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# Probe Job Declined by Top Choice

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Turned down by his top choice for special prosecutor in the Watergate case, Attorney General-designate Elliot Richardson held up his next selection yesterday in hopes of avoiding any more refusals.

He said he does not plan to offer the post to anyone else until he has had a chance to confer personally with each of the three remaining candidates on his list.

The Senate Judiciary Committee, in turn, suspended its hearings on Richardson's confirmation as Attorney General.

Richardson's first choice for special prosecutor, Federal District Judge Harold R. Tyler Jr. of New York, declined the job yesterday morning. He said that he thought it would have been "probably wrong to resign as an active judge, particularly when the ground rules (for the prosecutor) aren't completely settled."

Senate Judiciary Committee Chairman James O. Eastland (D-Miss.) promptly made plain his preference for former Deputy Attorney General Warren Christopher, one of the three men left on Richardson's "list of finalists."

"You get a man like Christopher now—I don't know the others—he'd run the show or quit," Eastland told reporters in an impromptu noon-hour press conference. "He's a big lawyer—a BIG lawyer."

Richardson has insisted on retaining "final authority" over the Watergate case since his confirmation hearings began last week. He has maintained that the special prosecutor will still have all the independence he needs to carry out an impartial investigation, but has argued that as Attorney General, he ought to be kept informed of its progress.

Challenging Richardson on that score, the president of the American Bar Association, Robert W. Meserve of Boston, said he did not

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think the plan would establish the "public confidence" that is essential.

Meserve voiced his objections "solely as a citizen and lawyer" in a letter to Eastland and House Judiciary Chairman Peter Rodino (D-N.J.).

"With all deference to Mr. Richardson," Meserve said, "I believe that the prosecutor should not report to the Attorney General, particularly as to evidence, if any, which might be thought to involve the office of a President who has, three times, nominated Mr. Richardson to important public positions."

Now Secretary of Defense, Richardson has also served in the Nixon administration as Under Secretary of State and as Secretary of Health, Education and Welfare.

A longstanding friend of Richardson's, Meserve said he had "complete confidence" in Richardson's integrity. But he said the investigation must have the appearance of independence as well as the substance.

As a result, Meserve said he felt it would be best to set up "a special agency, with a separate and adequate budget, supervised by the independent prosecutor," even if special legislation is necessary.

Since the prosecutor ought to be accountable to some higher authority, Meserve suggested creation at the same time of a supervisory body or commission, perhaps composed of senior or retired federal judges.

Along with Republican senators on the Judiciary Committee, Richardson has

taken the tack that the need for a special prosecutor to take over the far-flung investigations stemming from the Watergate break-in is too urgent to be postponed for the time needed to nurse new laws through Congress.

Beyond that, Richardson has said that he has no desire to be Attorney General if he cannot be trusted with "ultimate responsibility" for the Watergate case.

Skeptical Democrats on the committee have indicated that Richardson's confirmation will be held up until they have an opportunity to question the special prosecutor and examine the written charter of authority that Richardson has promised to give him.

Summarizing the dilemma at yesterday's session, Sen. Philip A. Hart (D-Mich.) said he was confident "that if the facts led to involvement of the President, Elliot Richardson, whether he had a special prosecutor or not, would name the President."

But, Hart said, "the real problem is if the facts don't involve the President, who will believe Elliot Richardson when he says the don't."

Richardson replied that it would be impossible, in any event, for a special prosecutor to "prove a negative." Prosecutors, he said, deal in courtroom verdicts, but, he emphasized, "a 'not guilty' verdict is not a declaration of innocence. . . . If it is a negative that has to be proved, it may require some separate new mechanism," perhaps Sen. Sam C. Ervin's Senate investigating committee or a final review and report on all the investigations by an independent panel.

With the hearings adjourned yesterday afternoon "at the call of the chair," Richardson told reporters that he hopes to consult here before the end of the week with the three "finalists" for the prosecutor's job. They are former Deputy Attorney General Christopher, 47, now a Los Angeles lawyer; David W. Peck, 71, former presiding justice of the New York Supreme Court's appellate division, and Judge William H. Erickson, 49, of the Colorado Supreme Court.

Since each might have a variety of personal, financial and other reasons for not taking the post, Richardson said, he wants to sound them out first before making any more offers.

"It wouldn't be helpful to keep a scorecard on who's turned it down," Richardson said. He said he was anxious

"not to depreciate the job" with more refusals.

At that point, William Pierce of the far right National Youth Alliance, who has been attending the hearings in hopes of testifying against Richardson's confirmation, challenged Richardson on his old driving record. It reportedly involves more than a dozen traffic violations between 1938 and 1958, some involving liquor. Pierce demanded to know if that ought not disqualify him as Attorney General.

Richardson quietly replied that he thought not and said the subject had been thoroughly explored by the Senate Foreign Relations Committee when he was nominated as Under Secretary of State. Of his traffic record, he said: "If it shows anything, it shows at least that I never tried to fix a ticket."