

# Judge to Rule on Action Challenging Cox's Ouster

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WASHINGTON, Nov. 9—Federal District Judge Gerhard A. Gesell agreed today 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 Oct. 29 by the consumer advocate Ralph Nader, who was later joined by three Congressional Democrats — Senator Frank E. Moss, of Utah, and Representatives Bella S. Abzug, of Manhattan, and Jerome R. Waldie, of California.

Judge Gesell dropped Mr. 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 stop Leon Jaworski, Mr. Cox's successor, from acting as special prosecutor or to halt the dismissal of Mr. Cox.

## Regulations at Issue

Instead, the judge focused on the Justice Department rules and regulations setting up Mr. Cox's office and on whether his dismissal on Oct. 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, attorney for Mr. Nader's group, Public Citizen, Inc. Judge Gesell gave Raymond D. Battocchi, a lawyer with the Civil Division of the Justice Department, until Monday night to file legal citations bearing on the issue.

When Mr. Cox took the job in May, he and the then Attorney General, Elliot L. 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 Mr. Nader's attorneys and the Justice Department lawyers agreed that the rules were still in effect when Mr. Cox was dismissed by Acting Attorney General Robert H. Bork.

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

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

On Oct. 23, Mr. Bork issued a departmental order abolishing the special prosecutor's office and turning its personnel and functions over to the Criminal Division. The order also abolished the old Cox guidelines.

For reasons unexplained in court, the order was made retroactive to Oct. 21, the day after Mr. Cox's dismissal.

In the subsequent storm of public reaction, Mr. Nixon agreed to re-establish the office of special prosecutor and on Nov. 1, Mr. Bork appointed Mr. Jaworski.

## Guidelines Restored

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

Judge Gesell swept aside questions of the President's power to dismiss Government officers. He said that the question to be considered was only one of the Attorney General's power to act while the guidelines were in force.

Mr. Battocchi argued for the Justice Department that "the regulation was, in effect, abolished with the firing" of Mr. Cox, adding that "admittedly" the office was "not abolished until three days later."

Should Judge Gesell issue a declarative judgment that the action was illegal, it would have little direct effect because Cox has repeatedly said that he would not take the job again.

However, it could have an effect on consideration of bills pending in Congress for an independent special prosecutor or of impeachment resolutions in the House.



Judge Gerhard A. Gesell