

WXPost
Justice Department
NOV 9 1973
Defends Cox Firing

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The Justice Department said yesterday that the firing of Watergate Special Prosecutor Archibald Cox was legal because the regulations that protected Cox's job were abolished by the act of firing him.

Responding to a lawsuit demanding Cox's reinstatement, the department said regulations issued in May by former Attorney General Elliot L. Richardson could not serve as a basis for setting aside the Oct. 20 dismissal.

Ralph Nader and three members of Congress have sued acting Attorney General Robert H. Bork. They

contend that Bork, who said he fired Cox because President Nixon ordered him to, was legally bound by the department's regulations to dismiss Cox only for "gross improprieties."

The suit, which comes before Judge Gerhard A. Gesell in U.S. District Court today on a motion for a preliminary injunction, is based on Supreme Court decisions requiring government agencies to abide by their own published regulations.

Rather than violating the regulations, the government lawyers said, "In these circumstances the discharge of Prosecutor Cox on Oct. 20, 1973, constituted an automatic abolition of the regulation."

The rules were issued by Richardson in fulfillment of a promise to the Senate Judiciary Committee to safeguard the prosecutor's independence. Richardson cited the commitment in resigning rather than obey the President's order to fire Cox, but Bork said he was not bound by his predecessor's promise.

The government brief said there was a "serious and unresolvable doubt" as to whether Richardson would have been confirmed if he had not made the promise.

But the brief added that Richardson "did not promise that he would not resign, he could not prohibit the President from causing his resignation, and he could not impose on his successor obligations which would preclude him from firing the special prosecutor."

The regulations were formally revoked a few days after the firing and were replaced this week with similar rules, which Bork says will secure the independence of Leon A. Jaworski, newly appointed special prosecutor.

By defending the legality of the dismissal, the government attorneys went beyond their first line of defense, which is that only Cox has the requisite legal standing to bring the suit and Cox has pointedly refused to wage a legal battle for the job.