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Ladies and gentlemen, I have come to a decision which I felt I should tell you, and all my fellow citizens, as soon as I was certain in my own mind and conscience that it is the right thing to do.

I have learned already in this office that only the difficult decisions come to this desk. I ~~frankly~~ <sup>must</sup> admit that many of them do not look at all the same as the hypothetical questions that I have answered freely and perhaps too fast on previous occasions. ~~My customary policy is to try and get all the facts and to consider the opinions of my countrymen and to take counsel with my most valued friends. But these ~~decisions~~ seldom agree, and in the end the decision is mine.~~ My customary policy is to try and get all the facts and to consider the opinions of my countrymen and to take counsel with my most valued friends. But these ~~decisions~~ seldom agree, and in the end the decision is mine.

To procrastinate, ~~and to delay,~~ to agonize, to wait for a more favorable turn of events that may never come, or more compelling external pressures that may as well be wrong as right, is <sup>itself</sup> a decision of sorts and a weak and <sup>potentially</sup> ~~extremely~~ dangerous <sup>course for a President</sup> ~~one~~ <sup>to follow.</sup>

I have promised to uphold the Constitution, to ~~do~~ do what is right as God gives me to see the right, and to do the very best I can for America. I have asked your help and your prayers, not only when I became President, but many times since.

The Constitution is the supreme law of our land and it governs our actions as citizens. Only the laws of God, which govern our consciences, are superior to it. As we are a Nation under God, so I am sworn to uphold our laws with the help of God. And I have sought such guidance and searched my own conscience with special diligence to determine the right thing for me to do with respect to my predecessor in this place, Richard Nixon, and his ~~wonderful~~ <sup>loyal</sup>

wife and family.

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Theirs is an American tragedy in which we all have played a part. It can go on and on <sup>+m</sup> or someone must write "the end" ~~finish~~ to it.

I have concluded that only I can do that. And if I can, I must.

There are no historic or legal precedents to which I can turn in this matter, none that precisely fit the circumstances of a private citizen who has resigned the Presidency of the United States. But it is common knowledge that serious allegations and accusations hang like a ~~sword~~ sword over our Former President's head as he tries to reshape his life, a great part of which was spent in the service of this country and by the mandate of <sup>its</sup> ~~the~~ people.

After years of bitter controversy and divisive national debate, I have been advised and am compelled to conclude that many months and perhaps <sup>more</sup> years will have to pass before Richard Nixon could hope to obtain a fair ~~trial~~ trial by jury in any jurisdiction of the United States under governing decisions of the Supreme Court.

I deeply believe in equal justice for all Americans, whatever their station or former station. The law, whether human or Divine, is no respecter of persons but the law is a respecter of reality. The facts as I see them are that a former President of the United States, instead of enjoying equal treatment with any other citizen accused of violating the law, would be cruelly and excessively penalized either in

~~establishing his~~ <sup>preserving the</sup> ~~his~~ <sup>his</sup> presumption of innocence or in obtaining a speedy determination of his guilt in order to repay a legal debt to society.

During this long period of delay and potential litigation, ugly passions would again be aroused, our people would again be polarized in their opinions, and the credibility of our free institutions of government would again be challenged at home and abroad. In the end, the courts might well hold that Richard Nixon had been denied due process and the ~~result~~ <sup>verdict of history</sup> would be even more inconclusive with respect to those charges ~~arising out of~~ <sup>arising out of</sup> ~~during~~ the period of ~~which I am presently aware~~ his Presidency of which I am presently aware.

But it is not the ultimate fate of Richard Nixon that most concerns me -- though ~~it~~ <sup>surely it</sup> ~~deeply~~ <sup>deeply</sup> troubles every decent and compassionate person. ~~But~~ <sup>Rather my concern is</sup> the immediate future of this great country. In this I dare not ~~depend upon~~ <sup>depend upon</sup> my personal ~~sympathy~~ <sup>longtime</sup> ~~as a friend~~ of the Former President ~~nor my~~ professional judgment as a lawyer. And I do not.

As President, my primary concern must always be the greatest good of all the people of the United States, whose servant I am.

As a man, my first consideration ~~will always be~~ <sup>is</sup> to be true to my own convictions and my own conscience.

My conscience tells me clearly and certainly that I cannot prolong the bad dreams that continue to reopen a chapter that is closed. My conscience tells me that only I, as president, have the Constitutional power to firmly shut and seal this book. My conscience says it is my duty, not merely to proclaim domestic tranquillity, but to use every means I have to ensure it.



~~XXXXXX~~ I do believe that the buck stops here and that I cannot rely upon public opinion polls to tell me what is right. I do believe that right makes might, and that if I am wrong ~~all the legions~~<sup>ten</sup> of angels swearing I was right would make no difference. I do believe with all my heart and ~~xxxxxx~~ mind and spirit that I, <sup>not</sup> as President ~~but~~ ~~xxxx~~ as a humble servant of God, will receive justice without mercy if I fail to show mercy.

~~xxxx~~ Finally, I feel that Richard Nixon and his loved ones have suffered enough, and will continue to suffer no matter what ~~xxxxxx~~ I do, ~~xxxxxx~~ no matter what ~~xxxxxx~~ matter what ~~xxxxxx~~ we as a great and good Nation can do together to make his <sup>goal</sup> ~~dream~~ of peace ~~xxxxxx~~ <sup>for all peoples</sup> come true.

"Now, therefore, I, Gerald R. Ford

NOW, THEREFORE, I, Gerald R. Ford, President of the  
 United States, pursuant to the pardon power conferred upon me by  
 Article II, Section 2, of the Constitution, have granted and by these  
 presents do grant a full, free, and absolute pardon unto Richard Nixon  
 for all offenses against the United States which he, Richard Nixon, has  
 committed or may have committed or taken part in during the period  
 from January 20, 1969 through August 9, 1974.

IN WITNESS WHEREOF, I have hereunto set my hand this  
 8th day of September in the year of our Lord Nineteen Hundred  
 Seventy-Four, and of the Independence of the United States of  
 America the 199th.

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# Open Presidency

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~~Second~~, the President immediately decided to conduct -- and has continued to conduct -- an open Presidency. The President has held 35 national press conferences to date. He has met in White House Conferences on the issues of the day with more than 10,000 Americans. Shortly after he became President, Gerald Ford began to travel through the United States in an effort to speak directly to the American public about the issues he knew the country must resolve.

## NIXON - PRESIDENT'S CONGRESSIONAL TESTIMONY

When the President decided that the best interests of the United States required that former President Nixon be pardoned in order to get the country on the move, he became the first President in United States history to offer to appear and testify and submit to questioning by Members of the United States Congress. He did in fact testify in a public hearing held by a Congressional Committee and a transcript was made for the public. His Presidency has become the most open in modern times.

Finally, the President has instigated significant reforms in government handling of a wide variety of ethical problems:

- The President promulgated a strict code of conduct for his White House staff.
- The President gave strict instructions to all Cabinet members with regard to the conduct of their agencies.
- The President appointed the Rockefeller Commission to investigate and report on abuses of power and invasions of privacy by the American intelligence community which had occurred under several previous Administrations and issued guidelines for that community to insure that the community could effectively carry out its mission without infringing on the rights of Americans.
- The President supported the Attorney General in his actions in creating new limitations on investigative action by the FBI.
- The President appointed the Richardson Commission to investigate and recommend action on the problem of international corporate bribery.
- And this summer the President made a series of proposals, including one to set up a Special Prosecutor's office in the Department of Justice which would serve to make the government more open and accountable to the American people.

THE WHITE HOUSE

WASHINGTON

TO THE STAFF:

Calls for Jerry should be answered that he is not here. Will he be in? We don't expect him. Where can he be reached? I'm not sure.

On his resignation, it can be said that he resigned yesterday, effective yesterday. He talked with the President about it and submitted a letter (which will not be released unless Jerry himself wishes to do so.)

Has Hushen been named Press Secretary or Acting Press Secretary? Jack Hushen, as Deputy Press Secretary, is in charge of the press office.

(There is also brief Presidential statement.)

(Is there a terHorst statement? He is quoted accurately by the AP, to whom he talked last evening.)

tom

Memorandum to the  
Special Prosecutor  
on behalf of  
Richard M. Nixon

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This memorandum is submitted on behalf of Richard M. Nixon to bring to the attention of the Special Prosecutor facts and supporting legal authority which, we submit, warrant a decision not to seek indictment of the former President. We wish to emphasize that this memorandum focuses specifically on issues of law rather than policy. In so limiting this presentation we do not wish to imply that all other considerations are irrelevant or inappropriate. Indeed, we believe it is highly desirable and proper for the Special Prosecutor to weigh in his judgment the possible impact of such an indictment on the domestic spirit and on

international relations, as well as the more traditional policy considerations entrusted to prosecutorial discretion.<sup>\*</sup> However, the purpose of this memorandum is solely to demonstrate that one -- and probably the most crucial -- legal prerequisite to indicting and prosecuting Mr. Nixon does not exist: the ability of this government to assure him a fair trial in accordance with the demands of the Due Process Clause of the Fifth Amendment and the right to trial by an impartial jury guaranteed by the Sixth Amendment.

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Such intangible but none-the-less critical factors as domestic and international relations certainly fall within the ambit of the prosecutor's discretion as expressed in the Standards Relating to The Prosecution Function and The Defense Function, ABA Project on Standards for Criminal Justice, March 1971, where it is stated that

". . . The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence exists which would support a conviction. ABA Standards § 3.9(b).

A decision to forego prosecution because of overriding concerns of the national interest is in keeping with similar prosecutorial decisions to forego prosecution rather than disclose confidential national security or law-enforcement information required as evidence. United States v. Andolchek, 142 F.2d 503 (2d Cir. 1944); United States v. Beekman, 155 F.2d 580 (2d Cir. 1946); Christoffel v. United States, 200 F.2d 734 (D.C. Cir. 1952).

I. The Events and Publicity Surrounding Watergate have Destroyed the Possibility of a Trial Consistent with Due Process Requirements.

