

THE WHITE HOUSE

WASHINGTON

August 28, 1974

MEMORANDUM FOR:

PHILIP BUCHEN

FROM:

LEONARD GARMENT

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I have a difficult but urgent matter to raise with the President, and I don't know how else to do it but quickly and directly through you.

In all of his Presidency, President Ford will probably face no more difficult decision than what to do about President Nixon. I know there is a feeling that with time the problem may resolve itself, that for the moment a restatement of the call for compassion is sufficient, that action can be delayed at least until it is seen whether some consensus arrangement can be worked out with the Special Prosecutor and the Leadership in the Congress. I disagree. I doubt very much that there can be an "arrangement." A Special Prosecutor must prosecute; and Jaworski's staff, the media and Sam Dash will not let him forget that. My belief is that unless the President himself takes action by announcing a pardon today, he will very likely lose control of the situation. Other factors will begin to operate. The national mood of conciliation will diminish; pressures for prosecution from different sources will accumulate; the political costs of intervention will become, or in any event seem, prohibitive; and the whole miserable tragedy will be played out to God knows what ugly and wounding conclusion.

It is an illusion to think the President can count on anyone--the courts, Congress or Jaworski--to share with him the burden of solving this problem. The problem is uniquely one for Presidential decision and Presidential action--taken and announced by him alone. Truman's insight about the Presidency that President Ford selected and cited is right to the point: "The buck stops here." For President Ford to act on his own now would be strong and admirable, and would be so perceived once



the first reaction from the media passed. There would be a national sigh~~f~~ of relief. Quite apart from the millions who were supporters of Richard Nixon and are deeply depressed by what has already happened, there are many anti-Nixon voices--Osborne, Sevareid, Geyelin--who feel enough is enough. But, again, unless the President acts, the inexorable logic of the law rather than its sensible administration will take over.

Even from a narrow political standpoint, the weight of the argument seems to me to be strongly on the side of prompt action by the President. To have the disposition of Richard Nixon a live issue during the upcoming months of efforts to extract some unity on economic issues and during the Fall elections could have the most harmful consequences for the President, his Administration and his party. Because he has both the Constitutional and the moral authority to act on behalf of the former President, any failure to exercise that authority ~~would~~ be--and perceived to be~~s~~--fully as much a deliberate action as the exercise of it.

The country is struggling to get on its feet. Public feeling toward Richard Nixon is extremely confused. There is a drift toward prosecution stimulated by a variety of sources, but it has not yet crystallized. At this point most of the country does not want Richard Nixon hounded, perhaps literally, to death. Once the institutional machinery starts rolling, however, and the press fastens on Nixon as a criminal defendant, Presidential action will be immensely more difficult to justify and therefore, perhaps, impossible to take.

The country trusts President Ford and will follow him on this matter at this time.

A draft of a statement that the President could use at the opening of his press conference is attached.

Attachment



I have a brief statement with regard to former President Nixon which will anticipate some of your questions.

The issue of whether to proceed against the former President is more than a strictly legal one. It turns on considerations that are essentially political, in the broadest and best sense of that term--that is, considerations of the broader public interest, not merely of the mechanical application of laws written for other purposes and other circumstances. Therefore, I believe it is a decision that should not be imposed by default on the Special Prosecutor alone. Because this is a case that uniquely involves the national interest, and because it uniquely involves the Presidency itself, and because the Constitution gives the President the authority to decide, it is one that the President must decide. As Harry Truman used to say, the buck stops here.

Oliver Wendell Holmes once wrote that the life of the law is not logic, but experience. What this means is that the letter of the law is often best tempered by common sense, and the exercise of the law by restraint.

I meant deeply, in my heart, what I said when I took the oath of office: "May our former President, who brought peace to millions, find it for himself." I believe that justice should be tempered with mercy. Richard Nixon has already paid what, for a man in his position, was the supreme penalty--and a penalty that only a President can pay. I will not be a party to his further harassment or to the degradation of this



office that would result from his being forced to defend himself in a criminal trial.

Because he has paid this high penalty, and because, realistically speaking, there is no way that he could be given a fair trial by an unbiased jury, and because of the national interest uniquely involved in the question of prosecuting a former President, I believe his case can be separated from those of the other Watergate defendants. Those cases can and should proceed.

Therefore, I have today instructed my counsel to institute the necessary procedures for granting to President Nixon a full pardon for any acts committed while he was President. This will relieve the Special Prosecutor of the necessity of making what is essentially a political, not a legal, decision. It will enable us to bind up the nation's wounds, rather than opening them wider in a proceeding that would further divide and embitter the nation. It will let us get on with the business of the future:

In the final analysis, the judgment on Richard Nixon that matters will be the judgment of history. So let us leave that judgment to history.

