

Time Bears Out Ford's 1st View of Pardon Reaction

By John P. MacKenzie
Washington Post Staff Writer

"I do not think the public would stand for it," said the vice presidential nominee on Nov. 5, 1973.

"I can also understand why people were moved to question my action," said the President yesterday.

On both occasions, Gerald R. Ford was testifying in Congress about a pardon—first the idea and later the reality—of Richard M. Nixon that would abort any criminal proceedings that might be pending against Mr. Nixon.

The intervening 11 months have borne out Mr. Ford's initial judgement that an early intercession for Mr. Nixon would be very unpopular. The passage of time also has produced a variety of judgments about the guilt or innocence of the former President.

Many of those public statements of opinion were recalled at yesterday's extraordinary hearing before a House Judiciary subcommittee. But so much has been said during the entire momentous period some of the specific statements, and much of their meaning, have faded from memory.

Frequently overlooked, for example, is that when Mr. Ford uttered his now-famous remark about the public reaction, he was speaking not only about one President's intervention on behalf of another, but also about the timing of that intervention.

He was asked this specific question by Sen. Howard W. Cannon (D-Nev.), chairman of the Senate Rules Committee:

"If a President resigned his office before his term expired, would his successor have the power to prevent or to terminate any investigation or criminal prosecution charges against the for-

mer President?"

This was Mr. Ford's complete answer:

"I do not think the public would stand for it, I think—and whether he has the technical authority or not, I cannot give a categorical answer. The Attorney General, in my opinion, with the help and support of the American people, would be the controlling factor."

Yesterday, committee member James R. Mann (D-S.C.), asked whether the pardon's intention and effect were to "terminate the investigation by the special prosecutor's office" in at least 10 criminal areas that might have involved Mr. Nixon. The President replied, "I think the net result of the pardon was, in effect, just that. Yes, sir."

What Mr. Ford would not concede yesterday was Mann's suggestion that the pardon also terminated investigations affecting "other parties, other possible defendants" in addition to Mr. Nixon.

"I do not believe," the President testified that the action I took in pardoning President Nixon had any impact on any other mandate that the special prosecutor's office had."

This same inquiry was called "hypothetical" by Mr. Ford during a press conference a week after the pardon. Asked whether his mind had changed the public reaction, he replied:

"In those hearings before the Senate committee . . . I was asked a hypothetical question. And in answer to that hypothetical question I responded by saying that I did not think the American people would stand for such an action. Now that I am in the White House and don't have to answer hypothetical questions but have to deal with reality, it was my judg-

ment . . . that it was in the best interest of the United States to take the action I did. I did not say I wouldn't I simply said that under the way the question was phrased, the American people would object.

As for last November's testimony that the "controlling factor" would be "the Attorney General, with the help and support of the American people," Mr. Ford offered no new explanation yesterday for issuing the pardon without consulting his attorney general or the people.

His explanation on Sept. 8, when he announced the pardon, was as follows:

"My customary policy is to try and get all the facts and to consider the opinions of my countrymen and to take counsel with my most valued friends. But these seldom agree, and in the end, the decision is mine."

Mr. Ford's failure to consult Attorney General William B. Saxbe, or Leon Jaworski, who handled Nixon investigations under his special prosecutor's charter, was raised by Rep. Elizabeth

Holtzman (D-N.Y.) in a barrage of unanswered questions. The President testified that only a handful of White House aides played any role in the decision.

Until yesterday the story of President Ford's evolving views of the pardoning

power had come from White House sources rather than the President himself. Mr. Ford had been portrayed as not fully appreciating that he could pardon before prosecution until he received the results of a staff study on the subject early in September.

Yesterday's testimony disclosed that Mr. Ford had an inkling of the power to pardon in advance from former White House chief of staff Alexander M. Haig Jr. a week before succeeding Mr. Nixon as President.

Haig had laid out six "options" under discussion should Mr. Nixon resign, including "a pardon to the President" that could come only from his successor and had asked Mr. Ford for "my attitude on the options."

Mr. Ford said, "I inquired as to what was the President's pardon power, and he answered that it was his understanding from a White House lawyer that a President did have the authority to grant a pardon even before any criminal action had been taken against an individual."

The next morning, the testimony continued, Mr. Nixon's lawyer James D. St. Clair came to the Vice President's office. "When I pointed out to him the various options mentioned to me by Gen. Haig," Mr. Ford said, "he told me he had not been the source of any opinion about presidential pardon power."

The matter was not further explained, but Mr. Ford indicated yesterday that his ultimate conclusion about his own pardoning authority followed consultation with his trusted counsel, Philip W. Buchen.

In one area of the controversy there has been no shift at all in President Ford's statements. "My conscience tells me it is my duty," he said on Sept. 8. A week later he told newsmen he was "absolutely convinced . . . that I made the right decision."

And yesterday he said, "I am convinced after reflection, as I was previously, that the timing of the pardon was done at the right time."