Recent events have completely and irrevocably eliminated, with respect to Richard M. Nixon, the necessary premise of our system of criminal justice -- that, in the words of Justice Holmes, ". . . the conclusions to be reached in a case will be induced only by evidence and argument in open court, not by any outside influence, whether of private talk or public print." Patterson v. Colorado, 205 U.S. 454, 462 (1907). As reiterated by the Court in Turner v. Louisiana 379 U.S. 466, 472 (1965):

"The requirement that a jury's verdict 'must be based upon the evidence developed at trial' goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury."

Never before in the history of this country have a person's activities relating to possible criminal violations been subjected to such massive public scrutiny, analysis and debate. The events of the past two years and the media coverage they received need not be detailed here, for we are sure the Special Prosecutor is fully aware of the nature of the media exposure generated. The simple fact is that the

national debate and two-year fixation of the media on Watergate has left indelible impressions on the citizenry, so pervasive that the government can no longer assure Mr. Nixon that any indictment sworn against him will produce "a charge fairly made and fairly tried in a public tribunal free of prejudice, passion [and] excitement . . ." Chambers v. Florida, 309 U.S. 227, 236-37, (1940).

Of all the events prejudicial to Mr. Nixon's right to a fair trial, the most damaging have been the impeachment proceedings of the House Judiciary Committee. In those proceedings neither the definition of the "offense," the standard of proof, the rules of evidence, nor the nature of the fact-finding body, were compatible with our system of criminal justice. Yet the entire country witnessed the proceedings, with their all-pervasive, multi-media coverage and commentary. And all who watched were repeatedly made aware that a committee of their elected Representatives, all lawyers, had determined upon solemn reflection to render an overwhelming verdict against the President, a verdict on charges time and again emphasized as constituting "high crimes and misdemeanors" for which criminal indictments could be justified.



All of this standing alone would have caused even those most critical of Mr. Nixon to doubt his chances of subsequently receiving a trial free from preconceived judgments of guilt. But the devastating culmination of the proceedings eliminated whatever room for doubt might still have remained as the entire country viewed those among their own Representatives who had been the most avid and vociferous defenders of the President (and who had insisted on the most exacting standards of proof) publicly abandon his defense and join those who would impeach him for "high crimes and misdemeanors."

None of this is to say, or even to imply, that the impeachment inquiry was improper, in either its inception or its conduct. The point here is that the impeachment process having taken place in the manner in which it did, the conditions necessary for a fair determination of the criminal responsibility of its subject under our principles of law no longer exist, and cannot be restored.

Even though the unique televised congressional proceedings looking to the possible impeachment of a President leave us without close precedents to guide our judgments con-

cerning their impact on subsequent criminal prosecutions, one court has grappled with the issue on a much more limited scale and concluded that any subsequent trial must at minimum await the tempering of prejudice created by the media coverage of such events.

In Delaney v. United States, 199 F.2d 107 (1st Cir. 1952), a District Collector of Internal Revenue was indicted for receiving bribes. Prior to the trial a subcommittee of the House of Representatives conducted public hearings into his conduct and related matters. The hearings generated massive publicity, particularly in the Boston area, including motion picture films and sound recordings, all of which "afford the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial." 199 F.2d at 110. Moreover, the publicized testimony "ranged far beyond matters relevant to the pending indictments." 199 F.2d at 110. Delaney was tried ten weeks after the close of these hearings and was convicted by a jury. The Court of Appeals reversed, holding that Delaney had been denied his Sixth Amendment right to an impartial jury by being forced to "stand trial while the damaging effect of all that hostile publicity may reasonably be thought not to have been erased from the public mind." Id. 114.

The Court of Appeals did not suggest that the hearings were themselves improper. Indeed, the court emphatically stated that ". . . [i]t was for the Committee to decide whether considerations of public interest demanded at that time a full dress public investigation . . ." Id. 114 (emphasis added).

But the court continued,

"If the United States, through its legislative department, acting conscientiously pursuant to its conception of the public interest, chooses to hold a public hearing inevitably resulting in such damaging publicity prejudicial to a person awaiting trial on a pending indictment, then the United States must accept the consequence that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury, may find it necessary to postpone the trial until by lapse of time the danger of the prejudice may reasonably be thought to have been substantially removed."

The principle expounded by the court in Delaney is applicable here. Faced with allegations that the Watergate events involved actions by the President, the House of Representatives determined that not only was an impeachment inquiry required, but that the inquiry must be open to the public so that the charges and evidence in support thereof could be viewed and analyzed by the American people. We need not fault Congress in that decision. Perhaps -- in the interest of the country -- there was no other choice. But having pursued a

course purposely designed to permit the widest dissemination of and exposure to the issues and evidence involved, the government must now abide by that decision which produced the very environment which forecloses a fair trial for the subject of their inquiry.

The foregoing view is not at all incompatible with the Constitution, which permits the trial of a President following impeachment -- and therefore, some might argue, condones his trial after his leaving office. Nothing in the Constitution withholds from a former President the same individual rights afforded others. Therefore, if developments in means of communication have reached a level at which their use by Congress in the course of impeachment proceedings forever taints the public's mind, then the choice must be to forego their use or forego indictment following impeachment. Here, the choice has been made.

Further demonstration of the wholly unique nature of this matter appears in the public discussion of a pardon for the former President -- which discussion adds to the atmosphere in which a trial consistent with due process is impossible

Since the resignation of Mr. Nixon, the news media has been filled with commentary and debate on the issue of whether the former President should be pardoned if charged with offenses relating to Watergate. As with nearly every other controversial topic arising from the Watergate events, the media has sought out the opinions of both public officials and private citizens, even conducting public opinion polls on the question. A recurring theme expressed by many has been that Mr. Nixon has suffered enough and should not be subjected to further punishment, certainly not imprisonment.

Without regard to the merits of that view, the fact that there exists a public sentiment in favor of pardoning the former President in itself prejudices the possibility of Mr. Nixon's receiving a fair trial. Despite the most fervent disclaimers, any juror who is aware of the general public's disposition will undoubtedly be influenced in his judgment, thinking that it is highly probable that a vote of guilty will not result in Mr. Nixon's imprisonment. Indeed, the impact of the public debate on this issue will undoubtedly fall not only on the jury but also on the grand jury and the Special Prosecutor, lifting some of the constraints which might otherwise have militated in favor of a decision not to prosecute. Human nature could not be otherwise.

We raise this point not to suggest that the decision of whether to prosecute in this case cannot be reached fairly, but rather to emphasize that this matter -- like none other before it and probably after it -- has been so thoroughly subjected to extraneous and highly unusual forces that any prosecution of Mr. Nixon could not fairly withstand detached evaluation as complying with due process.

II. The Nationwide Public  
Exposure to Watergate  
Precludes the Impaneling  
of an Impartial Jury

The Sixth Amendment guarantees a defendant trial by jury, a guarantee that has consistently been held to mean that each juror impaneled -- in the often quoted language of Lord Coke -- will be "indifferent as he stands unsworn." Co. Litt. 155b. See Irvin v. Dowd, 366 U.S. 717 (1961); Turner v. Louisiana, 379 U.S. 472 (1965). The very nature of the Watergate events and the massive public discussion of Mr. Nixon relationship to them have made it impossible to find any array of jurymen who can meet the Sixth Amendment standard.

On numerous occasions the Supreme Court has held that the nature of the publicity surrounding a case was such that jurors exposed to it could not possibly have rendered a

verdict based on the evidence. See Sheppard v. Maxwell, 384 U.S. 333 (1966); Rideau v. Louisiana, 373 U.S. 723 (1963); Irvin v. Dowd, supra; Marshall v. United States, 360 U.S. 310 (1959). The most memorable of these was Sheppard v. Maxwell, in which the Court, describing the publicity in the Cleveland metropolitan area, referred time and again to media techniques employed there -- which in the Watergate case have been utilized on a nationwide scale and for a much longer period of time. The following excerpts from the Court's opinion are exemplary:

"Throughout this period the newspapers emphasized evidence that tended to incriminate Sheppard and pointed out discrepancies in his statements to authorities."  
p. 340.

\* \* \*

"On the sidewalk and steps in front of the courthouse, television and newsreel cameras were occasionally used to take motion pictures of the participants in the trial, including the jury and the judge. Indeed, one television broadcast carried a staged interview of the judge as he entered the courthouse. In the corridors outside the courtroom there was a host of photographers and television personnel with flash cameras, portable lights and motion picture cameras. This group photographed the prospective jurors during selection of the jury. After the trial opened, the witnesses, counsel, and jurors were photographed and televised whenever they entered or left the courtroom."  
pp. 343-44.

\* \* \*

"The daily record of the proceedings was made available to the newspapers and the testimony of each witness was printed verbatim in the local editions, along with objections of counsel, and rulings by the judge. Pictures of Sheppard, the judge, counsel, pertinent witnesses, and the jury often accompanied the daily newspaper and television accounts. At times the newspapers published photographs of exhibits introduced at the trial, and the rooms of Sheppard's house were featured along with relevant testimony." pp. 344-45.

\* \* \*

"On the second day of voir dire examination a debate was staged and broadcast live over WHK radio. The participants, newspaper reporters, accused Sheppard's counsel of throwing roadblocks in the way of the prosecution and asserted that Sheppard conceded his guilt by hiring a prominent criminal lawyer." p. 346.\*

The Sheppard murder was sensational news and the media reacted accordingly. In the course they destroyed the state's ability to afford Sheppard a fair trial.

The sensation of Watergate is a hundredfold that of the Sheppard murder. But the media techniques remain the

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The prejudicial publicity in Sheppard commenced well before trial, even before charges were brought, and continued throughout the duration of the prosecution. Although Mr. Nixon has not been criminally tried, the press coverage of the impeachment proceedings and Watergate related criminal trials reflect obvious similarities to the Sheppard coverage.



same and the destruction of an environment for a trial consistent with due process has been nationwide. The Supreme Court should not -- upon an appeal by Mr. Nixon -- have to recount for history the unending litany of prejudicial publicity which served to deprive the President of the rights afforded others.

The bar against prosecution raised by the publicity in this case defies remedy by the now common techniques of delaying indictment or trial, changing venue, or scrupulously screening prospective jurors. Although the court in Delaney, supra, could not envision a case in which the prejudice from publicity would be "so permanent and irradicable" that as a matter of law there could be no trial within the foreseeable future, 199 F.2d, at 112, it also could not have envisioned the national Watergate saturation of the past two years.

