."

Cox Asks Guarantees

Mr. Cox maintained in a television interview today that it was "essential" that his replacement have statutory guarantees of freedom and independence from the President.

But Alexander M. Haig Jr., the White House chief of staff, declared in a separate television interview that the White House intended "to appoint a special prosecutor with the kind of independence the President described on Friday."

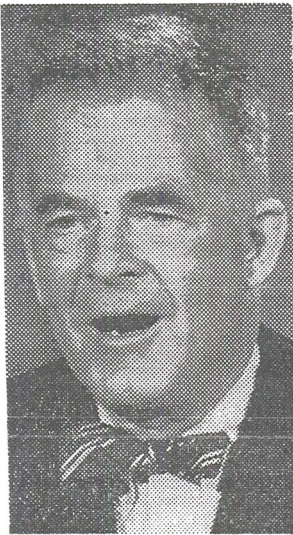
Mr. Bork, who is on leave as a professor at the Yale Law School, said specifically, in an interview with The New York Times, that he thought anyone placed in charge of the Government's Watergate investigation should have the option of subpoenaing, as Mr. Cox did, Presidential documents to which he was entitled and that were needed as evidence in a prosecution.

"Have I communicated to the



Associated Press

Alexander M. Haig, above, and Archibald Cox, below, discussing evidence.



United Press International

While House my feeling that the special prosecutor ought to be free? The answer is yes," he said, adding that no "reputable man with a reputation to maintain" would accept the post without such assurances.

Possibility of Quitting

In the interview, Mr. Bork also raised the possibility that he might resign from the Justice Department "if a special prosecutor were set up and his independence were interfered with."

"My position is untenable unless these investigations and prosecutions are handled correctly," he said.

Elliot L. Richardson chose to resign as Attorney General a week ago rather than dismiss Mr. Cox for his refusal to obey an order by Mr. Nixon not to pursue in the courts his quest for the nine White House tapes.

To do so, Mr. Richardson said, would have violated his pledge to the Senate when he was confirmed as Attorney General last May that the special prosecutor would have full authority to challenge in court

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claims of executive privilege by the President.

William D. Ruckelshaus, Mr. Richardson's former deputy, was discharged by the President a short time later for also refusing to dismiss Mr. Cox.

Mr. Bork, who as Solicitor General was next in command, agreed to carry out the order. He has said he had planned to resign immediately afterward but was persuaded by Mr. Richardson to stay on "because the department needed continuity."

Morale Problem

If the conflict between the Acting Attorney General and the White House over the special prosecutor's role eventually lead to Mr. Bork's resignation, the effect on a Justice Department shaken by the loss of its top officials would do still further damage to morale and efficiency.

Mr. Bork was reportedly consulting with top White House aides over the weekend on possible nominees for special prosecutor and on the guaran-

tees to be provided to him in seeking Presidential materials, but it could not be learned whether any resolution had been reached.

Mr. Bork also expressed the hope that he "would be able to prevent" the appointment of a person who he did not believe was suited for the job, and he implied that he would resign if he were overruled.

"These prosecutions have to be carried on correctly, and if I thought they were not going to be because of the person chosen, I couldn't tolerate that," he said before the President's announcement at his news conference last Friday night.

He also said he had suggested "five or six names" to the White House who met his prerequisites for the job — previous experience as a prosecutor, something Mr. Cox did not have, and someone who is not now withing the Government.

Not Petersen

Mr. Bork declined to name his choices, but they reportedly do not include Mr. Richardson, Mr. Ruckelshaus or Henry E. Petersen, the Assistant Attorney General who has temporarily taken control of the department's Watergate case. One or two, he said, are Democrats, and none of them is from Yale.

General Haig, the White House chief of staff and one of the officials with whom Mr. Bork is believed to be consulting over the appointment, said today that he did not believe a new prosecutor "will have to make a pledge of any kind" not to seek additional White House tapes or other confidential documents.

