



Should Nixon Be Prosecuted?

Joseph Kraft

"WHEN IN DOUBT, HESITATE," is a maxim followed by most of us in private life. Now it applies with a vengeance to the vexing public question of whether former President Nixon should be subject to prosecution.

There are no good answers to the question. So the best thing is to wait and see what evidence emerges in the future.

The starting point for analysis is a powerful presumption against prosecution. Nobody wants a former President to be in jail for the sport of it. Nor can anybody doubt that Mr. Nixon has already paid a very high penalty — the penalty of personal humiliation. But there is more to come.

He is going to have to testify in cases where he will not, to put it mildly, look good. He has heavy payments for back taxes due. He may be subject to civil suits from victims of Watergate.

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MOREOVER, the two arguments generally used to support the case for prosecution turn out to be terribly weak. First, there's the argument that it is unfair to prosecute the former President's leading associates — notably H. R. Haldeman, John Ehrlichman and John Mitchell — without also giving Mr. Nixon the business.

But in fact we all know that our system of justice is not a 100 per cent simon-pure platonic model of perfect equality.

White-collar crime, in particular, is punished much less severely — and much less frequently with prison sentences — than crimes associated with the working class.

Mitchell, Haldeman and Ehrlichman

are going to profit from that view in the future. Just as former White House aides are set apart from ordinary criminals, so a former President can be set apart from his underlings.

A second argument is that unless Mr. Nixon is prosecuted along with his aides and associates, the people will lose faith in American democracy and the system of justice. But faith in democracy and the system of justice is something acquired through many experiences over a long period of time. Anybody who turns to subversion and crime because Mr. Nixon does not do time can be assumed to have been headed in that direction anyway.

Even if some shallow people are shaken in their faith because of special treatment for Mr. Nixon, the adverse social effects of a prosecution would probably be more injurious. For Mr. Nixon retains the sympathy and support of millions of Americans.

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THE FINAL STORY on Mr. Nixon is not yet in. New evidence is likely to come out as more tapes are processed through the courts and made available to Leon Jaworski, the Watergate special prosecutor. The upcoming trial of Ehrlichman, Haldeman and Mitchell for the Watergate cover-up could well yield more material.

For the time being, it makes sense to leave the decision to those entrusted with the responsibility — in this case, to special prosecutor Jaworski. And only the willfully obtuse will fail to understand why he would want to postpone a decision until the passions of the past few months are spent.