Unlike others accused of involvement in the Watergate events, Mr. Nixon has been the subject of unending public efforts "to make the case" against him. The question of Mr. Nixon's responsibility for the events has been the central political issue of the era. As each piece of new evidence became public it invariably was analyzed from the viewpoint of whether it brought the Watergate events closer to "the

Oval Office" or as to "what the President knew and when he knew it." The focus on others was at most indirect.

In short, no delay in trial, no change of venue, and no screening of prospective jurors could assure that the passions aroused by Watergate, the impeachment proceedings, and the President's resignation would dissipate to the point where Mr. Nixon could receive the fair trial to which he is entitled. The reasons are clear. As the Supreme Court stated in Rideau v. Louisiana, 373 U.S. 717, 726 (1963):

For anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense was . . . [the] trial . . . Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.

Not only has the media coverage of Watergate been pervasive and overwhelmingly adverse to Mr. Nixon, but nearly every member of Congress and political commentator has rendered a public opinion on his guilt or innocence. Indeed for nearly two years sophisticated public opinion polls have surveyed the people as to their opinion on Mr. Nixon's involvement in Watergate and whether he should be impeached. Now the polls ask whether Mr. Nixon should be indicted. Under such conditions, few Americans can have failed to have formed an opinion

as to Mr. Nixon's guilt of the charges made against him. Few, if any, could -- even under the most careful instructions from a court -- expunge such an opinion from their minds so as to serve as fair and impartial jurors. "The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man." Irvin v. Dowd, 366 U.S. 717, 727 (1961). And as Justice Robert Jackson once observed, "The naive assumption that prejudicial effects can be overcome by instructions to the jury, . . . all practicing lawyers know to be unmitigated fiction." Krulewitch v. United States, 336 U.S. 440, 453 (1949) (concurring opinion). See also Delaney v. United States, 199 F.2d 107, 112-113 (1st Cir. 1952).

#### CONCLUSION

The media accounts of Watergate, the political columnists' debates, the daily televised proceedings of the House Judiciary Committee, the public opinion polls, the televised dramatizations of Oval Office conversations, the newspaper cartoons, the "talk-show" discussions, the letters-to-the-editor, the privately placed commercial ads, even

bumper stickers, have totally saturated the American people with Watergate. In the process the citizens of this country -- in uncalculable numbers -- from whom a jury would be drawn have formulated opinions as to the culpability of Mr. Nixon. Those opinions undoubtedly reflect both political and philosophical judgments totally divorced from the facts of Watergate. Some are assuredly reaffirmations of personal likes and dislikes. But few indeed are premised only on the facts. And absolutely none rests solely on evidence admissible at a criminal trial. Consequently, any effort to prosecute Mr. Nixon would require something no other trial has ever required -- the eradication from the conscious and subconscious of every juror the opinions formulated over a period of at least two years, during which time the juror has been subjected to a day-by-day presentation of the Watergate case as it unfolded in both the judicial and political arena.

Under the circumstances, it is inconceivable that the government could produce a jury free from actual bias. But the standard is higher than that, for the events of the past two years have created such an overwhelming likelihood

of prejudice that the absence of due process would be in-  
herent in any trial of Mr. Nixon. <sup>\*</sup> It would be forever  
regrettable if history were to record that this country --  
in its desire to maintain the appearance of equality under  
law -- saw fit to deny to the former President the right of  
a fair trial so jealously preserved to others through the  
constitutional requirements of due process of law and of  
trial by impartial jury.

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<sup>\*</sup>

"It is true that in most cases involving claims of due process deprivations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a [procedure] employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." Estes v. Texas, 381 U.S. 532, (1965).

**LE FIGARO** **Scintea**  
*Voice of Ethiopia* *الجُمهورِيَّة*  
**RUDE PRAVO** **Le Monde** **Daily News**  
**The Japan Times** **The Manila Times**  
**Frankfurter Allgemeine** **The Times of India**  
**AFRIQUE NOUVELLE** **LA PRENSA**  
**DAILY EXPRESS** **NEW CHINA NEWS**  
**EXCELSIOR** **The Ethiopian Herald**  
**DIE WELT** **THE YOMIURI**  
**CORRIERE DELLA SERA**



MEDIA  
 REACTION  
 ANALYSIS

Research Service

WORLDWIDE TREATMENT  
 OF CURRENT ISSUES  
Statement on Watergate Pardons  
 No. 114      September 12, 1974

**ИЗВЕСТИЯ** **ZYCIE WARSZAWY**  
**РАБОТНИЧЕСКО ДЕЛО** **БОРБА**  
**L'ESSOR** **EL TIEMPO**  
**JORNAL DO BRASIL** **THE STATESMAN**  
**THE WORKING PEOPLE'S DAILY** **The Straits Times**

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WHITE HOUSE STATEMENT ON PARDONS

Summary

Yesterday's White House statement that blanket Watergate pardons were not contemplated brought severe judgments of President Ford's present position in some influential foreign media.

--The Washington correspondent of the Times of London said "his sudden impulsive handling of affairs, as perceived in the pardons issue, is causing many drastic if hasty reassessments of his capacities."

--Figaro of Paris said "America is once more plunged into the nightmare of Watergate by the blunders of the man whose accession to power signified the end of 'horrors.' After a wave of protests... President Ford decided to take a step backwards..."

--A correspondent for Il Giornale of Milan, noting that Mr. Ford would "weigh pardon requests on a case-by-case basis," reported a "widespread feeling... that the President is already entangled in a judicial and political labyrinth which can only cause him harm."

Meanwhile, a number of commentators were predicting long-term benefits from President Ford's pardon of Mr. Nixon: for the Republican Party, "it was better to reduce the Republicans' chances for the next election than those of the Ford-Rockefeller team in 1976" (Le Monde); for the nation, "Ford chose to use his position in an attempt to reconcile Americans and heal the wounds of the past," an objective "both reasonable and noble" (La Nazione, Florence).

Monitored Soviet and East European media have carried only very brief news reports of the Nixon pardon. Sole comment came from the Albanian news service, which called the President's action "another step that discredits him."

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### London Headlines

British media reported uncertainty and reassessments in American political circles following White House announcement that there would be no blanket Watergate pardon.

These were among headlines in major papers:

"MR. FORD RETREATS ON THE ISSUE OF PARDONS FOR ALL..."  
(The Times of London)

"FORD BACKTRACKS ON PLAN TO PARDON ALL WATERGATE PLOTTERS"  
(Manchester Guardian)

"FORD SOMERSAULT SPARKS NEW PARDONS PROTEST"  
(Daily Express)

Washington correspondent Fred Emery reported in today's independent Times that "informed sources said the Democratic leadership had reversed its earlier decision to leave government, particularly economic decisions, to Mr. Ford.

"His sudden impulsive handling of affairs, as perceived in the pardons issue, is causing many drastic if hasty reassessments of his capacities. That drop in confidence...is possibly the most serious consequence of his pardon decision, regardless of its merits."

#### "Cast Doubt on His Sureness"

The conservative Daily Telegraph's man in Washington, Stephen Barber, said "the immediate result" of the latest White House information "was to cast... doubt on" the President's "sureness of touch at the helm of government."

#### "Belated Awareness"

The independent Financial Times carried the observation of its Washington correspondent, Adrian Dicks, that "Mr. Ford appears to have shown, belatedly, some awareness of the extent of the anger and concern he provoked, first by his abrupt and unexpected decision to pardon Mr. Nixon, and then by his rather clumsily released announcement...on the subject of general pardon."

Writing yesterday in the liberal Guardian, Washington correspondent Hella Pick judged that "the storm clouds which have been gathering round President Ford since he pardoned Mr. Nixon are becoming more threatening today after a casual announcement" of the possibility of other Watergate pardons. "However... Mr. Ford is convinced that he will safely survive the storm and that the Republican Party will soon thank him for trying to close the door on the Watergate trials."

"Sought to Bind Up the Wounds"

The independent London weekly Spectator, out yesterday, declared in an editorial, "What can be said... is that the pressures on President Ford not to pardon were very much greater than those to pardon, so the new President has clearly taken the more difficult course. What is more, he has clearly taken it for the right reason--in order the better to bind up the wounds of his people.

"He has signaled the end of the involvement of this or any other American administration in the Watergate affair, and has thus written finis to an agonizing chapter in American political history. What happens after this has no political dimension."

Paris: "Ford's Step Backward"

French papers, which yesterday were still leading their international pages with the pardon story, today gave White House rejection of the idea of blanket pardon less prominent treatment.

Moderate conservative Figaro of Paris observed today that "one month after Mr. Nixon's departure, America is once more plunged into the nightmare of Watergate by the blunders of the man whose accession to power signified the end of 'horrors.'

"After a wave of protests aroused by mention of possible amnesty for all those involved in the many affairs related to the Watergate matter, President Ford decided to take a step backward... But America now fears that the truth will be forever hidden... covering up the cover-up."

### "A Calculated Risk"

Independent-left Le Monde yesterday carried the report of Washington correspondent Henri Pierre that Mr. Ford's decision to pardon Mr. Nixon was judged by political observers to be "a cold calculation of a political man who preferred to face Congress and public opinion immediately, even at the risk of weakening his position, rather than let the matter drag out too long.

"It was better to reduce the Republicans' chances for the next election than those of the Ford-Rockefeller team in 1976."

### "Saw the Danger of a Big Trial"

Byliner Richard Liscia came to a similar conclusion yesterday in intellectual-left Quotidien de Paris: "If Mr. Ford was in such a hurry, it was because once more the Americans have a President who desires to reconcile them, but who is behaving like the leader of a political party. The Democrats are mute..."

"Only a big trial where all the mistakes of the old Republican Administration could be exposed could give some ammunition to the opposition. Mr. Ford saw the danger.

"Moreover, he is a conservative. He belongs to those who will never be convinced that what Mr. Nixon did was really so bad."

