

WATERGATE

When Richard Nixon resigned in 1974 in the wake of the Watergate scandal, it was only the second time in our history that impeachment of a President had been considered. Nearly every action taken with regard to the case had some constitutional significance. The document shown here deals with a specific question: Should the Watergate Special Prosecutor seek an indictment of the former President?

It is two pages of a three-page memorandum written for the Watergate Special Prosecutor in August 1974, after Richard Nixon resigned the Presidency and before President Ford pardoned him. (The third page adds one more item to the pro-indictment list and adds another category, "delay decision.")

The Office of the Special Prosecutor was created by Executive Order in May 1973 and twice faced the question of whether to seek an indictment of Richard Nixon. The first time was in March 1974, when the grand jury handed down indictments of seven White House aides for perjury and obstruction of justice.

President Nixon was named an "unindicted coconspirator" at that time because Watergate Special Prosecutor Leon Jaworski advised the grand jury that in his opinion a sitting President could not be indicted. In his view, the House Judiciary Committee was the appropriate body under the Constitution for examining evidence relating to the President.

The House Judiciary Committee pursued its constitutional mandate and drew up five articles of impeachment, three of which they approved in the summer of 1974. When the President was forced by the Supreme Court in August 1974 to surrender tape recordings that revealed his knowledge of the cover-up, even his staunchest supporters in the House admitted that they would have to vote in favor of impeachment. On August 9, 1974, President Richard Nixon resigned the Presidency and became citizen Richard Nixon.

Thus, for the second time the Watergate Special Prosecutor's Office faced the question of whether or not to seek an indictment. Article I, section 3, clause 7 of the Constitution provides that a person removed from office by impeachment and conviction "shall nevertheless be liable to Indictment, Trial, Judgment and Punishment, according to the Law." But there are no guidelines in the Constitution about a President who has resigned. The memorandum shown here is typical of others in this file. It outlines reasons for and against pursuing an indictment against Richard Nixon. It is taken from Records Relating to Richard M. Nixon, Records of the Watergate Special Prosecution Force, Record Group 460.

MEMORANDUM TO : Leon Jaworski
Special Prosecutor

FROM : Carl B Feldbaum
Peter M. Kreindler
Justice Department

DATE: August 9, 1974

SUBJECT: Factors to be Considered in Deciding Whether to Prosecute Richard M. Nixon for Obstruction of Justice

In our view there is clear evidence that Richard M. Nixon participated in a conspiracy to obstruct justice by concealing the identity of those responsible for the Watergate break-in and other criminal offenses. There is a presumption (which in the past we have operated upon) that Richard M. Nixon, like every citizen, is subject to the rule of law. Accordingly, one begins with the premise that if there is sufficient evidence, Mr. Nixon should be indicted and prosecuted. The question then becomes whether the presumption for proceeding is outweighed by the factors mandating against indictment and prosecution.

The factors which mandate against indictment and prosecution are:

1. His resignation has been sufficient punishment.
2. He has been subject to an impeachment inquiry with resulting articles of impeachment which the House Judiciary Committee unanimously endorsed as to Article I (the Watergate cover-up).
3. Prosecution might aggravate political divisions in the country.
4. As a political matter, the times call for conciliation rather than recrimination.
5. There would be considerable difficulty in achieving a fair trial because of massive pre-trial publicity.

The factors which mandate in favor of indictment and prosecution are:

1. The principle of equal justice under law requires that every person, no matter what his past position or office, answer to the criminal justice system for his past offenses. This is a particularly weighty factor if Mr. Nixon's aides and associates, who acted upon his orders and what they conceived to be his interests, are to be prosecuted for the same offenses.
2. The country will be further divided by Mr. Nixon unless there is a final disposition of charges of criminality outstanding against him so as to forestall the belief that he was driven from his office by erosion of his political base. This final disposition may be necessary to preserve the integrity of the criminal justice system and the legislative process, which together marshalled the substantial evidence of Mr. Nixon's guilt.
3. Article I, Section 3, clause 7 of the Constitution provides that a person removed from office by impeachment and conviction "shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to Law." The Framers contemplated that a person removed from office because of abuse of his public trust still would have to answer to the criminal justice system for criminal offenses.
4. It cannot be sufficient retribution for criminal offenses merely to surrender the public office and trust which has been demonstrably abused. A person should not be permitted to trade in the abused office in return for immunity.
5. The modern nature of the Presidency necessitates massive public exposure of the President's actions through the media. A bar to prosecution on the grounds of such publicity effectively would immunize all

future Presidents for their actions, however criminal. Moreover, the courts may be the appropriate forum to resolve questions of pre-trial publicity in the context of an adversary proceeding.

Written Document Analysis Worksheet

1. TYPE OF DOCUMENT: _____

2. DATE(S) OF DOCUMENT: _____

3. AUTHOR OF THE DOCUMENT: _____

POSITION (TITLE): _____

4. FOR WHAT AUDIENCE WAS THE DOCUMENT WRITTEN? _____

5. LIST THREE THINGS THE AUTHOR SAID THAT YOU THINK ARE IMPORTANT: __

6. WHY DO YOU THINK THIS DOCUMENT WAS WRITTEN? _____

7. LIST TWO THINGS THE DOCUMENT TELLS YOU ABOUT LIFE IN THE US AT THE TIME IT WAS WRITTEN: _____

8. WRITE A QUESTION TO THE AUTHOR THAT IS LEFT UNANSWERED BY THE DOCUMENT: _____

9. WOULD YOU HAVE BEEN IN FAVOR OF PROSECUTING THE FORMER PRESIDENT IN AUGUST 1974? WHY OR WHY NOT? _____
