

Pardon Challenge

By Bob Kuttner

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The Watergate special prosecutor's office at one point considered challenging the pardon of former President Nixon as a violation of the prosecutor's charter, which guarantees that "constitutional powers" would not be used to interfere with investigations of Mr. Nixon.

"That was one of a number of issues we researched," said Henry S. Ruth Jr., who was sworn in yesterday as the third Watergate special prosecutor. "But it did not raise a legal issue to the heights of probable success," Ruth said, choosing his words carefully. "Some people say that if a prosecutor has a 1 per cent chance of success he should proceed. I don't happen to share that."

Ruth, who has been deputy special prosecutor since the office was created in June, 1973, takes charge at a time when the special prosecution force has been criticized in some quarters for acquiescing to the Sept. 8 Nixon pardon and for winding down with its work still incomplete.

In a long, philosophical discussion Friday on the eve of his swearing-in ceremony, Ruth would say little

else about the pardon, except to insist that it will not hamper the Watergate cover-up trial or other investigations still in progress.

These include the ITT antitrust settlement, the "milk fund," and other illegal campaign contributions. Ruth said the investigations would probably continue well beyond the March 1, 1975, target date set informally by prosecutor Leon Jaworski, whom Ruth succeeds.

Ruth said investigations are also continuing in most of the 10 areas cited in his Sept. 3 memorandum as potentially involving Mr. Nixon. These include illegal wiretaps, misuse of the Internal Revenue Service, and the handling of campaign contributions by Mr. Nixon's friend, C. G. (Bebe) Rebozo.

Defending the special prosecution force against criticisms that it has been excessively lenient in its treatment of illegal campaign contributors, most of whom received \$5,000 fines, Ruth said all of the cases had involved some degree of cooperation by the defendants.

"We still have a number of cases under investigation," he said.



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Henry S. Ruth Jr., a prosecutor who prefers anonymity.

Was Considered, Ruth Says

Ruth would not comment on reports that the former chief Nixon fund-raiser, Maurice H. Stans, is bargaining to plead guilty to misdemeanor charges. But he defended the practice of permitting several key Watergate figures, including John W. Dean III, Charles Colson, Jeb Stuart Magruder, and Richard G. Klein-dienst to plead to a single count in exchange for cooperating with the prosecutors.

Asked whether it made sense any longer to permit pleas in exchange for information, Ruth said that obtaining information on "the top guy" is not the only consideration. "A prosecutor has to assess the state of his evidence. He may not have been able to win the more serious charge," he said.

Among the other decisions Ruth still has to consider is whether to bring additional charges against the five defendants in the Watergate cover-up trial, John N. Mitchell, H. R. Haldeman, John D. Ehrlichman, Robert C. Mardian, and former re-election committee lawyer Kenneth Wells Parkinson.

"A prosecutor has to think of a number of factors," Ruth said. "Are we harassing the defendants? Are we

being fair? You make those judgments at the time."

With the cover-up trial laying out much of the evidence on former President Nixon's role in Watergate, there remains pressure for the special prosecutor to tell a more complete story in his final report.

Ruth is giving much thought to his conflicting obligations as prosecutor and historian.

"Can a prosecutor just gather together the evidence and make it public? I don't see anything in the law that permits it," Ruth said.

But he is also aware that his report will be regarded as the final official word on Watergate, that an accounting will be expected. And without saying so directly, Ruth hints that he would welcome congressional action to permit the final report to include tape transcripts, documents, and related information about Watergate figures who many never be prosecuted, such as former acting FBI Director L. Patrick Gray.

"We're going to have to figure out a way to explain

how prosecutive decisions were made and still preserve our standards," Ruth said.

"In a normal prosecutor's office you never find out what happened to X or Y because of grand jury secrecy," he continued. "The added factor here is that you are dealing with corruption in very high places. So we have an obligation to the public's right to know."

Will he ask Congress for the authority to expand his final report?

"I always respond to congressional invitations to testify," Ruth replied after a long pause.

Of the three men to hold the special Prosecutor's job, Ruth is the youngest and also the least public man. He is highly respected by shy.

"He's genuinely unhappy about having to give up his anonymity," says a colleague. In fact, Ruth's previous top positions in the criminal justice system have been staff director jobs, not highly visible to the public.

After a stint in the Justice Department's organized crime section in the early

1960s, Ruth directed the National Institute of Law and Criminal Justice and later New York City's Criminal Justice Coordinating Council, before being named Watergate deputy special prosecutor last June.

"He is a criminal justice professional," says a close associate. "Archie Cox was concerned about the constitutional balancing. Leon was concerned about getting a dirty job done. Hank Ruth is interested in pursuing a meticulous investigation."