

Court Rules Bork's Firing of Cox Was

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Acting Attorney General

Robert H. Bork acted illegally when he fired Watergate Special Prosecutor Archibald Cox, U.S. District Court Judge Gerhard A. Gesell ruled yesterday.

The judge said Bork's dismissal of Cox on Oct. 20 "was in clear violation of an existing Justice Department regulation having the force of law and was therefore illegal."

Judge Gesell refused to order reinstatement, noting that Cox himself has refused to make a personal fight for the job. He added that past illegalities did not affect the status of Bork's appointment of Leon A. Jaworski to succeed Cox, nor did it cast a cloud over current operations of the prosecutor's office.

Although the decision put a brand of illegality on Bork's first action after assuming the top Justice De-

partment post, it was by no means certain that Bork would appeal to a higher court.

Bork received the news of the court's judgment, but not the entire 11-page opinion, while testifying before the Senate Judiciary Committee on legislation to create a special prosecutor's office secure from a repetition of the Oct. 20 events when two top department officials resigned and Bork,

obeying orders from President Nixon, fired Cox.

"I will go back to the office and read the opinion with great interest and if I understand its implications, I'll try to do what is called for under the circumstances," Bork told the committee.

Department officials said the judge's ruling could be interpreted as enhancing the independence of the new special prosecutor and could blunt the arguments in Con-

gress that a court-appointed prosecutor is needed.

Judge Gesell concluded his opinion by advising Congress to reject what he called "most unfortunate" legislation giving the District Court here the appointment power.

"The courts must remain neutral. Their duties are not prosecutorial," the judge said. "The solution lies in legislation enhancing and

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protecting that office as it is now established and not by following a course that places incompatible duties upon this particular court."

Similar sentiments were expressed by the court's

chief judge, John J. Sirica, in a brief meeting with reporters. "I think judge Gesell is right," Sirica said. Referring to the pending bill for a court-appointed prosecutor, he added, "I do not know of any judge who thinks it's a good idea."

Advocates of a court-appointed prosecutor deny that assigning the appointive power to the District Court would embroil its judges in prosecutorial functions. Opponents, including Nixon administration supporters in Congress, favor a presidentially appointed prosecutor with safeguards against arbitrary removal.

Yesterday's decision came in a lawsuit filed by Ralph Nader and three members of Congress, Sen. Frank E. Moss (D-Utah) and Reps. Bella S. Abzug (D-N.Y.) and Jerome R. Waldie (D-Calif.).

The suit cited a number of supreme Court decisions holding that government agencies must obey their own regulations. In Cox's case, they said, his job was safeguarded by published regulations stating he would be fired only for "extraordinary improprieties."

In addition, the regula-

tions said the special prosecutor's office would be abolished only when its occupant and the Attorney General agreed that the task had been completed.

Judge Gesell agreed on both points and said that since Bork admitted there were no gross improprieties, the dismissal was unlawful. It appeared that the ruling, if not appealed and reversed, would protect Jaworski against any firing by the Attorney General, perhaps even if the dismissal was ordered by the President.

Justice Department lawyers argued that the dismissal was an automatic abolition of the regulations, rather than a violation of them. The judge ignored that argument but said the formal abolition of the office three days after the firing and its re-establishment last week amounted to a "ruse" to make the dismissal appear legal.

Nader called on Cox last night to seek reinstatement but Cox said such a move "would only divert attention from getting the real job done." Reps. Abzug and Waldie said the decision buttressed the case for impeaching President Nixon.

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