

Cox Says Nixon Stand May Hurt Other U.S. Cases

Washington

Continued White House efforts to withhold presidential papers and tape recordings would leave "a substantial number" of future prosecutions in the Watergate scandal in "jeopardy," former special prosecutor Archibald Cox said yesterday.

Cox, appearing before the Senate Judiciary Committee for the second day, said he felt that "nearly all" the possible defendants would raise the claim that documents still held by the White House under the doctrine of executive privilege might contain information proving them innocent.

Under U.S. Supreme Court rulings, cases where evidence is withheld are normally dismissed.

Although President Nixon has said that he will cooperate with any new special prosecutor and reluctantly agreed to turn over nine tapes and other documents to the special Watergate prosecution force, he has said other presidential papers will be withheld under the right of confidentiality.

MOVED

There is some confusion over what papers are protected and what are not, Cox told the committee. There is also evidence, he said, of papers that once had been available, having been moved into presidential custody and thus protected from the investigators.

Cox told the committee that papers held by Egil Krogh Jr., a former White House aide, had been moved into presidential custody and that a large number of papers from John D. Ehrlichman and H. R. Haldeman have been secured in a special room at the Executive Office Building.

"There are a lot of those papers," Cox told Senator Robert C. Byrd (Dem.-W.Va.). "Many of them are relevant, many are not."

Cox said he had proposed to J. Fred Buzhardt Jr., special counsel to the President, that an inventory of the papers be made so that he would not appear to be "prying" into private presidential affairs.

"After a period of many weeks I was told by Mr. Buzhardt that there would be no such inventory," he said.

COVERUP

Byrd said that the shifting of documents and Mr. Nixon's statement last Friday that he would not produce presidential documents to a special prosecutor could lead to what the senator called "the ultimate cover-up."

Cox also said:

• The House Judiciary Committee, which is looking into the possibility of impeachment proceedings against Mr. Nixon, should investigate "the extent to which the President did or did not cooperate with the investigation."

• Congress should consider outlawing executive pri-

ilege except when it is based on the Constitution.

• Congress should give any new special prosecutor the specific right to sue the White House for access to withheld documents. Cox repeated his support for legislation that would empower the courts to appoint the prosecutor.

• It would take "months if not years" for a new prosecutor to familiarize himself with the material already developed in the investigation.

The committee is considering seven different bills and resolutions dealing with the office of special prosecutor.

POWER

The major bill, now with 47 Democrats and eight Republicans as co-signers, was drawn up by Senator Birch Bayh (Dem.-Ind.) and Senator Philip A. Hart (Dem.-Mich.).

It would give chief judge John J. Sirica of the U.S. District Court the power to appoint a new special prosecutor to replace Cox and thus keep the successor free from possible presidential dismissal.

However, Senator Hugh Scott of Pennsylvania, the Republican minority leader, said that such a prosecutor might not be able to obtain any indictments because federal rules require that they be signed by the executive branch of government.

He also questioned the constitutionality of granting Sirica such power and noted that as chief judge of the District of Columbia he might lack jurisdiction to prosecute cases arising outside Washington.

"That's a good question, isn't it?" Scott asked.

"Yes it is," Cox replied.

Senator Charles Percy (Rep.-Ill.) proposed a compromise bill yesterday in which the President would appoint a special prosecutor but either house of Congress could stop his dismissal if they did not approve of it.

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