"Nor do I think he should," General Haig continued, "and if he were the type that would feel encumbered in that way, he's perhaps not the man that we would want."

Mr. Nixon agreed last Monday to surrender the nine original recordings of conversations between him and his aides to the United States District Court here. His decision came two days after Mr. Cox was discharged for refusing to acquiesce in the President's order barring him from seeking the tapes through the courts.

The former special prosecutor and Harvard law professor conceded today that his subpoena for the nine recordings had been "only the first step in seeking a great deal of important evidence from the White House."

Would Have Checked Gifts

Had he remained in office, Mr. Cox said, he would have also challenged the President's assertion of executive privilege in refusing to release certain information concerning campaign contributions from big dairy industry cooperatives that critics have linked to a 1971 increase in milk-price supports.

Mr. Cox emphasized, on the National Broadcasting Company's "Meet the Press" tele-

vision program, that he had no hard evidence that the White House was concerned about some of the aspects of his investigation.

"But," he added, "I gathered the impression from the Attorney General that he was occasionally subject to calls" from the White House over the scope of the Cox inquiry.

In its issue on sale tomorrow, Time magazine reports that Mr. Cox was dismissed after the White House challenged his determination to pursue four sensitive avenues of investigation, including a program of "national security" wiretaps on Government officials and newsmen.

The three other areas ob-

jected to, according to the report, involved a 1970 operation that raised \$4-million for Congressional and gubernatorial candidates, the handling of anti-Nixon demonstrators during the 1972 Presidential campaign, and the activities of the White House's special investigations unit known as the "plumbers."

Predicts Approval

Senator Birch Bayh, Democrat of Indiana, appearing on the American Broadcasting Company's "Issues and Answers" program, predicted that Congress would approve a resolution introduced last week that would authorize the appointment of a special Water-

gate prosecutor by the courts.

The measure, which has gained 53 co-sponsors in the Senate, was endorsed yesterday by the American Bar Association in a resolution, passed by the organization's board of governors, calling on Congress to create an independent "office of special prosecutor."

General Haig said today that although the Nixon Administration welcomed the views of the Bar Association, "no President can run this great republic by being the victim of a viewpoint of a particular advocate of a particular point of view."

"I don't think President Nixon is going to feel encumbered by that recommendation," Gen-

eral Haig said on the Columbia Broadcasting System program "Face the Nation." But he added, "He might not ignore it, either."

Mr. Cox, who as prosecutor had no statutory authority, said today that he would prefer that an independent prosecutor, authorized by Congress, be appointed by the courts rather than the President, even though in either case his autonomy would be guaranteed by law.

Feels Less Certain

However, he conceded that he was less certain about the constitutionality of a Congressionally authorized prosecutor

who was appointed by the court.

"I feel no hesitance in saying that a bill that created an independent prosecutor, truly independent, and gave him enough power to do the job in a broad enough area, would be constitutional if it allowed for appointment with the advice and consent of the Senate," Mr. Cox said.

On Friday, Mr. Bork expressed strong reservations about the effort in Congress to set up a prosecutor ultimately answerable to anyone except the President, on the ground that criminal prosecution ought to be a function of the executive branch.

"You don't want to set in motion a train of events in which we wind up with every branch of government with its own Department of Justice, and we conduct relations between the three branches of government by litigation," he said.

Asked what he might do if Congress proved to be successful in its efforts to establish an independent prosecutor, he replied that "some day I would write a stinging article in The Yale Law Journal about the inadvisability of that course of action."

But Mr. Cox suggested that there would be no real problem if Mr. Nixon and Congress both moved to appoint their own

special Watergate prosecutors.

"I think Congress could easily legislate the Presidential appointed one out of existence, that would surely be constitutional," he said.

Asked whether he might succumb to sentiment in Congress to take back his old job if it were re-established by law, Mr. Cox, who was packing today to leave for an extended vacation in Maine, conceded that "I suppose if I were pressed that I would have to consider it."

But he added, "It would be unwise for anyone to offer it to me, and unwise for me to take it."