

Nixon Plans Prosecutor,

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President Nixon said last night that a new special prosecutor will be appointed next week but that he will not be given access to "presidential documents" in pursuing his investigations.

Speaking at his first press conference since the ouster of Watergate Special Prosecutor Archibald Cox, Mr. Nixon said he hoped the new appointment would prove satisfactory on Capitol Hill and dissuade Congress from demanding a prosecutor appointed by the courts.

That seemed unlikely in light of the restrictions Mr. Nixon indicated will be placed on the administration's new choice for the job.

Acting Attorney General Robert H.

Bork, the President said, will name the new prosecutor next week.

Bork said he had recommended five or six names to the White House, but would not disclose their identities, except to say that "he is not from Yale," where Bork taught law before becoming solicitor general last June.

Using almost the same words that fore-shadowed the Cox appointment last May, Mr. Nixon said last night: "The special prosecutor will have independence. He will have total cooperation from the executive branch."

But when asked whether the new prosecutor would have the authority to go to court if necessary to obtain evidence from the President's files, Mr. Nixon indicated that he would not.

"I would anticipate that that would not be necessary," the President said.

"... These are matters 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."

"We will not," Mr. Nixon added a few moments later, "provide presidential documents to a special prosecutor."

"We will provide, as we have in great numbers, all kinds of documents from the White House, but if it is a document involving a conversation with the President, I would have to stand on the principle of confidentiality."

It was just such a stand on the President's secret Watergate tapes that led to Cox's dismissal last week. Promised "full authority" to challenge claims of executive privilege,

Bars Access to Files

Cox was fired last Saturday night after he vowed to contest Mr. Nixon's decree that Cox "make no further attempts by judicial process to obtain tapes, notes or memoranda of presidential conversations."

Two hours before the President's news conference last night, acting Attorney General Bork, who fired Cox at Mr. Nixon's direction, told six reporters that he hopes the new prosecutor will obtain as much of a guarantee of independence "as is constitutionally possible."

Asked if the new appointee should have more freedom than Cox had, Bork said, "He ought to have guarantees. The more, the better."

The acting Attorney General noted that the President "can give a guarantee, but under the Constitution he can revoke it."

However, Bork seemed to put his own job on the line in connection with the independence of the prosecutor. "If his independence were interfered with," Bork said, "I would feel that my position would be intolerable . . . morally untenable."

And he declared, "I don't think any reputable man would take the job unless he has as much of a guarantee as possible of his independence."

Some of Bork's comments seemed to conflict with those of the President.

Asked if the new prosecutor should be free to go to court to get additional tapes and documents, the acting Attorney General replied, "I would think he'd be able to do it. I would regard no legal procedure as out of bounds."

Bork said he had not discussed the matter directly with Mr. Nixon, but added, "I have communicated to the

White House my feeling that the special prosecutor ought to be free."

Bork's ruling out of candidates from Yale means that Yale law dean Abraham S. Goldstein and law professor Alexander M. Bickel, who have been mentioned as possible candidates, are not on the acting Attorney General's list.

He said all his nominees come "from outside the government" and have "prosecutorial experience, though they are not necessarily currently prosecutors."

Bork said he feels strongly that "prosecution is an executive branch function" and consequently opposes pending congressional legislation that would empower U.S. District Court Chief Judge John J. Sirica to appoint the

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prosecutor and make the judge the only one who could fire him.

The acting Attorney General declined to say whether the new prosecutor should be confirmed by the Senate or whether Congress should have a role in the selection.

Bork said that Assistant Attorney General Henry E. Petersen also "would very much like to see a special prosecutor appointed."

Petersen, who heads the Justice Department's Criminal Division, was in charge of the Watergate case until Cox took it over last May, and was put in charge of it again when Cox was fired. Bork said Petersen is "perceived to be in a very awkward position and only a strong sense of duty has kept him on" to handle the case.

Despite Mr. Nixon's suggestions that the flow of White House documents to Cox had been ample, Cox had protested that the record had been one "of repeated frustration."

He said he needed the authority to press for disputed items in court "because nearly all the evidence bearing not only on the Watergate incident and the alleged cover-up, but on the activities of the plumbers and other things of that kind is in the White House papers and files . . ."

Faced with growing public demands for his impeachment and the first formal steps in the House to consider it, the President agreed Tuesday to give up his secret Watergate tapes to U.S. District Court Chief Judge John J. Sirica for selection of relevant evidence for the Watergate grand jury.

White House lawyers, Mr. Nixon said last night, will meet with Sirica Tuesday "to work out the delivery of the tapes."

They will be turned over under an Oct. 12 ruling of the U.S. Circuit Court of Appeals which held that the conversations were "no longer confidential" because of the extensive public testimony about them before the

Senate Watergate committee by former high White House aides.

At the same time, the Court of Appeals held that presidential conversations, in general, are "presumptively privileged," and there are signs that White House lawyers may rely on that holding in resisting further demands for tapes or other "presidential documents," which Mr. Nixon did not define.

Just four days after the appellate court decision, for example, a White House lawyer invoked executive privilege to keep former Secretary of Agriculture Clifford Hardin from telling a Senate Watergate committee investigator about a 1971 meeting in Mr. Nixon's Oval Office at which a controversial increase in milk price supports was discussed. The lawyer, Douglas Parker, subsequently indicted to a reporter that the privilege was invoked for Hardin's oral testimony largely to head off any court order for the complete tape recording of the meeting.

Before the system of taping conversa-

tions in Mr. Nixon's offices in the White House and the Executive Office Building came to light at Senate hearings last summer, the President told the Senate Watergate committee in a July 7 letter that he would "permit the unrestricted testimony of present and former White House staff members before your committee."

Mr. Nixon also stated last May 22 that "executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters under investigation."

A prosecutor's attempts to obtain tapes of presidential conversations by court order, even if the legal action were permitted, would be much more difficult without oral testimony supporting a claim that criminal conduct had been discussed.

Defending his firing of Cox, Mr. Nixon reiterated his plan to supply a personal, written summary of evidence gleaned from the nine Watergate

tapes, which was to have been verified by Sen. John Stennis (D-Miss.). When Cox rejected that proposal, the President said, "I had no choice but to fire him."

Mr. Nixon again last night said that while he would continue to withhold documents involving presidential conversations, "information that is needed from such documents would be provided."

Cox had protested that it would be "most unlikely that a summary of the tapes would be admissible in evidence," especially at criminal trials. As a consequence, he warned, not a few prosecutions might have to be dropped.

Mr. Nixon, however, said last night that he was determined to maintain the confidentiality of presidential conversations. He contended that the concessions that he has already made constitute "the greatest waiver of executive privilege in the whole history of this nation."

Bork submitted his list of candidates at a meeting with top White House officials Thursday. They discussed other names as well, an informed source said last night, and the final nominee will be recommended by the White House and approved by Bork.

The acting Attorney General told reporters that if someone were chosen of whom he disapproves, he could prevent such an appointment.

At a fund-raising dinner last night in Waukesha, Wis., Vice President-designate Gerald R. Ford said he detected "quite a sentiment" among House Republicans for Elliot L. Richardson, who resigned a week ago as Attorney General rather than follow Mr. Nixon's order to fire Cox.

"I see a lot of merit in the appointment of Elliot Richardson," Ford told reporters.

However, several sources said Richardson had not been offered the job and would probably not accept it.