

Senate Panel Quizzes Saxbe on Prosecutor

By Susanna McBee 1/13/73
Washington Post Staff Writer

Sen. William B. Saxbe (R-Ohio) said yesterday that as Attorney General he would make President Nixon fire him before he would carry out any order he disagrees with to dismiss Watergate Special Prosecutor Leon Jaworski.

During nearly six hours of testimony Saxbe told the Senate Judiciary Committee, which is considering his nomination to head the Justice Department, that acting Attorney General Robert H. Bork had fired the former prosecutor, Archibald Cox, for an "extraordinary impropriety."

Sen. Robert C. Byrd (D-W.Va.) expressed incredulity, since no one in the administration, including Bork, has ever accused Cox of such impropriety. Cox has said he was fired on orders of President Nixon because he refused to give up his access to the courts in seeking White House evidence in the Watergate scandal.

Saxbe testified that to fire Cox, Bork "had to find impropriety, and I think he did." The senator said he knows of no such impropriety himself, but he said that the Justice Department will appeal the ruling by U.S. District Court Judge Gerhard A. Gesell that Bork acted illegally in the firing.

"Suppose the President orders you to fire Mr. Jaworski?" Byrd asked.

"I would not attempt to fire Mr. Jaworski, nor would I resign," Saxbe replied. "The President has the right to fire me any time he wants to." He added that he would argue with the President if Saxbe feels Jaworski is "getting a bad rap."

"Would you resign rather than carry out an order you didn't think was ethical, just, or fair?" Byrd asked.

"No, but I wouldn't carry out the order, either," Saxbe said.

"So you would make him fire you?" Byrd pressed.

"Absolutely," the nominee answered.

Saxbe said the only justifiable reasons he could envision for firing Jaworski would be "conduct that would unfavorably reflect on the country and the judicial system, irresponsible activities that would shock the bar and the citizenry of the world, and failure to proceed with an investigation."

At Byrd's request, Jaworski was called to testify, and for a period of two hours both he and Saxbe swore under oath that they understood Jaworski's charter to be one of full independence.

As Byrd read the charter line by line, Saxbe responded with a series of "I do's" to questions asking him to promise not to interfere with Jaworski's jurisdiction or with the prosecutor's right to go to court to get evidence the White House might refuse to supply.

At one point, Saxbe vowed to "fight for his (Jaworski's) right to proceed as he sees fit."

If the committee desires, he added, he will remove a clause that Bork added Nov. 19 to Jaworski's charter saying Mr. Nixon would have to obtain the concurrence of congressional leaders if he seeks to limit Jaworski's jurisdiction in the Watergate investigation.

Saxbe said he interpreted the clause as one that strengthens Jaworski's position. Jaworski agreed, citing a Nov. 21 letter from Bork saying he intended it as a safeguard, not a restriction. But several committee members are known to regard it as a restriction.

When Saxbe said President Nixon "fully understands and agrees with" Jaworski's charter of independence, Sen. Philip A. Hart (D-Mich.) asked him to see if Mr. Nixon would "commit that to paper."

"I wouldn't presume to demand such a thing from the President," Saxbe replied. "I would suggest that the committee ask him." Hart said it would.

Saxbe also told the committee that if he is confirmed he will remove himself from any participation in the Justice Department's reopened investigation of the fatal shooting of four Kent State University students after Ohio National Guardsmen opened fire during a campus demonstration in May, 1970. Saxbe noted that he was once in the Ohio guard and that he knows many people involved in the case. If the grand jury re-

turns any indictments, he will ask the deputy attorney general to handle them, he added.

Saxbe indicated disagreement with several internal changes that former Attorney General Elliot L. Richardson understood at the Justice Department before he quit in protest over Cox's ouster.

The Senator expressed doubts, for example, on a reorganization plan that he said would separate the Attorney General from the FBI director and the director of prisons. He also questioned a plan to create an inspector general within the department to investigate any internal wrongdoing and a proposal to remove politics from the selection of federal judges, marshals and U.S. attorneys.

Meanwhile, on the Senate floor Majority Leader Mike Mansfield (D-Mont.) postponed indefinitely action on a bill to let the courts appoint an independent Watergate prosecutor. Mansfield said, however, that should Jaworski's independence or tenure be threatened by the White House, the bill will be recalled rapidly to the floor even if Congress has to be called back from the month-long Christmas recess.