

# PROSECUTOR'S JOB IS CONGRESS ISSUE

## Cox Ruling Raises Pressure to Protect Official Against Discharge by President

By WARREN WEAVER Jr.  
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WASHINGTON, Nov. 15 — The Federal court decision that Archibald Cox was dismissed illegally as special Watergate prosecutor put renewed pressure on Congress today to protect the new prosecutor against any discharge by the President.

At the same time, the ruling yesterday by Judge Gerhard A. Gesell of Federal District Court appeared to deal a serious blow to a pending legislative proposal that the power to name a special prosecutor be transferred to a group of Federal judges from the Attorney General.

In his opinion, Judge Gesell called it "most unfortunate" that Congress was considering giving the courts power to appoint and supervise a Watergate prosecutor. He is one of the judges who would be involved in the selection process if the legislation should go through.

Senator Charles H. Percy of Illinois, sponsor of an alternative plan, read parts of the Gesell opinion to President Nixon at the White House last night at one of the meetings that the President is holding with Republican Senate and House members.

Mr. Nixon reportedly told the Senator he would "consider" backing the Percy bill, which leaves the appointive power in the President but requires Senate confirmation for the prosecutor and limits the grounds and procedures by which he may be discharged. Mr. Cox was not subject to Senate confirmation.

It was increasingly clear that Leon Jaworski, the special prosecutor named on Nov. 1 to succeed Mr. Cox, would retain his position under any revision of the appointive power and that Congress was concentrating not on replacing him but on protecting him from possible future White House retaliation.

### Bork Studying Opinion

The Justice Department reported today that Solicitor General Robert H. Bork, the acting Attorney General, had reached no decision on whether to appeal Judge Gesell's ruling. Mr. Bork said yesterday he would read the opinion and "try to do what is called for under

the circumstances."

Chief Judge J. Sirica of the Federal District Court here said he agreed with Judge Gesell on the issue of giving the judiciary power to appoint the prosecutor and added: "I don't know of any judge who thinks it's a good idea."

Judge Gesell based his decision on the fact that Mr. Bork had not rescinded a Justice Department regulation prohibiting the discharge of the special prosecutor except for "extraordinary improprieties" at the time he dismissed Mr. Cox.

Had the Acting Attorney General rescinded the regulation first and then dismissed Mr. Cox, the judge indicated, the action would have been legal. The only protection Mr. Jaworski now enjoys is a similar regulation.

It also limits the grounds for his replacement to extraordinary impropriety and provides in addition that the President cannot discharge him for such activity without concurrence by Congressional leaders of both parties. But that departmental regulation can be dropped by the Attorney General at any time.

Under the Percy proposal, the prosecutor could be discharged for malefeasance or neglect of duty, but either the Senate or House could invalidate such a discharge by a majority vote that would reinstate the prosecutor.

Senator Hugh Scott of Pennsylvania, the Republican minority leader, told a Senate Judiciary Committee hearing today that Congress should either leave intact the President's current authority to have his Attorney General name the special prosecutor or enact the Percy plan for Senate confirmation.

Any system of Federal court appointment would be subject to serious court challenge for unconstitutionality, Senator Scott said, and could lead to the possibility that all the appointing Federal judges would have to disqualify themselves when anyone indicted by the prosecutor came up for trial.

Henry Ruth, deputy special prosecutor, told the committee that he was more concerned about who would be given the power to remove the prosecutor and under what circumstances rather than who the appointive authority would be. He said removal should not be in the hands of the executive branch.