### Milan: "Uncertainty, Discrepancy, Secrecy"

New York correspondent Mauro Lucentini of middle-of-the-road Il Giornale of Milan, under the heading "Watergate II: Ford Loses Popularity," reported today that the President would "weigh pardon requests on a case-by-case basis." He remarked:

"Although Ford has tried to remedy what everybody considers to be another great mistake, the widespread feeling is that the President is already entangled in a judicial and political labyrinth which can only cause him harm. If he pardons Nixon's aides, he will be charged with aiming at a final cover-up. If he does not pardon them he will be responsible for having applied two separate judicial standards."

Lucentini said it was "clear that in following a procedure that was too quick and simplistic when he pardoned Nixon," the President failed to consider some of the adverse implications mentioned by the New York Times "and has already seriously damaged his political position, his Presidency and the Republican Party...

"The uncertainty of his actions, the discrepancies between Ford and his official spokesmen and the secrecy of his behavior have prematurely destroyed the image of candor that the new Administration cultivated during its first days."

"Violates Constitution"

An analyst in today's center-left Il Giorno of Milan judged that "since Nixon avoided removal from the Presidency by resigning, the pardon granted by Ford violates in substance, even if not formally, what the Constitution says."

"Reasonable, Noble"

A Washington correspondent for independent conservative La Nazione of Florence stated today that "Ford chose to use his position in an attempt to reconcile Americans and heal the wounds of the past, specifically those caused by Watergate and Vietnam. The President's objective is both reasonable and noble."

"Opens a Debate More Disquieting Than Watergate"

Chief editor Piero Ottone of leading independent conservative Corriere della Sera of Milan said yesterday that President Ford "has used a power which no Western head of state possesses, and which recalls that of absolute monarchs. He has given Nixon the full pardon the former President desperately tried to obtain while still in power.

"Ford thus has recognized the 'executive privilege' that Nixon contended should prevail against Congress and the Judiciary, thereby establishing an exceptional status for men in power. Ford's proclamation does not rehabilitate the former President, who implicitly is admitting his guilt. Nixon's ideas rather than the American tradition prevailed.

"Ford is putting an end to the Watergate debate but is opening up a more disquieting one."

### "Showed Political Wisdom"

A byliner in independent conservative Il Resto del Carlino of Bologna judged yesterday that "President Ford behaved with much political wisdom in granting the Nixon pardon. It is necessary to get out of the Watergate crisis once and for all. A former President under investigation by the courts for several years... would certainly have weakened the prestige of institutions and been of no advantage to the U.S. on the world scene..."

"We will not comment on the ridiculous resignation of Ford's spokesman. A man who behaves like that is not worth a cent and President Ford should thank God he got rid of him quickly. The Lord only knows what mistakes a man with so little political sensitivity might have made..."

### Stuttgart: "Ironic That Ford Reopened Watergate"

West German coverage today stressed that President Ford was not considering a general pardon of Watergate offenders.

A Washington correspondent for the independent Stuttgarter Zeitung wrote today:

"The Americans came back down to earth sooner than could have been expected from their euphoria after Gerald Ford took office. It was, to be sure, an illusion to suppose that the new President's inviolability would last more than a few weeks. It is a bitter irony that of all men to reopen the wounds of Watergate it should be Ford, who seemed with his reputation for integrity to be practically the ideal person to help America recover from its past..."

Saying that "a pardon for Richard Nixon would in any event have been a hot potato," the correspondent held that "a majority of Americans would have approved or at least accepted it if it had been granted at the right time and under more acceptable circumstances... after justice had taken its course... Ford's about-face within days," he said, "seems quite dubious from legal and moral perspectives... He has delivered his reputation a body blow."

Left-center Frankfurter Rundschau stated that "only a month since Ford took office the nation is torn apart as badly as at any time during the Watergate developments... Public opinion is furious at a decision taken from on high, a decision the public was powerless to prevent..."

### "Has Put Himself in a Difficult Position"

Pro-Christian Democratic Frankfurter Neue Presse, in an editorial written before yesterday's White House statement that a blanket pardon was not contemplated, suggested that "President Ford has been caught in a chain of circumstances" in pardoning President Nixon which "practically forced him into further acts of clemency..."

"The President has maneuvered himself into an extremely difficult position that has depleted his reserves of trust in the Congress and with the public. Instead of closing the book on Watergate, Ford has roused renewed passions. Behind all this looms the question-- as yet unanswered--of why Ford took this step at this point."

### "A Lonely Decision"

Independent Koelner Stadt-Anzeiger of Cologne declared yesterday: "The growing criticism" of the President's "lonely decision indicates that he will possibly have to pay a high political price for it..."

### Vienna: "Did He Think What He Was Doing?"

Independent Die Presse of Vienna asked today, "Was Gerald Ford, the 38th President of the United States, thinking what he was doing when he fully pardoned No. 37?"

"The American public, which had exuberantly celebrated the new clean man in the White House, has massively turned against him for the first time. A Senator advocates a Constitutional amendment to authorize the Congress to overrule an amnesty decision by the President. Such parliamentary action would be unthinkable in other countries..."

Independent Tiroler Tageszeitung of Innsbruck said today, "It is amazing how short-sighted Gerald Ford is.... In the case of Nixon, a man prodigious in endurance, we admired the capacity of American democracy to cleanse itself, but not that that gullible nation has again been taken in by a Pied Piper..."

### "Shows Daring"

People's Party Suedost Tagespost of Graz declared yesterday that the pardon for Mr. Nixon was "a courageous decision which surely will not make life easier for President Ford, a decision which justifies the hope that he will be daring in other matters including foreign affairs.... Aware of this, the West can feel reassured."

"The Pardon Is Not Scandalous"

A leading Danish provincial paper, independent conservative Jyllands-Posten of Aarhus, judged yesterday that "President Ford's decision to pardon former President Nixon is not scandalous, but human and humanly understandable.... Nixon had been punished for the wrongs he committed. A trial would become a heavy psychological burden for the new President as well. And the U.S. undoubtedly needs to talk about something besides Watergate.... The wisdom in President Ford's decision may lie at a higher political level..."

Helsinki: "Ford Probably Chose Political Risk"

Independent Helsingin Sanomat of Helsinki said it "seems strange" that Mr. Nixon was pardoned when "he has not even been prosecuted or sentenced.... Naturally, Ford could grant pardons to all the Watergate men, but then ordinary law-abiding Americans would have reason to wonder about inequality before the law.

"Probably Ford has knowingly taken a political risk. The sensation caused by the pardon may be forgotten by the time of the Congressional elections in November."

Center Party Suomenmaa said, "For the Republican Party it is best that the affair be forgotten as soon as possible because the Congressional elections take place in November.

"Also, from the viewpoint of American prestige, the burial of the scandal as soon as possible is an understandable effort."

Madrid: "Courageous, But Was It Right?"

Monarchist ABC of Madrid carried a foreign affairs writer's view that "the pardon that President Ford granted to ex-President Nixon is a dramatic and courageous decision, but that does not imply it was the right action to take."

In an editorial the paper said, "No country--not even the U.S.--can...permit itself the luxury of indefinitely continuing political bloodshed and excessive attention to Watergate..."

Ya of Madrid said, "Ford's political error may be damaging to him in the future.... If Watergate is Nixon's political sin, those who criticize him give the impression that they are not doing it for purely moral purposes."

Manila: "Can Only Hope to Heal Wounds"

The evening Express of Manila said yesterday in an editorial headed "Mercy Brings Strain" that "the basic issue that will nag for some time to come is whether Nixon should have been pardoned at all. Short of a reversal of the Presidential pardon, which is unlikely, a debate on this point is academic.

"The pardon has been given, and Ford can only hope and pray that it will indeed contribute to a healing of the wounds of Watergate, rather than opening these afresh."

Singapore: "Implies the Greatest Cover-up"

Today's conservative Straits Times of Singapore asserted that public reaction in the U. S. to Mr. Ford's pardoning of Mr. Nixon "has been understandably outraged." The paper observed that although Mr. Ford's "honeymoon with the American public and Congress may not be exactly over, his sense of fidelity is already in doubt.

"Even the American press--which went overboard on Mr. Ford's appointment, treating him like a cross between St. Peter and St. George--has suddenly discovered clay in his feet.

"The most serious implication of Sunday's pardon and the events likely to flow from it is that Mr. Ford is presiding over the greatest Watergate cover-up: a calculated attempt to subvert the judicial process which alone can establish the whole truth..."

The paper then asked, "Were Lyndon Johnson and Harry Truman right about Mr. Ford? Is he a lumbering mediocrity--as they insisted--who blunders into pitfalls of his own making? Or is he so much of a party man that his compassion for fellow-Republicans transcends his devotion to the high call of Presidential duty? The truth, perhaps, lies in another direction--the future political ambitions of Gerald Ford.... To have postponed the pardon until after a long-drawn-out Watergate trial would have been to get uncomfortably close to the nomination stakes and Presidential election.

"How much cleverer, tactically speaking, to get it done with now, and have the storm behind him when election time comes round. But the storm has just restarted."



Kuala Lumpur: "Wisdom Will Soon Be Apparent"

The editorially separate Kuala Lumpur edition of the paper maintained yesterday that "a Presidential pardon for former President Nixon was always probable," but acknowledged that initial reaction in the U. S. was unfavorable. Asserting that "the wisdom of the pardon is unquestionable and soon will be apparent," the paper said, "The need now, as President Ford emphatically proclaimed, is an end to Watergate and the cruel and dangerous divisions which have racked Americans for so long."

New Zealand: "An Anomaly"

Yesterday's Christchurch Press argued, "The ghost of Watergate might have been more completely laid to rest had Mr. Ford allowed the law to run its course, exempting none from its rigor. It would not have been necessary to subject Mr. Nixon to the full processes of the law in order to dissuade future Presidents from attempting to conduct themselves in office as Mr. Nixon did. His political disgrace served that purpose.

"But the anomaly of a pardon for the ex-President while his aides are punished establishes an unfortunate precedent--one which lacks even the slight redeeming feature of the 'plea bargaining' which allowed Mr. Agnew to escape with a light punishment. Had Mr. Nixon gone to trial it would have provided final proof that in America no man can presume to be above the law. That, surely, was what Watergate was all about."

Bangkok: "Why Didn't Ford Wait?"

Leading moderately conservative Siam Rath of Bangkok today carried a byliner's assertions that Mr. Ford "was in far too much of a hurry to pardon Nixon (showing) that he is different from high administrative officials in taking any action he pleases and feeling that he is above the law, thus making ordinary members of the public second-class citizens."

