

Merciful But Lawful

By Tom Wicker

During a month's vacation spent in New York, California, Hawaii and Indiana, most of the Americans I spoke to said they had no desire to see Richard Nixon prosecuted. I share this instinct, but long deliberation has not yet suggested any good way by which the Nixon case can be dropped.

Glib phrases don't help. Mr. Nixon has not been "hung" and no one has proposed that he should be "drawn and quartered." Nor was he "stripped" of his office. Mr. Nixon resigned the Presidency by his own choice, and not even—as in the Agnew case—as part of a plea bargain. He has not admitted anything more than "mistakes" and "bad judgment," although these included taking part in the Watergate cover-up.

It is also somewhat misleading to talk of his having been "punished enough" by the loss of his high office. Bank presidents suffer greatly when they lose their posts for embezzlement; and Senators and Congressmen are highly embarrassed and grieved when they have to resign because of corruption charges; but no one suggests they should not be prosecuted just because they gave up important jobs. Besides, in Mr. Nixon's case, this reasoning suggests that he had some kind of proprietary right to the office of the Presidency—which he sooner or later would have had to give up anyway.

Mr. Nixon's spiritual suffering is no doubt real and grievous. In other respects, giving up the Presidency has not been so punishing. He still has his East Coast and West Coast homes, on which the Government spent \$17-million during his five and one half years in office. Now President Ford has asked Congress for allowances of \$40,000 for travel for Mr. Nixon, numerous other appropriations totaling \$109,000, a "miscellaneous" allowance of \$100,000, a "transition" allowance of \$450,000—all in addition to an ex-President's pension of \$60,000 a year and staff allowances of \$90,000 a year, together with Secret Service protection and Federal office space. It does not begrudge Mr. Nixon any of this to point out that he is not exactly doing time in Leavenworth.

More important is the problem created by the prosecution of others—seven indicted, with several guilty pleas in from others, and some sentences served or being served—on essentially the same evidence of obstruction of justice that might be used against Mr. Nixon. How, for instance, can the tape of the conversation in which Mr. Nixon and H. R. Haldeman plotted part of the Watergate cover-up be used against Mr. Haldeman if it is not used against Mr. Nixon?

IN THE NATION

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To prosecute the one and not the other is to set up a double standard. To drop all the other Watergate cases in order to avoid prosecuting Mr. Nixon would establish an even more disastrous double standard—between high public officials who violate the law and the public trust but escape prosecution, and ordinary violators of the law who get the book thrown at them when apprehended.

As difficult to resolve as the double standard dilemma is the problem of the effect on future Presidents—a matter about which Mr. Nixon himself used to express great concern. President Ford has assured the nation that the example he sets will be a sufficient ethical guide for his Administration. But is the precedent really to be established that if a President commits crimes, either of a personal or a political nature, while in office, he can escape prosecution by resigning, then live well on his pension and benefits?

When the echo of Watergate is no longer heard—it is already getting to be yesterday's story—that might prove a mighty temptation to the kind of President Americans used to think they could never have.

Look at it another way. Who really has the authority to say that the law doesn't apply? One approach apparently being talked of would be for Mr. Ford, Special Prosecutor Jaworski and the leaders of Congress to join in announcing that Mr. Nixon will not be prosecuted in return for some admission of guilt by him. But even if all parties to such an agreement, including Mr. Nixon, could be persuaded to go along, what gives any or all of them the right to set aside due process of law especially in concert with a guilty plea?

It would be better to let the law take its course. Even then, Mr. Nixon would not necessarily be found guilty. But if he were, Mr. Ford would have the right to pardon him if he chose. Most Americans, including this one, would welcome that as an act of generosity and mercy as well as constitutionality.