

## Tyler Turns Down Job as Prosecutor in Watergate Case; Richardson's First Choice

### LIST IS NARROWED TO 3 CANDIDATES

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#### Attorney General-Designate Says He Will Call Them to Capital for Conference

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By DAVID E. ROSENBAUM

Special to The New York Times

WASHINGTON, May 15—Elliott L. Richardson's first choice to be special prosecutor in the Watergate case turned down the job today, and it seemed likely that it would be at least another day or two before another person would be offered the job.

The delay in finding a special prosecutor has held up Mr. Richardson's confirmation to be Attorney General, because the Senate Judiciary Committee is clearly unwilling to act until a prosecutor is named.

Meanwhile, Robert W. Meserve, president of the American Bar Association, said today he believed that the special prosecutor should not report to the Attorney General and that a special Federal agency should be created to conduct the investigation and prosecution.

Judge Harold R. Tyler Jr. of the United States District Court for the Southern District of New York, who was offered the prosecutor job by Mr. Richardson last Saturday, called Mr. Richardson this morning to say that he would not accept it. The 51-year-old judge said he was not willing to give up his judgeship.

#### 3 Other Candidates

Judge Tyler's refusal left the names of three other men on Mr. Richardson's list of candidates for the special prosecutor's job. They are Warren M. Christopher, a 47-year-old Los Angeles lawyer who was Deputy Attorney General in the Johnson Administration; David W. Peck, 70, former Presiding Justice of the New York State Appellate Division, and William H. Erickson, 49, a Justice on the Colorado Supreme Court.

During a break in the fourth day of confirmation hearings before the Senate Judiciary Committee, Mr. Richardson told reporters that he would call the three men to Washington to talk with them before he offered one of them the job.

It was learned that the Federal Bureau of Investigation

had begun a "full field investigation" of at least two of the men.

Mr. Richardson told the committee that he hoped to pick a prosecutor "in the next couple of days," but he added quickly, "I can't guarantee it."

#### Discards Earlier Plan

Mr. Richardson's decision to meet with the three candidates was a departure from his initial plan of selection. He told the Judiciary Committee last week that he would rank the names of the candidates on his final list on the basis of priority and would then offer the job to the candidates in that order until one accepted it.

After the hearing today, the Attorney General-designate said that one or more of the candidates might, as did Judge Tyler, have personal or professional reasons for refusing the offer and that he did not want a "scorecard on refusals" to be kept.

The Judiciary Committee is not planning to meet tomorrow. Several Senators on the committee said they wanted the name of a prosecutor and a written declaration of the prosecutor's authority before they acted on Mr. Richardson's nomination.

Mr. Richardson has agreed to work out with the prosecutor such a statement of authority and to submit it to the committee. He has continued to insist that he must maintain "ultimate responsibility" for the Watergate investigation, but would designate broad authority to the special prosecutor.

#### Letter to Eastland

Mr. Meserve made his views known in a letter to Senator James O. Eastland, chairman of the Senate Judiciary Committee.

Arguing against Mr. Richardson's contention that the Attorney General must bear over-all responsibility for the Watergate prosecution, Mr. Meserve said that only if the prosecutor were completely independent from Mr. Richardson could public confidence in the investigation be assured.

Mr. Meserve, who emphasized that he was writing "solely as a citizen and a lawyer" and not in his official capacity, also suggested that a "supervisory body or commission" be created to oversee the work of the special prosecutor.

Mr. Richardson has contended throughout his confirmation hearings that creation of a separate agency would take considerable time and thus delay the prosecution.

#### 'Reluctant to Resign'

By ARNOLD H. LUBASCH

"I came to the conclusion that as important as this special prosecutor's role should be, and will be, I was reluctant to resign as an active judge and do

this," Judge Tyler said here yesterday.

Judge Tyler, who has been Federal District Court judge here for 10 years, said the job of special prosecutor could take two or three years "if the man gets the complete independence he ought to have to do the right job."

The judge said Mr. Richardson had informed him last Friday that he was one of several men under consideration and told him on Saturday that he was the first choice for the job.

On Sunday, Judge Tyler continued, he flew to Washington for a lengthy discussion at Mr. Richardson's home, and then reported his decision to Mr. Richardson by telephone yesterday at 9:30 A.M.

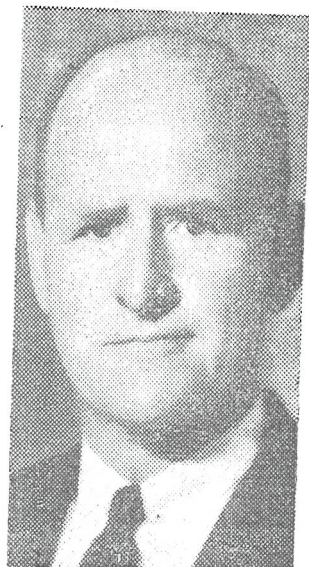
#### 'Ground Rules' Unsettled

"I thought it was probably wrong to resign as an active judge," he told newsmen in his chambers an hour later, "particularly when the ground rules are not completely settled."

Judge Tyler, a Republican appointed to the bench by President Kennedy, said his decision to turn down the prosecutor's job had been difficult because he believed that Mr. Richardson and the Senate were "trying to work out a program and get the right man to do the right job."

Before becoming a judge, Mr. Tyler served as an Assistant Attorney General in the Eisenhower Administration, an Assistant United States Attorney here and a member of the Waterfront Commission of New York Harbor.

The judge, who was born in Utica, N. Y., is a graduate of Princeton University and Columbia Law School.



Conway

Judge Harold R. Tyler Jr., in a photo made some years ago. He rejected the job of special prosecutor in the Watergate case.