He continued, "Why didn't Ford wait for the Watergate issue to blow over? Was it because he was worried that the long arm of the law would throw Nixon into prison? Or did he fear that if he didn't pardon Nixon now, he would spread the story that Ford had broken a promise to him?" In concluding, he declared that full pardon for Mr. Nixon "now raises concern over Ford's political future. He could well be defeated in the next Presidential election."

### "Timely Decision"

A commentator on Radio Thailand yesterday took a different view, calling the pardon an "act of mercy" and pointing out that politically it "was timely because Mr. Ford did it at a point when, as a new President, he still enjoyed good will from everyone." He added, "If a decision is to cause controversy, it is best to make it now. Postponing it would create disunity in the U. S."

### New Delhi: "Is This the 'Open' Presidency?"

Leading Indian papers today reported that President Ford was not planning a general pardon for all Watergate accused. Scattered comment on the pardon of Mr. Nixon continued to be critical.

The independent conservative Hindustan Times of New Delhi today carried the view of its Washington correspondent that "what seems to have dismayed most observers... is the secretive manner in which Mr. Ford reached this major decision (to pardon Mr. Nixon). People ask, 'Is this the type of open Presidency that Mr. Ford had promised to give the nation?'... Mr. Ford did not even consult his legal counsel... to most White House watchers this seems disturbingly reminiscent of the Nixon style of conducting the Presidency."

### "A Partisan Decision"

Yesterday the independent Indian Express of Bombay, New Delhi and Madras judged that President Ford "seems to have miscalculated the popular mood in his country." It maintained that his decision to pardon Mr. Nixon was "dictated purely by partisan politics."

### Kabul: "Helped Get Over Watergate"

Afghanistan's Government-run Jumhooriyat yesterday carried a byliner's view that "President Ford helped the American people to get over the Watergate scandal once and for all," although the decision to pardon Mr. Nixon "may reduce President Ford's popularity among the people, as political sources predict."

Tehran: "Attempt to Erase Watergate as an Issue"

The independent Tehran Journal speculated yesterday that in pardoning Mr. Nixon, President Ford's "main concern is the next Presidential election... Ford's assumption may be that if the Watergate scandal is not completely erased from the political scene now, it would be a long time before it is, if ever."

It added, "The Watergate scandal would have remained a bad American dream for a long time if it were to follow its judiciary course. As usual the American Constitution was well prepared for such events, and it needed Ford to execute it."

Dakar: "No Laurel Wreath"

Government-directed Le Soleil of Dakar declared yesterday that "by trying to save Nixon from the clutches of inexorable justice, Gerald Ford unconsciously put himself on the fringe of the law. His good deed has earned him a huge crown of thorns instead of a laurel wreath... America, which thought it had found in Ford an ideal President, respectful of the Constitution and a friend of the law, finds it difficult to hide its disappointment: the long awaited Messiah has appeared, only to trample the most sacred precepts of democracy."

Communist Countries

East European media have carried brief news reports of the Nixon pardon much like the TASS item noted on Monday (WTCI No. 112, Sept. 9).

The only Communist media comment monitored so far was that of the Albanian news service (in English), which called the President's action "another step that discredits him."

Memorandum to the  
Special Prosecutor  
on behalf of  
Richard M. Nixon

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This memorandum is submitted on behalf of Richard M. Nixon to bring to the attention of the Special Prosecutor facts and supporting legal authority which, we submit, warrant a decision not to seek indictment of the former President. We wish to emphasize that this memorandum focuses specifically on issues of law rather than policy. In so limiting this presentation we do not wish to imply that all other considerations are irrelevant or inappropriate. Indeed, we believe it is highly desirable and proper for the Special Prosecutor to weigh in his judgment the possible impact of such an indictment on the domestic spirit and on

international relations, as well as the more traditional policy considerations entrusted to prosecutorial discretion. <sup>\*/</sup>

However, the purpose of this memorandum is solely to demonstrate that one -- and probably the most crucial -- legal prerequisite to indicting and prosecuting Mr. Nixon does not exist: the ability of this government to assure him a fair trial in accordance with the demands of the Due Process Clause of the Fifth Amendment and the right to trial by an impartial jury guaranteed by the Sixth Amendment.

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Such intangible but none-the-less critical factors as domestic and international relations certainly fall within the ambit of the prosecutor's discretion as expressed in the Standards Relating to The Prosecution Function and The Defense Function, ABA Project on Standards for Criminal Justice, March 1971, where it is stated that

" . . . The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that evidence exists which would support a conviction. ABA Standards § 3.9(b).

A decision to forego prosecution because of overriding concerns of the national interest is in keeping with similar prosecutorial decisions to forego prosecution rather than disclose confidential national security or law-enforcement information required as evidence. United States v. Andolchek, 142 F.2d 503 (2d Cir. 1944); United States v. Beakman, 155 F.2d 580 (2d Cir. 1946); Christoffel v. United States, 200 F.2d 734 (D.C. Cir. 1952).

I. The Events and Publicity Surrounding Watergate have Destroyed the Possibility of a Trial Consistent with Due Process Requirements.

Recent events have completely and irrevocably eliminated, with respect to Richard M. Nixon, the necessary premise of our system of criminal justice -- that, in the words of Justice Holmes, ". . . the conclusions to be reached in a case will be induced only by evidence and argument in open court, not by any outside influence, whether of private talk or public print." Patterson v. Colorado, 205 U.S. 454, 462 (1907). As reiterated by the Court in Turner v. Louisiana, 379 U.S. 466, 472 (1965):

"The requirement that a jury's verdict 'must be based upon the evidence developed at trial' goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury."

Never before in the history of this country have a person's activities relating to possible criminal violations been subjected to such massive public scrutiny, analysis and debate. The events of the past two years and the media coverage they received need not be detailed here, for we are sure the Special Prosecutor is fully aware of the nature of the media exposure generated. The simple fact is that the

national debate and two-year fixation of the media on Water-gate has left indelible impressions on the citizenry, so pervasive that the government can no longer assure Mr. Nixon that any indictment sworn against him will produce "a charge fairly made and fairly tried in a public tribunal free of prejudice, passion [and] excitement . . ." Chambers v. Florida, 309 U.S. 227, 236-37, (1940).

Of all the events prejudicial to Mr. Nixon's right to a fair trial, the most damaging have been the impeachment proceedings of the House Judiciary Committee. In those proceedings neither the definition of the "offense," the standard of proof, the rules of evidence, nor the nature of the fact-finding body, were compatible with our system of criminal justice. Yet the entire country witnessed the proceedings, with their all-pervasive, multi-media coverage and commentary. And all who watched were repeatedly made aware that a committee of their elected Representatives, all lawyers, had determined upon solemn reflection to render an overwhelming verdict against the President, a verdict on charges time and again emphasized as constituting "high crimes and misdemeanors" for which criminal indictments could be justified.

All of this standing alone would have caused even those most critical of Mr. Nixon to doubt his chances of subsequently receiving a trial free from preconceived judgments of guilt. But the devastating culmination of the proceedings eliminated whatever room for doubt might still have remained as the entire country viewed those among their own Representatives who had been the most avid and vociferous defenders of the President (and who had insisted on the most exacting standards of proof) publicly abandon his defense and join those who would impeach him for "high crimes and misdemeanors."

None of this is to say, or even to imply, that the impeachment inquiry was improper, in either its inception or its conduct. The point here is that the impeachment process having taken place in the manner in which it did, the conditions necessary for a fair determination of the criminal responsibility of its subject under our principles of law no longer exist, and cannot be restored.

Even though the unique televised congressional proceedings looking to the possible impeachment of a President leave us without close precedents to guide our judgments con-



cerning their impact on subsequent criminal prosecutions, one court has grappled with the issue on a much more limited scale and concluded that any subsequent trial must at minimum await the tempering of prejudice created by the media coverage of such events.

In Delaney v. United States, 199 F.2d 107 (1st Cir. 1952), a District Collector of Internal Revenue was indicted for receiving bribes. Prior to the trial a subcommittee of the House of Representatives conducted public hearings into his conduct and related matters. The hearings generated massive publicity, particularly in the Boston area, including motion picture films and sound recordings, all of which "afford the public a preview of the prosecution's case against Delaney without, however, the safeguards that would attend a criminal trial." 199 F.2d at 110. Moreover, the publicized testimony "ranged far beyond matters relevant to the pending indictments." 199 F.2d at 110. Delaney was tried ten weeks after the close of these hearings and was convicted by a jury. The Court of Appeals reversed, holding that Delaney had been denied his Sixth Amendment right to an impartial jury by being forced to "stand trial while the damaging effect of all that hostile publicity may reasonably be thought not to have been erased from the public mind." Id. 114.

The Court of Appeals did not suggest that the hearings were themselves improper. Indeed, the court emphatically stated that ". . . [i]t was for the Committee to decide whether considerations of public interest demanded at that time a full-dress public investigation . . ." Id. 114 (emphasis added). But the court continued,

"If the United States, through its legislative department, acting conscientiously pursuant to its conception of the public interest, chooses to hold a public hearing inevitably resulting in such damaging publicity prejudicial to a person awaiting trial on a pending indictment, then the United States must accept the consequence that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury, may find it necessary to postpone the trial until by lapse of time the danger of the prejudice may reasonably be thought to have been substantially removed."

The principle expounded by the court in Delaney is applicable here. Faced with allegations that the Watergate events involved actions by the President, the House of Representatives determined that not only was an impeachment inquiry required, but that the inquiry must be open to the public so that the charges and evidence in support thereof could be viewed and analyzed by the American people. We need not fault Congress in that decision. Perhaps -- in the interest of the country -- there was no other choice. But having pursued a

course purposely designed to permit the widest dissemination of and exposure to the issues and evidence involved, the government must now abide by that decision which produced the very environment which forecloses a fair trial for the subject of their inquiry.

The foregoing view is not at all incompatible with the Constitution, which permits the trial of a President following impeachment -- and therefore, some might argue, condones his trial after his leaving office. Nothing in the Constitution withholds from a former President the same individual rights afforded others. Therefore, if developments in means of communication have reached a level at which their use by Congress in the course of impeachment proceedings forever taints the public's mind, then the choice must be to forego their use or forego indictment following impeachment. Here, the choice has been made.

