

PRESIDENT WILL LET BORK NAME A NEW PROSECUTOR; VOWS FULL COOPERATION

TO RETAIN PAPERS

Cites Confidentiality in Refusal to Reveal His Conversations

By ANTHONY RIPLEY
Special to The New York Times

WASHINGTON, Oct. 26. — President Nixon said tonight that a new Watergate special prosecutor would be named next week by Acting Attorney General Robert H. Bork and he pledged "total cooperation from the executive branch. [Opening statement, page 14.]

He said that the matter of turning over evidence from the White House to the special prosecutor for the criminal investigation was a matter that "can be worked out and should be worked out in cooperation, and not by having a suit filed by a special prosecutor within the executive branch against the President of the United States."

It was such a lawsuit that brought about the President's orders last Saturday to dismiss Archibald Cox, the special prosecutor, and led to the resignations of Attorney General Elliot L. Richardson, and his deputy, William D. Ruckelshaus.

However, Mr. Nixon said, "We will not provide Presidential documents to special prosecutor. We will provide, as we have in great numbers, all kinds of documents from the White House."

"But," he went on, "if it is a document involving a conversation with the President I would have to stand on the principle of confidentiality."

Storm of Protest

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the Attorney General, and his deputy, William D. Ruckelshaus.

The dismissal and resignations touched off a storm of public protest, which the President apparently tried to head off tonight with his announcement that the investigation would be once again headed by a special prosecutor rather than by the Presidentially controlled Justice Department.

He referred to the Senate confirmation hearings last May of Mr. Richardson. At that time, the Senate Judiciary Committee won a guarantee from Mr. Richardson that Mr. Cox would be dismissed only for "extraordinary improprieties."

"Mr. Richardson and Mr. Ruckelshaus felt that because

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of the nature of their confirmation that their commitment to Mr. Cox had to take precedence over any commitment they may have to carry out an order from the President," Mr. Nixon told a news conference.

"Under those circumstances, I accepted with regret the resignations of two fine public servants."

"Now we come to a new special prosecutor. We will cooperate with him and I do not anticipate that we will come to the time when he would consider it necessary to take the President to court."

The speculation was that former Solicitor General J. Lee Rankin, Mr. Richardson or Henry E. Petersen, an Assistant Attorney General in charge of the Justice Department's Criminal Division, might be named as a replacement. Mr. Petersen is temporarily in charge of the special prosecutor's office.

Mr. Bork, in an interview today, said he had urged President Nixon to name a new special prosecutor with "a mandate no less free than Archibald Cox had." Mr. Bork implied that he would resign from the Justice Department if it were not done.

He said he had submitted a list of "five or six" individuals to the White House as possible replacements for Mr. Cox. He

declined to name any of them but said the list contained "a couple of Democrats."

Mr. Nixon tonight said that Mr. Richardson had agreed to the decision on the tapes that had cost Mr. Cox his job. However, Mr. Richardson in his news conference Tuesday stated: "I did not agree with the decisions which brought about the necessity for the issuance of that order."

He said that he had recommended appointment of a replacement for Mr. Cox because, although "I feel like an honest man, how the hell can I expect anybody else to know that."

Tapes And Documents

He said he believed that any new prosecutor ought to be free to seek through the courts any materials, including White House documents and tape recordings, that became necessary in the Watergate prosecutions. He added:

"If a special prosecutor were set up and his independence were interfered with, I would feel that my position (at the Justice Department) was untenable." He would not elaborate.

Meanwhile, more than half the Senate, 46 Democrats and seven Republicans, sponsored a bill today to create an independent special prosecutor answerable only to the courts.

Informed of this development, Mr. Bork said that he disagreed with such a proposal on the ground that such a prosecutor was a constitutional function of the executive branch. But he said that he had had no indications that the White House was contemplating submitting the name of whom ever it might appoint for Senate confirmation as a means of appeasing the sentiment in Congress.

The bill, drafted by Senators Birch Bayh of Indiana, and Philip A. Hart of Michigan, both Democrats, would strip from the President the right to dismiss a special prosecutor as he did last week with Archibald Cox.

It would provide for appointment of the special prosecutor by Chief Judge John J. Sirica of the United States District Court and provide that Judge Sirica could dismiss him only for "extraordinary improprieties."

