

What Law Professors Say

Professors of constitutional law and political science at the University of California, Berkeley, and Stanford expressed shock yesterday at the pardon for Richard Nixon and its implications.

Stanford law professor John Kaplan called it "an affront to justice" and his colleague, professor Gerald Gunther, considered it "unwise and apt to be very divisive."

UC law professor Paul Mishkin summarized it as "premature" and his colleagues, Jesse Choper, characterized it as "a blind and blanket kind of immunity."

UC political scientist Nelson Polsby felt it would "kick open" Watergate again.

"If the President thinks this is going to stop people from worrying about Watergate," Polsby said, "he's in for a surprise, because I feel this will raise more questions than it answers.

"He's not slamming the door at all, he may be kicking it open. And it's making it much more difficult, if not impossible, for there to be an official determination of the facts."

"Considerations of friendship and magnanimity," said Professor Kaplan, "may be inappropriate in trying to run a government, at least when so whimsically applied to one man and not to all those who did what he told them to and are now being prosecuted as a result.

"Simple retribution has a place in criminal law. There seems to be an exception for Richard Nixon. Presumably, this pardon means he will keep his pension and annual expense allowance."

Gunther and Mishkin agreed it would have been better to pursue the legal processes.

"The case for proceeding with the other Watergate-related trials," said Gunther, "may be strengthened, not weakened, since former President Nixon not only is clearly summonable but now cannot claim the Fifth Amendment."

Mishkin felt that a pardon to prevent Mr. Nixon from going to prison, if convicted, would have been more appropriate.

Can a pardon be granted before even an indictment?

"This issue is not clearly

defined," said Mishkin, "but from the little authority available, I feel a presidential pardon can be granted at any stage."

In labeling this pardon in

advance a blind and blanket kind of immunity, Choper held that "neither President Ford nor the people really know just what offenses were committed."

"I would underline that President Ford doesn't know," he said. "It could well be, for example, that investigation could reveal Mr. Nixon had committed crimes much more grievous than those we're already familiar with."

Choper said, however, that one of two "interesting" things could happen if Nixon were called to testify at one of the still pending Watergate trials.

"If he admits all wrongdoing, Mr. Ford runs the risk of looking bad for pardoning him in advance. If Mr. Nixon doesn't tell the truth as a witness, he then can be prosecuted for perjury, since the pardon covers conduct only up to August 9."