Further demonstration of the wholly unique nature of this matter appears in the public discussion of a pardon for the former President -- which discussion adds to the atmosphere in which a trial consistent with due process is impossible

Since the resignation of Mr. Nixon, the news media has been filled with commentary and debate on the issue of whether the former President should be pardoned if charged with offenses relating to Watergate. As with nearly every other controversial topic arising from the Watergate events, the media has sought out the opinions of both public officials and private citizens, even conducting public opinion polls on the question. A recurring theme expressed by many has been that Mr. Nixon has suffered enough and should not be subjected to further punishment, certainly not imprisonment.

Without regard to the merits of that view, the fact that there exists a public sentiment in favor of pardoning the former President in itself prejudices the possibility of Mr. Nixon's receiving a fair trial. Despite the most fervent disclaimers, any juror who is aware of the general public's disposition will undoubtedly be influenced in his judgment, thinking that it is highly probable that a vote of guilty will not result in Mr. Nixon's imprisonment. Indeed, the impact of the public debate on this issue will undoubtedly fall not only on the jury but also on the grand jury and the Special Prosecutor, lifting some of the constraints which might otherwise have militated in favor of a decision not to prosecute. Human nature could not be otherwise.

We raise this point not to suggest that the decision of whether to prosecute in this case cannot be reached fairly, but rather to emphasize that this matter -- like none other before it and probably after it -- has been so thoroughly subjected to extraneous and highly unusual forces that any prosecution of Mr. Nixon could not fairly withstand detached evaluation as complying with due process.

II. The Nationwide Public  
Exposure to Watergate  
Precludes the Impaneling  
of an Impartial Jury

The Sixth Amendment guarantees a defendant trial by jury, a guarantee that has consistently been held to mean that each juror impaneled -- in the often quoted language of Lord Coke -- will be "indifferent as he stands unsworn." Co. Litt. 155b. See Irvin v. Dowd, 366 U.S. 717 (1961); Turner v. Louisiana, 379 U.S. 472 (1965). The very nature of the Watergate events and the massive public discussion of Mr. Nixon relationship to them have made it impossible to find any array of jurymen who can meet the Sixth Amendment standard.

On numerous occasions the Supreme Court has held that the nature of the publicity surrounding a case was such that jurors exposed to it could not possibly have rendered a

verdict based on the evidence. See Sheppard v. Maxwell, 334 U.S. 333 (1966); Rideau v. Louisiana, 373 U.S. 723 (1963); Irvin v. Dowd, supra; Marshall v. United States, 350 U.S. 310 (1959). The most memorable of these was Sheppard v. Maxwell, in which the Court, describing the publicity in the Cleveland metropolitan area, referred time and again to media techniques employed there -- which in the Watergate case have been utilized on a nationwide scale and for a much longer period of time. The following excerpts from the Court's opinion are exemplary:

"Throughout this period the newspapers emphasized evidence that tended to incriminate Sheppard and pointed out discrepancies in his statements to authorities."  
p. 340.

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"On the sidewalk and steps in front of the courthouse, television and newsreel cameras were occasionally used to take motion pictures of the participants in the trial, including the jury and the judge. Indeed, one television broadcast carried a staged interview of the judge as he entered the courthouse. In the corridors outside the courtroom there was a host of photographers and television personnel with flash cameras, portable lights and motion picture cameras. This group photographed the prospective jurors during selection of the jury. After the trial opened, the witnesses, counsel, and jurors were photographed and televised whenever they entered or left the courtroom."  
pp. 343-44.

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"The daily record of the proceedings was made available to the newspapers and the testimony of each witness was printed verbatim in the local editions, along with objections of counsel, and rulings by the judge. Pictures of Sheppard, the judge, counsel, pertinent witnesses, and the jury often accompanied the daily newspaper and television accounts. At times the newspapers published photographs of exhibits introduced at the trial, and the rooms of Sheppard's house were featured along with relevant testimony." pp. 344-45.

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"On the second day of voir dire examination a debate was staged and broadcast live over WHK radio. The participants, newspaper reporters, accused Sheppard's counsel of throwing roadblocks in the way of the prosecution and asserted that Sheppard conceded his guilt by hiring a prominent criminal lawyer." p. 346.\*

The Sheppard murder was sensational news and the media reacted accordingly. In the course they destroyed the state's ability to afford Sheppard a fair trial.

The sensation of Watergate is a hundredfold that of the Sheppard murder. But the media techniques remain the

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The prejudicial publicity in Sheppard commenced well before trial, even before charges were brought, and continued throughout the duration of the prosecution. Although Mr. Nixon has not been criminally tried, the press coverage of the impeachment proceedings and Watergate related criminal trials reflect obvious similarities to the Sheppard coverage.

same and the destruction of an environment for a trial consistent with due process has been nationwide. The Supreme Court should not -- upon an appeal by Mr. Nixon -- have to recount for history the unending litany of prejudicial publicity which served to deprive the President of the rights afforded others.

The bar against prosecution raised by the publicity in this case defies remedy by the now common techniques of delaying indictment or trial, changing venue, or scrupulously screening prospective jurors. Although the court in Delaney, supra, could not envision a case in which the prejudice from publicity would be "so permanent and irradicable" that as a matter of law there could be no trial within the foreseeable future, 199 F.2d, at 112, it also could not have envisioned the national Watergate saturation of the past two years.

Unlike others accused of involvement in the Watergate events, Mr. Nixon has been the subject of unending public efforts "to make the case" against him. The question of Mr. Nixon's responsibility for the events has been the central political issue of the era. As each piece of new evidence became public it invariably was analyzed from the viewpoint of whether it brought the Watergate events closer to "the



Oval Office" or as to "what the President knew and when he knew it." The focus on others was at most indirect.

In short, no delay in trial, no change of venue, and no screening of prospective jurors could assure that the passions aroused by Watergate, the impeachment proceedings, and the President's resignation would dissipate to the point where Mr. Nixon could receive the fair trial to which he is entitled. The reasons are clear. As the Supreme Court stated in Rideau v. Louisiana, 373 U.S. 717, 726 (1963):

For anyone who has ever watched television the conclusion cannot be avoided that this spectacle, to the tens of thousands of people who saw and heard it, in a very real sense was . . . [the] trial . . . Any subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality.

Not only has the media coverage of Watergate been pervasive and overwhelmingly adverse to Mr. Nixon, but nearly every member of Congress and political commentator has rendered a public opinion on his guilt or innocence. Indeed for nearly two years sophisticated public opinion polls have surveyed the people as to their opinion on Mr. Nixon's involvement in Watergate and whether he should be impeached. Now the polls ask whether Mr. Nixon should be indicted. Under such conditions, few Americans can have failed to have formed an opinion

as to Mr. Nixon's guilt of the charges made against him. Few, if any, could -- even under the most careful instructions from a court -- expunge such an opinion from their minds so as to serve as fair and impartial jurors. "The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man." Irvin v. Dowd, 366 U.S. 717, 727 (1961). And as Justice Robert Jackson once observed, "The naive assumption that prejudicial effects can be overcome by instructions to the jury, . . . all practicing lawyers know to be unmitigated fiction." Krulewitch v. United States, 336 U.S. 440, 453 (1949) (concurring opinion). See also Delaney v. United States, 199 F.2d 107, 112-113 (1st Cir. 1952).

#### CONCLUSION

The media accounts of Watergate, the political columnists' debates, the daily televised proceedings of the House Judiciary Committee, the public opinion polls, the televised dramatizations of Oval Office conversations, the newspaper cartoons, the "talk-show" discussions, the letters-to-the-editor, the privately placed commercial ads, even

bumper stickers, have totally saturated the American people with Watergate. In the process the citizens of this country -- in uncalculable numbers -- from whom a jury would be drawn have formulated opinions as to the culpability of Mr. Nixon. Those opinions undoubtedly reflect both political and philosophical judgments totally divorced from the facts of Watergate. Some are assuredly reaffirmations of personal likes and dislikes. But few indeed are premised only on the facts. And absolutely none rests solely on evidence admissible at a criminal trial. Consequently, any effort to prosecute Mr. Nixon would require something no other trial has ever required -- the eradication from the conscious and subconscious of every juror the opinions formulated over a period of at least two years, during which time the juror has been subjected to a day-by-day presentation of the Watergate case as it unfolded in both the judicial and political arena.

Under the circumstances, it is inconceivable that the government could produce a jury free from actual bias. But the standard is higher than that, for the events of the past two years have created such an overwhelming likelihood

of prejudice that the absence of due process would be in-  
herent in any trial of Mr. Nixon. <sup>\*/</sup> It would be forever  
regrettable if history were to record that this country --  
in its desire to maintain the appearance of equality under  
law -- saw fit to deny to the former President the right of  
a fair trial so jealously preserved to others through the  
constitutional requirements of due process of law and of  
trial by impartial jury.

---

Herbert J. Miller, Jr.

MILLER, CASSIDY, LARROCA & LEWIN  
1320 19th Street, N.W., Suite 500  
Washington, D. C. 20036  
(202) 293-6400

Of Counsel

William H. Jeffress, Jr.  
R. Stan Mortenson

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\*/

"It is true that in most cases involving claims of due process deprivations we require a showing of identifiable prejudice to the accused. Nevertheless, at times a [procedure] employed by the State involves such a probability that prejudice will result that it is deemed inherently lacking in due process." Estes v. Texas, 381 U.S. 532, (1965).

# Memorandum

TO : Leon Jaworski

DATE: Sept. 3, 1974

FROM : Henry Ruth

SUBJECT: Mr. Nixon

The following matters are still under investigation in this Office and may prove to have some direct connection to activities in which Mr. Nixon is personally involved:

1. Tax deductions relating to the gift of pre-Presidential papers.
2. The Colson obstruction of justice plea in the Ellsberg matter.
3. The transfer of the national security wire tap records from the FBI to the White House.
4. The initiating of wire tapping of John Sears.
5. Misuse of IRS information.
6. Misuse of IRS through attempted initiation of audits as to "enemies."
7. The dairy industry pledge and its relationship to the price support change.
8. Filing of a challenge to the Washington Post ownership of two Florida television stations.
9. False and evasive testimony at the Kleindienst confirmation hearings as to White House participation in Department of Justice decisions about ITT.
10. The handling of campaign contributions by Mr. Rebozo for the personal benefit of Mr. Nixon.

