

# Report On Nixon Opposed

## 2 Prosecutors Doubt Legality Of Legislation

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Watergate Special Prosecutor Henry S. Ruth Jr. said yesterday that he doubted the constitutionality of any legislation that would authorize him to issue a complete report on Richard M. Nixon's role in the Watergate affair.

Ruth's position was supported by former Special Prosecutor Leon Jaworski—who had said last fall such legislation was necessary before a detailed report on the Nixon investigations could be made.

The combined testimony of Ruth and Jaworski appeared to reverse completely the initial promise made in May, 1973, by the original special prosecutor, Archibald Cox, that "all the facts" concerning persons in high office "ought to be brought out" in connection with the Watergate affair.

Testifying before the House Subcommittee on Criminal Justice, Ruth and Jaworski agreed that the legislation needed would probably be unconstitutional, that confidences would be breached and promises broken by a full report, and that the special prosecutor had little, if any, significant information to add to what is already known about Nixon's role in the Watergate affair.

The charter under which the special prosecutor functions states that he shall "upon completion of his assignment submit a final report to the appropriate persons or entities of the Congress."

Ruth told the subcommittee yesterday, "As a prosecution office, we have never read our charter as permitting the dis-

semination of evidence involving specific individuals gathered during the course of our investigations, and I have doubts about the legality of any legislation which authorizes such conduct."

Attempts to release information in the special prosecutor's files that has not come out in a public proceeding, including tapes of White House conversations, "would be almost surely enveloped in extensive litigation after challenges filed in court on the basis of executive privilege," Ruth said. More important, Ruth said, were concerns of "fundamental fairness" at the core of the Fifth Amendment right to due process of law.

"I doubt that the Congress

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should authorize any prosecutor, no matter how laudable the apparent objective, to issue an ad hoc public report on an individual's possible criminal activity."

Present federal law, Ruth noted, allows special grand juries to issue public reports on organized crime and official corruption only after a complicated procedure that includes court approval. "I would be surprised if the normal restraints on a grand jury's issuance of an evidentiary report could be circumvented merely by authorizing the prosecutor to publish the evidence on his own."

Several bills were introduced in the House, although none was enacted, during the last Congress that would have

authorized the special prosecutor to write a complete report and to release evidence from his files that had not been made public. Yesterday's hearing was called to consider whether such legislation should still be considered.

Ruth, warning that legislation directing such a report would be a dangerous precedent, told the subcommittee, "I'm terribly concerned . . . because I don't know who tomorrow's villain's going to be. I don't know who tomorrow's prosecutor's going to be."

Ruth and Jaworski also agreed that the information still secret would not significantly alter the public's understanding of Nixon's role.

"I know of some information that I consider 'juicy,' but I don't know that you'd consider it significant," Jaworski

said. The information was not significant "insofar as the bringing of charges is concerned," Jaworski said. "I think that's the test."

After President Ford pardoned Nixon last September, eight members of the Senate Judiciary Committee wrote Jaworski reminding him of the provision in the special prosecutor's charter concerning his final report and urging "a full and complete record detailing any involvement of the former President in matters under investigation by you."

Jaworski responded at the time that he and his staff saw "substantial legal and ethical questions" about their "existing" authority to issue such a report. "Unless authorized," Jaworski wrote on Sept. 17, "our primary concern relates to the protection of indi-

vidual rights and to the proper scope of a prosecutor's treatment of criminal allegations."

Ruth's position was attacked by Rep. Elizabeth Holtzman (D-N.Y.), who asserted that when Nixon accepted a pardon he "waived his right to have these allegations tested beyond a reasonable doubt."

Jaworski answered that much of the information needed to describe Nixon's role "doesn't relate to Mr. Nixon at all." Much of the evidence relates to others whose "rights are very much at stake," Jaworski said, and a full report would be "invading the rights of third parties." Ruth and Jaworski also disputed the Holtzman argument that Nixon had waived his rights by accepting the pardon.