

Letters to the Editor

Of the Pardon, the Tapes and the Law

To the Editor:

Two aspects of Mr. Ford's pardon of Mr. Nixon appear to have escaped notice.

The first aspect concerns one of the consequences of the pardon: namely, whether the public will ever hear the tapes of the conversations between Mr. Ford and Mr. Nixon. Specifically, it means the public may never know whether the two of them discussed Mr. Nixon's pardon or whether some deal was made. By fully and completely pardoning Mr. Nixon for any and all criminal offenses, President Ford cut off any further investigations into any alleged criminal activities of Mr. Nixon by the office of the Special Prosecutor. At his Oct. 17 appearance before the subcommittee of the House Judiciary Committee, Mr. Ford stated that the tapes of his conversations with Mr. Nixon were safely preserved and were available only to the Special Prosecutor at his request for investigation of crime. Since Mr. Ford's pardon of Mr. Nixon eliminates almost every ground the Special Prosecutor could advance in a request for the tapes, the "Catch 22" dimensions of the problem become apparent. It is now most unlikely that the taped conversations between Mr. Ford and Mr. Nixon will be known to the American people.

The second aspect concerns the legality of Mr. Nixon's pardon. When establishing the office of the Special Prosecutor, Mr. Nixon agreed to an administrative regulation stating in plain terms that "in accordance with

assurances given by the President to the Attorney General . . . the President will not exercise his constitutional powers to limit the independence the [Special Prosecutor] is hereby given. . . ." This regulation was the basis of Judge Gesell's decision that Mr. Nixon's firing of Archibald Cox during the "Saturday Night Massacre" was illegal.

This regulation is still in effect and Mr. Ford is bound by it. This much was clearly declared by the Supreme Court of the United States in Mr. Nixon's executive privilege-tapes case: "So long as this regulation remains in force," the court held, "the executive branch is bound by it, and indeed the United States as the sovereign composed of the three branches is bound to respect and enforce it." True, Mr. Jaworski during his recent resignation stated that Mr. Nixon's pardon was proper. But that does not settle the question whether the independence of the Special Prosecutor was impaired by the pardon because the question is one of law, to be decided by a court. It would appear to any reasonable person that Mr. Nixon's pardon impaired the "independence" of the Special Prosecutor because (1) it eliminated the possible prosecution of Mr. Nixon and (2) it precludes further investigation for criminal evidence into the affairs of Mr. Nixon, including his taped conversations with Mr. Ford.

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