The same language—"extraordinary improprieties"—was attached to the guidelines set up

last May 19 for Mr. Cox's job. However, the President swept them aside last Saturday when he dismissed Mr. Cox and temporarily appointed Henry E. Petersen to head the Watergate investigation.

Petersen Saw Discredit

Mr. Petersen is the Assistant Attorney General in charge of the Criminal Division and originally headed the Watergate investigation. He was bitter when the job was taken from him last May, saying the transfer cast discredit on him.

This time, under the Senate bill, the judge alone would have the power of dismissal.

Mr. Bork said today that he had communicated to the White House his view that any new special prosecutor "ought to have a mandate no less than Archibald Cox had."

Any nominee, he said, should be assured in advance that he would be "free to do anything," including appoint a new staff of his own. But he said he believed it would be a mistake not to take advantage of the experience that the former members of Mr. Cox's office had acquired.

They are now employees of the Justice Department, Mr. Bork said, adding that his efforts to persuade them to remain on the case had been successful so far. They were continuing to call witnesses and present evidence to the two Federal grand juries investigating Watergate, he said.

Although Mr. Bork conceded that he would not have the last word in any nomination—he said that it would come out of a "consultative process"—he believed that "I would be able to prevent" the naming of someone who did not meet his standards.

On Leave From Yale

Asked how soon an announcement might come, Mr. Bork, who is taking a year's leave from the Yale Law School, said he "would like to see a special prosecutor named in about 15 minutes, and an Attorney General and Deputy Attorney General named in about 16 minutes."

"I would like to be Solicitor General of the United States, a job I have long aspired to," the Solicitor General said.

He added that Mr. Petersen "would very much like" to see that authority transferred back to another special prosecutor. There were reports earlier that Mr. Petersen himself might be named to the post, but Mr. Bork said he did not think he wanted the job.

Senate Republicans have brought heavy pressure to bear on Mr. Nixon to name a successor to Mr. Cox.

By appointing Mr. Petersen as the permanent successor,

President NIXON would not make a complete break from the original Watergate investigation. Critics, citing a wide-scale cover-up, say that the first investigation was tax and Mr. Petersen was too close to White House aides.

By passing him over for a second time, Mr. Nixon would

again strike at Mr. Petersen's credibility.

No matter what action the President takes, backers of the bill for a court-appointed special prosecutor said they would continue to press for passage of the bill.

Senator Bayh said the prosecutor must answer to neither the Congress nor the President.

Senator Bayh said there had proposals that the President name Mr. Cox's successor.

"If that course is pursued, we will again be in a situation in which a person or persons charged with the investigation of the executive branch would be beholden to the executive branch and subject to dismissal by the President.

"One thing our system of Government cannot withstand is another trauma such as that of the past week and I caution my colleagues not to fall prey to an approach fraught with danger."

Some indication of the pressure was shown when Senator Robert W. Packwood, Republican of Oregon, joined six liberal Republican senators in sponsoring the bill.

"Justified or not, public acceptance of truthfulness from this Administration is beyond redemption," Senator Packwood said.

"Nothing now will do but an independent prosecutor beyond the grasp of the President."

Aside from the defection of Senator Packwood, who has long been an Administration supporter, and the six liberals, most Senate Republicans held back.

"We're in a holding pattern," said an aide to one Republican Senator. He said the leadership was giving the President a chance to name a new prosecutor first, out of courtesy, and hoping some compromise would be found.

However the Republican minority leader, Senator Hugh Scott of Pennsylvania, made it clear to the White House early this week that it would support a court-appointed special prosecutor if Mr. Nixon failed to act.

Byrd Favors Bill

Senator Robert C. Byrd of West Virginia, Democratic whip, said he preferred the court-appointed prosecutor.

He said that if "the likes of Elliot Richardson were to be special prosecutor," and if Senate confirmation were part of the nomination with strict guidelines, "that might be a fairly good second-rate pro-

posal."

"I don't think that any investigation conducted under the auspices of the Justice Department at this time would lend the degree of credibility to the investigation that would be accepted by the American people."

If Mr. Nixon vetoed such a bill for a special prosecutor, he "might well be overridden," Senator Byrd said.