

# Hill-Named Prosecutor May Be Unconstitutional, Bork Warns

By Mary Russell

Washington Post Staff Writer

Acting Attorney General Robert H. Bork told a House Judiciary subcommittee yesterday that congressional attempts to set up an independent Watergate special prosecutor could be unconstitutional and he would advise the President to veto any such legislation.

Bork said, "Should the Congress or the courts attempt to establish a new special prosecutor there is bound to be legal confusion, delay and disruption of these investigations and prosecutions." He warned that those convicted by a congressionally mandated special prosecutor could go free if the legislation were found to be unconstitutional.

He also warned that the delays resulting from testing the constitutionality could "let the statute of limitations run on some offenses and that witnesses and other evidence would be lost."

The subcommittee is considering 35 bills signed by more than 160 congressmen to set up an independent special prosecutor, either by giving the court the power to appoint and remove him or by having the prosecutor appointed by the President with the advice and consent of the Senate with some restrictions on his removal.



By Douglas Chevalier—The Washington Post

Robert H. Bork: "... legal confusion and delay ..."

Bork sought to reassure the congressmen that the special prosecutor he recently appointed, Texas lawyer Leon Jaworski, would be independent and would be allowed to go to court to seek Watergate documents, presidential tapes and papers he thought necessary.

Bork said that before being appointed successor to fired Watergate Special

Prosecutor Archibald Cox, Jaworski met with Bork, Deputy Attorney General Henry Petersen, White House chief of staff Alexander M. Haig Jr. and White House lawyers Leonard Garment and J. Fred Buzhardt.

"I stated to the gentlemen

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who were sitting with Jaworski and myself that, it must be understood that he has the power to go to court," Bork said. Bork said all those present agreed, but that he had not discussed the position with President Nixon.

Bork said it was "my understanding" Jaworski would not be discharged if he went to court to get materials from the White House he felt he needed for evidence.

The acting Attorney General, the first administration official to testify on the legislation, also elaborated on the assurance President Nixon gave that he would not fire the special prosecutor without consulting House and Senate majority and minority leaders and the chairmen and ranking minority members of the Judiciary committee.

He said that the President meant—in saying he would seek a consensus of those congressional leaders—that he would not fire the prosecutor unless six of the eight agreed.

Bork was asked what the administration planned to do about the constitutional problem facing the nomination of Sen. William B. Saxbe (R-Ohio) to be the new Attorney General. Article I, Section 6 of the Constitution says no senator can be appointed to an office for which he voted to raise the pay. Saxbe entered the Senate in January of 1969 and in February Congress voted to raise the pay of Cabinet officers from \$35,000 to \$60,000.

Bork said legislation would be sent to the Hill reducing the pay for Saxbe as Attorney General back to \$35,000. Bork said this remedy was used once before in 1909 when Philander Chase Knox, a Pennsylvania senator was nominated to be Secretary of State by President William Howard Taft. The salary increase was simply withdrawn by Congress and Knox took office at the old rate.

Despite the support of over 100 House members and 55 senators for legislation creating an independent special prosecutor, the question of the constitutionality of such a move has bothered some members.

Prosecution of criminal offenses is normally an executive branch function.