

WXPost NOV 1 0 1973

Judge Slates Ruling On Firing of Cox

By John P. MacKenzie
Washington Post Staff Writer

U.S. District Court Judge Gerhard A. Gesell said yesterday he expects to rule next week on whether the Oct. 20 firing of Watergate Special Prosecutor Archibald Cox was legal.

Brushing aside Justice Department pleas that a judicial opinion might add to the confusion in Congress and the executive branch, Gesell said he may have a duty to provide an answer to the challenge posed in a lawsuit by three members of Congress.

Sen. Frank E. Moss (D-Utah) and Reps. Bella S. Abzug (D-N.Y.) and Jerome R. Waldie (D-Calif.) have charged that acting Attorney General Robert H. Bork had no right to violate the Justice Department's regulations, which protected Cox from firing except for "extraordinary improprieties."

Department lawyers have replied that the dismissal did not violate the regulations because the act of firing Cox "constituted an automatic abolition" of the regulations.

Judge Gesell said yesterday that even if he rules the firing illegal he is not prepared to order the reinstatement of Cox, who, he said, has waived any interest he might have in getting the job back.

The only effect of a ruling against Bork thus would be to put the stamp of illegality on the Oct. 20 action and perhaps add a measure of job security for Leon A. Jaworski, who took over as Watergate prosecutor under guidelines similar to the

regulations governing Cox's six months in office.

The judge said the original plaintiff in the lawsuit, Ralph Nader, was a mere "volunteer" with no more legal standing to sue Bork than any other citizen. But he said that the U.S. Court of Appeals had recognized that members of Congress had a special interest in such matters because of the possibilities of legislation or impeachment.

Gesell said a declaratory judgment would not have the effect of interfering with the White House. Only Bork's power to act is challenged, so "it really isn't a case that deals with presidential authority," he told Justice Department attorney Raymond D. Battocchi.

Bork took over the top department post after Attorney General Elliot L. Richardson and his deputy, William D. Ruckelshaus, resigned rather than obey President Nixon's order to fire Cox. Federal law requires that the department head, not the President, do the actual firing.

Gesell said his ruling may also cover the power of any department head to abolish the special prosecutor's office, as Bork did briefly following the dismissal. He questioned whether Bork could do that legally when the regulations pledged full support to the prosecutor until he and the Attorney General agreed that the Watergate prosecutions were completed.