

Amnesty for Nixon: Views for and Against

AUG 14 1974

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Special to The New York Times

WASHINGTON, Aug. 13—

"No amnesty for Nixon." The bumper stickers have already started to appear, blue letters on a white background, their message harsh and unequivocal.

News

Analysis

Lawyers and politicians and ordinary citizens alike are speaking out with a similar message. The American Bar Association, at its convention in Hawaii, is considering a resolution to the same effect.

The pressure is understandable, for there are good arguments in favor of prosecuting Richard M. Nixon, and, adding to the immediacy, there is also a pending prosecution with a Sept. 9 trial date for six former Nixon subordinates charged with the same crime in which Mr. Nixon has admitted a role.

There are good arguments against prosecuting Mr. Nixon. Also, the pressure, at the moment, is directed at one man, Leon Jaworski, the special Watergate prosecutor, and there are those who believe that the decision should be made elsewhere.

Had there is some feeling that the decision should be postponed. Emotions are high now, and the question is momentous.

The present situation, briefly, is this: Mr. Nixon, having given is now liable to prosecution whatever immunity it carried, up the Presidency and, with it, for any crimes committed while in office. He, himself, has made public transcripts of his conversations that, to lawyers, provide a prima facie case against him on at least the charge of obstruction of justice. There is evidence from the transcripts support additional charges from other sources that might against him.

Pardon or Resolution

President Ford could pardon Mr. Nixon, but he has shown no inclination to do so, and, indeed, his press secretary has would be opposed to a pardon. implied that the new President Congress could conceivably pass a pending resolution favoring clemency, an act that while not legally binding would at least give Mr. Jaworski some psychological backup should the prosecutor decide not to prosecute Mr. Nixon. Such action, though, now also appears unlikely.

Mr. Jaworski, the man authorized to prosecute Mr. Nixon, is thus on his own.

As a result, there are three basic questions, as follows:

1. Should Mr. Nixon be prosecuted, or should the books be closed and the former President left alone?
2. Who should decide?
3. When should the decision be made?

The questions involve far more than just the fate of Mr. Nixon, for any decision on his legal status will affect to one degree or another the status of other defendants or potential defendants.

There is something more at stake too: The public's perception of its legal system.

The arguments in favor of prosecuting Mr. Nixon go thus:

The law applies to all persons equally, and Mr. Nixon must be prosecuted for his alleged crimes in the same way that anybody else who apparently committed crimes would be prosecuted. If Mr. Nixon is not prosecuted the prosecutions of his former subordinates would be unfair and might have to be dropped. If he is not prosecuted, he will be able to go about the country saying that he has done no wrong and, perhaps, having his opinions heeded.

Finally, the argument goes, a failure to prosecute Mr. Nixon would lessen whatever respect Americans have for the law.

Draft Evasion Stand

Some proponents of prosecution also cite Mr. Nixon's own words on the subject of amnesty for draft evaders, for Mr. Nixon, in opposing amnesty, spoke very strongly of the "rule of life [that] we all have to pay for our mistakes." The "price" for "disobeying the laws of the United States," Mr. Nixon said, is "a criminal penalty."

The main argument on the other side is that Mr. Nixon has already suffered a penalty harsh enough for whatever offenses he committed—he forfeited the Presidency, he brought disgrace to his family, he was and undoubtedly will be humiliated.

Another argument is that a proper system of justice allows compassion and mercy. A corollary is that prosecutors in this country have vast discretion—as suggested by Elliot L. Richardson, the former Attorney General, who had said he thinks that "as a matter of discretion" Mr. Nixon should not be prosecuted.

Letting Mr. Nixon free while prosecuting his former aides for what may have been subordinate roles in the Watergate crimes seems, on the face of it, unfair. But it is possible that those aides could be let free—that those prosecutions could be dropped, or pardons issued.

Such a decision could perhaps be justified on the grounds that the aides were acting at the direction of the President, and since the President was not being prosecuted, for na-

tional policy reasons, the aides should not be either.

That possibility, of course, raises the next question: Who is to decide what should be done with Mr. Nixon? For while a prosecutor has huge discretion in deciding whom to prosecute and what charges to bring, and while there are few ways to control a prosecutor's discretion, there are public policy reasons for prosecutors posing some limits on themselves.

Mr. Jaworski is a cautious and traditionally minded prosecutor, considering himself guided if not totally bound by such guidelines as the American Bar Association's standards for prosecutors. Those standards give a variety of reasons for declining to prosecute, such as inadequate proof or reluctance of the victim to testify, but those reasons are not particularly helpful in this case.

Also, a decision by Mr. Jaworski not to prosecute Mr. Nixon might set a precedent on which other prosecutors could rely if they wanted to avoid prosecuting important public officials.

So, although Mr. Jaworski has broad power—including, as a practical matter, the power to decide not to prosecute Mr. Nixon—he might be reluctant to take such a step on his own.

Paul C. Warnke, former general counsel to the Defense Department and Assistant Sec-

retary of Defense, was among observers who said that the central question was whether a pardon or immunity for Mr. Nixon would bring the criminal law into disrepute.

It is a question that perhaps cannot be answered right now, given the emotions generated by Mr. Nixon's resignation. It can be postponed, by delaying the Watergate cover-up trial a few months, as some of the defendants have asked.

More than that, though, it is a question that involves, as Mr. Warnke put it, "determining the national character." And so, to him and to some others as well, it is a job for the President, not the prosecutor.