

Cox Sees Cases Periled if Nixon Retains Papers

By ANTHONY RIPLEY

Special to The New York Times

WASHINGTON, Oct. 30 — 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," the dismissed special prosecutor, Archibald Cox, contended today.

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

Under United States Supreme Court rulings, cases in which evidence has been withheld are normally thrown out of court.

Although President Nixon said he would cooperate with any new special prosecutor and reluctantly agreed to turn over nine tapes and other documents to the special Watergate prosecution force, he said that other Presidential papers would be withheld under executive privilege. That doctrine holds that the President has the power to keep internal documents stored to protect the orderly functioning of governments.

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

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

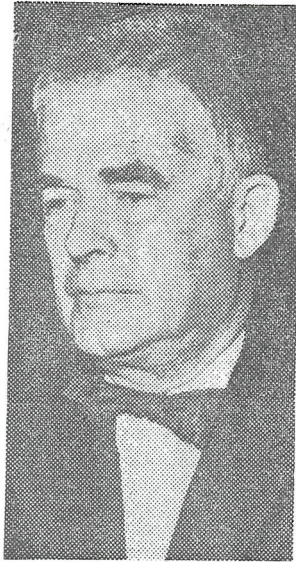
"There are a lot of those papers," Mr. Cox told Senator Robert C. Byrd, Democrat of West Virginia. "Many of them are relevant, many are not."

He said he had proposed to J. Fred Buzhardt, 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.

Senator Byrd asserted that the shifting of documents and Mr. Nixon's statement last Friday that "we will not produce Presidential documents to a special prosecutor" could lead to what the Senator called "the ultimate cover-up."

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



United Press International
Archibald Cox at the Senate Judiciary Committee hearing yesterday.

The major bill, now with 47 Democrats and eight Republicans as co-signers, was drawn up by Senator Birch Bayh, Democrat of Indiana, and Senator Philip A. Hart, Democrat of Michigan. It would give Chief Judge John J. Sirica of the United States District Court the power to appoint the new special prosecutor to replace Mr. Cox and keep the successor free from possible Presidential dismissal.

Declined Review

Senator Hugh Scott of Pennsylvania, the Republican minority leader, cited Federal Court rules that require the executive branch to sign any indictment before it becomes legally binding.

This is contained in Rule Seven of the Federal Rules of Criminal Procedure and was upheld in the United States v. Cox, a case settled by the United States Court of Appeals for the Fifth Circuit in 1965. The Supreme Court declined to review the case.

Senator Scott said that any cases brought by a court-appointed prosecutor might be thrown out on the ground that they lacked such a signature from the Justice Department.

He also questioned the constitutionality of granting Judge 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?" Senator Scott asked.

"Yes it is," Mr. Cox replied.

Senator Charles H. Percy, Republican of Illinois, proposed a compromise bill today in which the President would appoint a special prosecutor but either house of Congress could stop any dismissal that they did not approve.

At the same time, the Senate Democratic Conference passed, 30 to 9, a resolution calling for a special prosecutor to be ap-

pointed outside the Presidential or Congressional branches of Government.

At the Judiciary Committee hearing, Senator Bayh quoted President James Madison as having said that the "wanton removal from office of meritorious" men was grounds for impeachment.

"I'm not familiar with that quotation from President Madison," Mr. Cox said. "I think the President had the power to dismiss me. I don't question that." He contended that the House Judiciary Committee's investigations of possible impeachment should go into "the extent of the over-all basis on which the President has cooperated or failed to cooperate" with the criminal investigation of Watergate.

Ralph Nader, meanwhile, filed suit today against Acting Attorney General Robert H. Bork, challenging the legality of Mr. Bork's move in discharging Mr. Cox.

The suit notes that Mr. Cox's office had been set up under the code of Federal regulations and contends that Mr. Bork violated the rules by dismissing Mr. Cox without showing "extraordinary improprieties," a condition written into the regulations last June.

Mr. Nader's lawyers, from his group called Public Citizen Inc., also asserted that Mr. Bork, who is Solicitor General, was barred by a reorganization

of the Justice Department approved in 1953 from performing any administrative functions such as dismissing and hiring.

The suit seeks to restore Mr. Cox to his former job. A hearing was set for 9:30 A.M. before Judge Gerhard Gesell of United States District Court.

White House Interview

WASHINGTON Oct. 30 (AP) — Senator William B. Saxbe, Republican of Ohio, was reported tonight to have been chosen by President Nixon to be the Attorney General-designate but the Senator said he had not yet been offered the job.

Mr. Saxbe said that during a White House interview he "got the impression they were interested and consider me a likely candidate."

If asked to accept the job, he added, he would take the offer seriously because "I consider it a challenge to serve my country." It had been reported previously that Mr. Saxbe was being considered.

Key Senators said tonight they had been notified of Mr. Saxbe's pending appointment to fill the job left vacant by the resignation of Elliot L. Richardson.

When he announced earlier this month that he would not seek re-election, Mr. Saxbe said he planned to re-establish a law firm in Ohio.