None of these matters at the moment rises to the level of our ability to prove even a probable criminal violation by Mr. Nixon, but I thought you ought to know which of the pending investigations were even remotely connected to Mr. Nixon. Of course, the Watergate cover-up is the subject of a separate memorandum.

cc: Mr. Lacovara

CALLCUT: 8:30 a.m., Sunday, September 8, 1974

TEXT:

"OFF THE RECORD, the President will have an important announcement at about 10:30 this morning in the Oval Office. The announcement will be followed by a briefing in the briefing room. Written material will be available concurrently with the announcement."  
END TEXT

(ALL INFORMATION IS OFF THE RECORD UNTIL ANNOUNCEMENT OCCURS)

Q&A:

Q: What is the subject? Is it foreign or domestic? Is it amnesty? Is it a China announcement?

A: I can give you no further information regarding subject.

Q: Will the President make the announcement personally?

A: Yes, from the Oval Office.

Q: Will the announcement be available for coverage?

A: The announcement will be available for sound on film coverage, and we will take in a small writing pool, and a ~~fax~~ stills photo pool.

Q: Will the briefing be available for sound coverage?

A: The briefing will be held under regular briefing rules-- no sound, no film, no still photos.

Q: Who will brief?

A: I have no information for you at this time on who will brief.

Q: Will any of the material or the announcement be embargoed?

A: The written material and announcement will be for release at the conclusion of the President's announcement.

Q: Will there be time to file before the briefing?

A: Yes, the briefing will follow the announcement by about 30 minutes.

(ALL OF THIS INFORMATION IS OFF THE RECORD UNTIL ANNOUNCED)

SCENARIO FOR PRESS OFFICE STAFF: Sunday, September 8, 1974

6:00-6:15 a.m.--terHorst, Hushen, DeCair arrive office. Review Materials ~~wixx~~ to be sure they are all suitable for Xeroxing.

6:30 a.m.--Judy Gibson, Connie Gerrard and Joy Chiles arrive to begin work of Xeroxing and collating.(200 of each)

7:00 a.m.--Speakes arrives to supervise security of documents.

8:00 a.m.--Karin Nordstrom, Jill McAulay and Connie Thumma arrive to prepare for call out.

ALSO 8 A.M.--Roberts handles Church service.

8:30 A.m. -- Callout begins (see attached text, Q&A).  
terHorst calls Kraslow.

8:30 a.m. -- DeCair calls Socolow to ask for pool crew and to discuss need for radio engineer.

8:45 a.m. (approx) President returns from Church.

9:30 a.m.--WHCA, ~~and~~ lighting technician and pool crew setup in Oval Office for filming.

WHCA will arrange to have announcement piped into briefing room and into booths of radio networks so they can tape.

10:15 a.m. (approx.)--Hushen posts pool (or notifies poolers).

10:45 a.m.--With pool present President enters office, sits at desk, ~~and~~ reads announcement, then finally signs proclamation.

10:50 a.m.--At conclusion of announcement, terHorst, on open line to Ziegler, notifies Ron that announcement has been made. Ziegler releases RN statement.

At conclusion of announcement, xeroxed copies of Presidential Statement and Proclamation are made available.

Poolers give pool report.

FILING TIME

11:10 a.m.--Reporters are sequestered in briefing room to read following handouts: (1) AG opinion; (2) xerox of DEX of RN Statement; (3) RN-CSA agreement.

-----As delivered remarks are released when ready.

11:25 a.m.--Buchen briefs under regular terHorst briefing ground rules (NO SOUND, NO FILM, NO STILLS). DeCair and Roberts ensure that ~~thazz~~ no one violates these ground rules.

At conclusion of Buchen briefing, last handouts are released.



Baltimore I

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Q: Will there be time to file before the briefing?

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(ALL OF THIS INFORMATION IS OFF THE RECORD UNTIL ANNOUNCED)

September 8, 1974

GROUND RULES FOR COVERAGE

\* 10:45 a. m. Pool reporters and photographers and T. V. film crew enter Oval Office.

\* 10:50 a. m. PRESIDENT ENTERS OVAL OFFICE

(No photos or film until the President is seated behind desk and begins to read statement.)

At the conclusion of the statement the President will leave the Oval Office.

(No photos or film while the President is leaving.)

NOTE: THE PRESIDENT'S STATEMENT IS FOR RELEASE WHEN HE FINISHES READING IT.

The President will take no questions and no live sound coverage is allowed.

The President's remarks and other material will be handed out by the Press Office when the pool returns to the Briefing Room.

\* 11:20 a. m. Briefing in the Briefing Room.

No sound or film coverage of the briefing

\* All times approximate

WATERGATE SPECIAL PROSECUTION FORCE  
United States Department of Justice  
1425 K Street, N.W.  
Washington, D.C. 20005

September 9, 1974

PRESS RELEASE

For Immediate Release

A spokesman for Special Prosecutor Leon Jaworski today issued the following statement:

"In view of the approaching trial of U.S. v Mitchell et al and the order of the court regarding pre-trial publicity entered on March 1, the Special Prosecutor will not discuss the subject of the pardon granted former President Nixon. There will be no further comment on that subject from this office."

THE WHITE HOUSE  
WASHINGTON

As of 1:30 PM, Wednesday, 9/11/74:

Telegrams and Letters -

Pro 5,764

Con 26,391

Comments 1,500

Total 33,655

Phone calls as of noon, 9/11/74:

Pro 9,572

Con 7,850

17,422

SEPTEMBER 11, 1974

POOL REPORT

AIR FORCE ONE ENROUTE FAYETTEVILLE

Hushen questioned on board about the matter of pardons.

1. When asked if Ford would consider only requests for pardons coming from individual Watergate defendants, Hushen said there are guidelines by which you apply for executive clemency or pardons. Applications for executive clemency or pardons would be processed thru pardon attorney at Justice Department. He said application could be made in letter to President, or in a variety of ways.
2. Asked if Ford would pardon defendant on his own, without application, Hushen said: "I can't respond to that."
3. Hushen said we have had no requests for pardons from Watergate defendants who have not gone to trial, adding he was not aware of any formal requests for pardons.
4. Hushen also said that White House waited until this a.m. to issue clarification of pardon study because it wasn't clear until last night "how much the statement had been taken out of context and was made almost to appear as though a decision had already been made."
5. Hushen denied his statement yesterday was trial balloon.
6. Update report on Nixon pardon: Phone calls -- 9,500 in favor of Nixon pardon; 7,800 against. Telegrams still 5-1.

Brokaw  
Sehlstedt

**LE FIGARO** **Scinteia**  
*Voice of Ethiopia* **الجُمهورِيَّة**  
**RUDE PRAVO** **Le Monde** **Daily News**  
**The Japan Times** **The Manila Times**  
**Frankfurter Allgemeine** **The Times of India**  
**AFRIQUE nouvelle** **LA PRENSA**  
**DAILY EXPRESS** **NEW CHINA NEWS**  
**EXCELSIOR** **The Ethiopian Herald**  
**DIE WELT** **THE YOMIURI**  
**CORRIERE DELLA SERA**

MEDIA  
 REACTION  
 ANALYSIS



WORLDWIDE TREATMENT  
 OF CURRENT ISSUES  
Presidency and Nixon Pardon  
 No. 115 September 16, 1974

**ИЗВЕСТИЯ** **新華通訊社新聞** **ZYKTE WARSZAWY**  
**БОРБА**  
**РАБОТНИЧЕСКО ДЕЛО** **EL TIEMPO**  
**L'ESSOR** **THE STATESMAN**  
**JORNAL DO BRASIL** **The Straits Times**  
**THE WORKING PEOPLE'S DAILY**

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THE PRESIDENCY AND THE NIXON PARDON

Foreign media comment over the weekend and today sought to assess the outlook for Mr. Ford's Presidency in the light of the Nixon pardon and the Vietnam amnesty issue.

Frequent judgments that Mr. Ford "appears to have damaged his national reputation unnecessarily" by doing "exactly what he said he would not do" (The Economist, London) were interspersed with observations that his decision might prove in the long run to be politically sound.

Switzerland's Neue Zuercher Zeitung said the decision was "arrived at and made public somewhat hastily," but held that "the liberal press in the U.S. is probably exaggerating when it disappointedly writes off President Ford... as 'an ordinary politician.'"

Milan's Corriere della Sera called the decision "a very useful and clarifying move" because it "demonstrates new opportunities for making U.S. democracy work."

The Malay Mail of Kuala Lumpur agreed with Mr. Ford's point that "it would be difficult to find any court where presumption of (Mr. Nixon's) innocence would be certain," but observed that "politically he has misjudged the mood of the country."

Among comments accepting compassion as a valid element in Mr. Ford's decision were these:

--"The quality of mercy is not strained and the critics of President Ford's decision... are wrong to wish it otherwise" (London Sunday Telegraph).

--Mr. Ford "gave proof of his understanding, judgment and sympathy as he... exercised his Constitutional power..." (The People, Dacca).

--"The Constitutional leniency of President Ford can be understood and accepted as a judgment that rejects Pharisaism. His harsh critics should stop acting like political scavengers" (La Nacion, Buenos Aires).

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London: "Ford Must Win Back Trust"

Britain's weekend quality press contained considerable comment in general agreement that by his handling of the Nixon pardon President Ford had damaged his reputation for candor. Nevertheless, some commentators suggested that the decision to pardon may turn out to have been the best of his options.

The conservative London Sunday Telegraph carried its Washington correspondent's assessment: "Inevitably, Mr. Ford is now tarred with the Watergate brush. But even worse is that the loss of confidence comes at a time when the country needs strong leadership.

"The indecisiveness he has shown on the amnesty issue is being seen as paralleled in a lack of definition on how to deal with America's growing economic problems.

"In short, Mr. Ford will have to work hard to win back the trust he had in his first halcyon month."

