

Who Can Name Prosecutor Is Debated

By ANTHONY RIPLEY
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Only one of five constitutional experts who were called before Congressional committees today recommended that President Nixon be left with the power to choose a special prosecutor in the Watergate investigation.

That one man, Dean Roger C. Crampton of the Cornell University Law School, said he thought Mr. Nixon should seriously consider resigning.

Dean Crampton served as an Assistant Attorney General in the Nixon Administration and was the Justice Department's expert on constitutional problems.

He was the only one of the five experts to appear before both the House and Senate Judiciary Committees.

The committees are considering bills to set up a special prosecutor who would be named by the courts and not by the President.

Mr. Nixon has already named Leon Jaworski, a former president of the American Bar Association, to replace Archibald Cox, whom he discharged as special prosecutor in a dispute over White House tape recordings.

Dean Crampton told Senators that a court-appointed special prosecutor would put "added strains upon the Constitution" at a time when "the President has acted with doubtful legality and little wisdom."

He said that the prosecution of crime was a function of the executive department of government and that, "while the Constitution allows some mixing and blending" of powers, Congress could not take an executive function and put it in another branch of government.

If such a bill was passed over an expected Presidential veto, he predicted, the President might still not cooperate and might refuse to have the present special prosecutor's files turned over to a new prosecutor appointed by the courts.

The result would be that "everything grinds to a halt," he said.

The opposition to his analysis of the constitutional difficulties was formidable.

Change in Viewpoint

Paul M. Bator, associate dean, and Prof. Paul A. Freund, both of the Harvard Law School; Dean Monrad G. Paulsen, of the University of Virginia Law School, and Prof. Philip B. Kurland, of the University of Chi-

cago Law School, all disagreed.

Dean Bator told the House Judiciary Committee that he wrote last spring on The New York Times Op-Ed Page that a court-appointed prosecutor would be unconstitutional but that he had "on further study and reflection" changed his view.

Professor Freund told the Senate committee that he agreed with the American Bar Association position and that of 46 deans of American law schools supporting the idea of a court-appointed prosecutor.

"There appears to be no case holding invalid an appointing power vested in the courts," he said. "In fact, a variety of appointments have been so vested."