

U.S. Court Will Rule on Legality of Cox Firing

Washington

United States District Judge Gerhard A. Gesell agreed yesterday to consider the legality of the dismissal of Archibald Cox as special Watergate prosecutor and of the order temporarily abolishing his prosecution force.

The dismissal was challenged October 29 by consumer advocate Ralph Nader, who later was joined by three congressional Democrats: Senator Frank Moss of Utah and Representatives Bella Abzug of New York and Jerome Waldie of California.

Judge Gesell dropped Nader as a party to the action saying he was a "volunteer" who had no legal standing to sue. He also turned down requests for injunctions to halt Leon Jaworski, Cox's successor, from acting as special prosecutor or to halt the dismissal of Cox.

Instead, the judge focused on the Justice Department

rules and regulations setting up Cox's office and on whether the dismissal on October 20 violated those rules.

"The issue is whether that regulation is worth the paper it was written upon or should be thrown aside," said Alan B. Morrison, lawyer for Nader's group, Public Citizen, Inc.

Gesell gave Raymond D. Battocchi, a lawyer with the civil division of the Justice Department, until Monday night to file legal citations on the issue.

When Cox took the job in May, he and former Attorney General Elliot Richardson worked out a set of guidelines. They described the duties of the special prosecutor and stated that he could be dismissed only for "extraordinary improprieties."

The guidelines also stated that the work of the Watergate investigation would continue until the job was done.

The guidelines were made

an official departmental regulation when published June 4 in the federal register.

Both Nader's lawyers and the Justice Department lawyers agreed that regulations were still in effect when Cox was dismissed by Acting Attorney General Robert Bork.

In Bork's brief letter to Cox, he said he was discharging Cox "as instructed by the President." There was no mention of "extraordinary improprieties."

Mr. Nixon said he was also ordering the office of Watergate special prosecutor abolished and the 80 employees transferred to the Department of Justice Criminal Division.

On October 23, Bork issued a departmental order abolishing the special prosecutor's office and turning its personnel and functions over to the Criminal Division of the Justice Department.

Under the subsequent storm of public reaction, Mr. Nixon agreed to reestablish the special prosecutor and on November 1 Bork appointed Jaworski.

The next day Bork ordered the old guidelines set up again as a departmental regulation with only one change: That Jaworski could be dismissed only after the President contacts eight congressional leaders "ascertaining that their consensus is in accord with the proposed action."

New York Times