"Pardon Cannot Be Judged by Ordinary Standards"

In an editorial, the paper declared: "The quality of mercy is not strained and the critics of President Ford's decision to pardon Mr. Nixon are wrong to wish it otherwise. Such decisions are bound to be subjective, highly personal, and cannot be judged by the ordinary measures that apply to other acts of state.

"If Mr. Nixon is seriously ill, this is even more true. It could be that the President has only anticipated another kind of merciful release."

"No One Knows Ford's Reasons"

Correspondent John Graham wrote in the independent Sunday Observer that "anyone who tells you he knows precisely why President Ford pardoned Mr. Nixon... is bluffing." He said "no one, apart from Mr. Ford himself, knew his reasons... and, more extraordinary, no one knows now..."

"A reputation for straightness, for clear undissembling statement of intent, for open dealings with the public via the press has been demolished."

"Decision May Prove to Be Right"

Henry Brandon, Washington correspondent of the independent London Sunday Times, reported that "those who talked privately to Mr. Ford last week found him remarkably relaxed and convinced that he had made the right decision," and added:

"In the long run, that may prove to be so."

"Raises Questions About Ability and Good Faith"

The liberal Guardian of Manchester and London ran a dispatch by Washington correspondent Hella Pick asserting that "the handling of the pardon issue for the former President and of the other Watergate conspirators, as well as of amnesty for Vietnam dissenters, raises questions about Mr. Ford's intellectual ability and his capacity for decision making."

She said he had "come into the White House promising decisiveness, openness, and a complete break with his predecessor... Yet, within a month, because of Mr. Ford's own actions, the country is again questioning the credibility and good faith of its President."

"Unnecessarily Damaged His Reputation"

The influential independent London weekly Economist, out Friday, observed in an editorial that with the Nixon pardon "that refreshing, reassuring presidential honeymoon came to an abrupt end."

It said the President "has now done exactly what he said he would not do, and a reconstruction of the negotiations between the White House and Mr. Nixon's lawyers shows plainly enough that he started preparing to do it within a day or two of his telling the public just why he would not." It concluded:

"Mr. Ford appears to have damaged his national reputation unnecessarily."

West German TV: "The Smiles Have Faded"

West German television's first network yesterday ran a film report of "student demonstrations against President Ford's decision to pardon fully his predecessor, Richard Nixon."

Narrating the film, Washington correspondent Guenther Mueggenburg reported that "the majority is unable to appreciate amnesty for a man whom it has never honored but at best accepted as a clever politician..."

"Ford is deeply affected by this reaction. The smiles around him have suddenly faded. Distrust and rejection have pushed aside yesterday's good will and sympathy."

Following the film sequence, David Binder of the New York Times reportedly commented, "The amnesty was a grave although well-meant mistake.... The American people are awaiting the new President's next mistake."

#### Panelists' Views

The second network's Sunday panel show included a section on the pardon.

Sebastian Haffner of nationally circulated weekly tabloid Der Stern said Mr. Nixon had merely done "what other politicians do all the time."

Editor Rudolf Augstein of the weekly news magazine Der Spiegel asked, "Where is the compassion for all the underprivileged people in the prisons?.... Only in the event of a full acknowledgment by Nixon would amnesty be justified."

#### "U.S. Will Follow Ford if He Proves Himself"

Washington correspondent Monika Metzner, writing today in pro-Social Democratic Frankfurter Rundschau, said the storm over the pardon would die down but Mr. Ford must re-establish public confidence. She declared that distrust and bitterness had returned to the American scene "for the new President, in his first test, failed miserably.... Gerald Ford lost his credibility by saying one thing and doing another..."

"Through his own failure, Ford ended the honeymoon early. His contradictory moves have not healed the nation's wounds but have torn them open again. The energy and determination he demonstrated in his first days in office proved deceptive; for the new President thus far has not even succeeded in eliminating Nixon's influence on the Ford Government. Many key positions are still held by the same men for whom, under Nixon, misuse of power was a matter of course.

"Yet Ford has not forfeited all his credit. Since the pardon for Nixon, as the Constitution provides, cannot be altered, the storm will soon die down. But America, once again suspicious, will follow Ford only if he proves himself by determined and reasonable action--in personnel matters as well as in economic policy. Only then will he be able to halt the drop in his popularity."

Milan: Praise for Nixon Pardon

A correspondent in Los Angeles for independent conservative Corriere della Sera of Milan wrote today:

"President Ford's decision to pardon Nixon must be considered a very useful and clarifying move even though no clemency has been granted to his former aides. It demonstrates new opportunities for making U.S. democracy work."

Pro-Communist Paese Sera of Rome titled a byliner's article Saturday, "Ford's True Face." Subheads for the story read: "America Reveals Through Nixon Pardon That Things are Unchanged; New President Proves Himself Politician Like Others: Michigan Mafia and Clan of Millionaires Animate White House."

Zurich: "Ford Should Not Be Written Off"

Switzerland's prestigious Neue Zuercher Zeitung observed yesterday that "it seems that Ford's decision to pardon Nixon was arrived at and made public somewhat hastily, without substantial consideration of the question to what degree a pardon for the star might entail a general pardon for at least 38 co-actors, and what value all of this has in relation to the principle of the rule of law..."

"The liberal press in the U. S. is probably exaggerating when it disappointedly writes off President Ford... as 'an ordinary politician'... Puritanical zealots have not only scolded Nixon--rightfully--for Watergate, but also--wrongfully--for many a thing that served the interest of the free world better than countless appeals for appeasement coming from these same critics.

"Ford already finds himself exposed to a change in the mood of a public that should ultimately be more concerned with resolute determination than anxiety and hesitation at shouldering the burden of far-reaching responsibility."

Manila: "Ford Was Thinking of Future"

Philippine media gave prominent play today to President Ford's reasons for pardoning Mr. Nixon and to Mr. Nixon's health.

The Bulletin Today of Manila on Friday carried a byliner's view that "President Ford was right in granting absolute pardon to Nixon. It was not only a humanitarian move but one that could preserve the Presidency."

Speculating that if Mr. Ford had not taken that action, "no U.S. President could make firm decisions that could expose him to future prosecution," he added, "Can you imagine a President unable to make a decision before he is told what his chances are of escaping personal responsibility after he is no longer President? . . . Ford must have been thinking of himself too when he signed the pardon for Nixon."

Kuala Lumpur: "Ford's Next Move Will Be Decisive"

The conservative Malay Mail of Kuala Lumpur today headed an editorial, "Nixon Woes Not Over,"

It said, "President Ford's pardon was based on the premise that putting Nixon on trial would not be just because it would be difficult to find any court where presumption of his innocence would be certain. He had a point there, but politically he has misjudged the mood of the country. The people are now asking if it would be fair to punish all the underlings in the affair without touching the king pin."

The paper asserted that many people question "the concern for the rights of one man while thousands suffer in exile because they refused to serve in the armed forces during the Vietnam war. Admittedly Ford has not shown the same concern for them. His next move will decide the faith that Americans will place on him as President."

Dacca: "The President's Prerogative"

The pro-government Times of Dacca said last week, "It is the President's prerogative to grant a pardon and he has exercised it in favor of a man who has a long and distinguished record of service to his nation. . . . It has certainly brought

to an end Mr. Nixon's bad dreams, which had been haunting him.... It has also brought to a close one of the most agonizing chapters in the 198-year history of the American nation."

Dacca's independent The People last week noted that Mr. Ford "gave proof of his understanding, judgment and sympathy as he seized the opportunity and exercised his Constitutional power to pardon former President Nixon..."

Buenos Aires: "Critics Like Scavengers"

Conservative La Nacion of Buenos Aires said on Friday, "The Constitutional leniency of President Ford can be understood and accepted as a judgment that rejects Pharisaism. His harsh critics should stop acting like political scavengers."

"Revealed Emotionality"

A byliner for leftist Opinion of Buenos Aires said that "by pardoning Nixon and becoming vulnerable to the Democrats' attacks, Gerald Ford may have committed a serious blunder..."

"It is disquieting, not only for the people of the U.S. but for the entire world, that the President of the leading world power should reveal an emotionality that allows his feelings to prevail over the clear cold reason that was called for..."

Lima: "Many Benefits to Nixon"

Government-owned Cronica of Lima said last Wednesday, "Nixon will be relieved not only by reason of the thousands of dollars that he will receive from his pension, from publications and other sources but because part of the agreement provides that the tapes" will be retained by him "under protection of the amnesty. For older Peruvians this will be a reminder of the 'forget and start over again' of Odria's times." (The reference was to General Odria, former Peruvian dictator.)

Bogota: "Acted in National Interest"

Conservative La Republica of Bogota declared on Thursday that President Ford's decision was motivated by the wish to "put an end to a traumatic episode in American life" and "by the desire to safeguard the highest interests of the nation..."

Santiago: "Foresighted and Timely"

Conservative El Mercurio of Santiago observed last Wednesday that "for those inside and outside the U. S. who wished to end the unfortunate Watergate episode... President Ford's action has been foresighted and timely." The paper commented, however, that because of the opposition to the pardon it might damage his re-election prospects. It said:

"In any case, Ford has assumed his responsibility before history with respect to reducing the bitterness of Watergate. If the wound caused by that episode remains open, U. S. politicians will have been responsible for it."



Mexico City: "May Have Acted Rashly"

A byliner for rightist El Sol de Mexico noted earlier last week that President Ford "may have acted rashly in granting amnesty to President Nixon" because the "so-called honeymoon of Ford with Congress had to end for political reasons" and "the Democratic leaders are trying to use the Watergate scandal to defeat their traditional political adversaries..."

THE WHITE HOUSE

WASHINGTON

October 17, 1974

MEMORANDUM FOR:                   RON NESSEN  
FROM:                               KEN LAZARUS   
SUBJECT:                           Effect of the Acceptance of a Pardon 

It is my understanding that questions regarding the legal effect of the acceptance of a pardon with respect to the question of guilt have been referred to you.

In response to these questions you might want to make reference to the following authorities:

Burdick v. United States, 236 U.S. 79 (1915) states that a pardon "... carries an imputation of guilt; acceptance a confession of it." (at 95)

11 Op. A. G. 227, 228 (1865) states that "There can be no pardon where there is no actual or imputed guilt. The acceptance of a pardon is a confession of guilt, or of the existence of a state of facts from which a judgment of guilt would follow."