

# Legal Questions Underlie the Debate Over Proposal of Immunity for Nixon

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WASHINGTON, Aug. 8—In Congress and elsewhere in Washington today, there was growing debate over whether President Nixon should be given immunity from criminal prosecution upon his resignation.

Underlying the debate were a number of legal questions, some narrow and technical, some broad and constitutional, as well as a number of competing legal interests.

Mr. Nixon could be given immunity under an arrangement with the special Watergate prosecution, with whose lawyers his own lawyers met yesterday. Or, he could be pardoned by Vice President Ford after Mr. Ford assumes the presidency. *7 KVG*

Neither Leon Jaworski, the special Watergate prosecutor, nor Mr. Ford is expected to take such a step without having a consensus of Congress to back it up.

## Proposal From Brooke

Senator Edward W. Brooke, Republican of Massachusetts, submitted to the Senate today a proposed resolution expressing the "sense" of Congress that the President not be prosecuted when he leaves office. Although this resolution, if passed, would not be binding, it would provide either Mr. Ford or Mr. Jaworski with the "consensus" each would want.

The law provides no guide as to which route would be the better way. And on the question of whether Mr. Nixon should be given immunity it provides only hints, not answers.

A major question is whether Mr. Nixon should be given immunity from prosecution for Watergate crimes when numerous Nixon subordinates have either been convicted already or are facing prosecution for alleged roles in the same crimes.

The traditional practice for prosecutors faced with evidence implicating both subordinates and their superiors in a crime is to concentrate on prosecuting the superiors. If anyone gets immunity, it is a subordinate whose testimony is needed to make the prosecutor's case against the superior.

This is, however, only practice, not a legal requirement.

## Constitutional Guarantees

The law provides at least an outside standard: Under the Constitution, people are en-

titled to due process and "equal protection of the laws." There is a legal theory that "selective prosecution" violates the equal protection guarantee—that if only one conspirator is prosecuted, say, and his five co-conspirators are not, the first one can contest his prosecution on the grounds that he is being denied equal protection.

But as one Washington lawyer, Daniel A. Reznick, noted today, this theory is rarely applied. To prove that a prosecution is unconstitutionally "selective," a defendant would have to show that there was absolutely no basis for distinguishing between the various potential defendants.

Mr. Reznick said that there were obviously some legitimate reasons for viewing a President somewhat differently from an ordinary citizen. As there are considerations, for example, such as the great penalty that the President is already receiving in leaving his office in disgrace.

At the same time, there is also the legal principle that everyone, including the President, is subject to the rule of law.

There is also the importance of what is generally called the "appearance of justice." And there is the provision, in the Constitution that says that an official convicted by the Senate in an impeachment proceeding "shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law."

There is no precise statute setting out exactly how any of these three principles or rules are to be applied. But they must obviously be considered in weighing the advantages and the disadvantages of giving Mr. Nixon immunity.

To some lawyers, moreover, the constitutional provision is proof that the men who drafted the Constitution intended that a President who commits a crime be prosecuted for it.

## Aim of the Framers

The discussion of impeachment during the Constitutional Convention in 1787 was almost exclusively a discussion of impeaching Presidents, not the other officials such as judges who were subsequently placed within the impeachment clauses.

So, as Daniel Davidson, another Washington lawyer, put it today, "the Constitution was written for this situation."

Mr. Davidson rejects the rationale that Mr. Nixon has al-

ready suffered massive disgrace and that the loss of office is penalty enough. The drafters of the Constitution knew that a President who committed a crime "would be disgraced," he said, and they included the provision for prosecution nevertheless.

There has been some suggestion, in pro-Nixon circles, that Mr. Nixon should be given not only immunity from prosecution but also immunity from being called as a witness.

The suggestion raises additional legal problems, for it affects other interests as well—the interest of the special Watergate prosecution in making its case in the Watergate cover-up trial, and perhaps other trials, too, and the interests of defendants in those cases in getting fair trials.

Here, the law is clearer.

For one thing, the Sixth Amendment guarantees that a defendant may "have compulsory process for obtaining witnesses in his favor." It is possible that Mr. Nixon could provide testimony helpful to one or more defendants in the Watergate cover-up case. Also, if the defendant was barred from obtaining Mr. Nixon's testimony, the case against him might have to be dismissed.

The prosecution probably does not need Mr. Nixon's testimony in the cover-up case, for it already has abundant evidence. Indeed, it might not want him as a witness either.

To get Mr. Nixon to testify fully the prosecutors would clearly have to give him at least a limited immunity, protecting him against prosecution based on that testimony. The defense lawyers could use this fact in cross-examination, saying, as one of the lawyers in the case put it today, "What kind of deal did you make, Mr. ex-President?"

But the prosecution might need Mr. Nixon's testimony to make its case in other trials.

And, as more than one lawyer pointed out today, the Supreme Court—in the Nixon tapes case a few weeks ago—unanimously and unequivocally affirmed the basic rule that the courts are entitled to every man's evidence.





White House Photograph via United Press International

**President Nixon and his younger daughter, Julie Eisenhower, embracing Wednesday after he decided to resign.**