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"The Best Thing for the Country"

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“The Best Thing for the Country”

transcribed remarks of
HERBERT J. MILLER, JR.*

Introduction by Fred Altshuler, Esq.: One of the milestone events in the Watergate saga was of course President Ford’s decision to grant a pardon to his immediate predecessor, President Nixon. Mr. Nixon’s attorney in the negotiations leading to the pardon was Mr. Herbert J. Miller. The granting of the pardon involves a host of very interesting factual and legal issues, and Mr. Miller will now address some of them.

Mr. Miller: It is not a new situation for me to sit and listen to allegations concerning Richard Nixon. I have been doing it ever since I started to represent him, which was shortly after he resigned the Presidency of the United States. I have found that it is difficult to convince anyone that he did not personally participate in all of the wrongdoing that went on in the Nixon White House. In order to delve into this and get to the bottom of it, it would be necessary to listen to the tapes and to analyze what Richard Nixon was told and to ascertain the motivation of those who informed him. This task would be a major undertaking. The tapes have been copied and are now for sale. Some of them you can hear, and some of them are totally unintelligible. But you do have a difficult time demonstrating and separating the conscious conduct of those who were involved in the various illegal activities in the White House. It’s difficult to determine what steps they were taking to try to cover-up and save their own bodies, and only at the last minute deciding that the only way to solve it was to get Richard Nixon involved. It would take months to lay all of these facts out.

When I was hired by Richard Nixon, he had already resigned, and the issue was what was going to happen in terms of a federal

* Mr. Miller, a partner with the Washington, D.C. law firm of Miller, Cassidy, Larroca & Lewin, LLP, represented Richard Nixon and his heirs for twenty-five years. A 1949 graduate of George Washington University Law School, Mr. Miller also served as the Assistant Attorney General in the Department of Justice’s Criminal Division from 1961 to 1965. His reported cases include *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), and *Nixon v. Fitzgerald*, 457 U.S. 731 (1982).

prosecution. To me, there was only one real solution because I knew that he, like every individual, was constitutionally entitled to a fair trial. And you could not, in my personal estimation, have given Richard Nixon a fair trial in view of the hurricane of publicity, particularly when the trial would be held in Washington, D.C. The *Washington Post* was constantly publishing stories, some true, some false. The networks were picking it up. It is interesting to me that a survey was conducted by some of the individual defendants who did go to trial. They were able to demonstrate through this survey that sixty-one or sixty-two percent of the eligible voters of the District of Columbia who would be eligible for jury duty believed Richard Nixon to be guilty. You can find those figures and those facts in the dissent of the U.S. Court of Appeals for the District of Columbia opinion in connection with the prosecution of former Attorney General John Mitchell.

If you have a situation where an individual cannot get a fair trial, you try to do one of two things. You either seek a postponement until the public stories and editorials pass, or you find citizens who can sit without prejudice, and will listen to the facts as presented during the trial of the case. By my estimation that would have taken months in the District of Columbia. And Judge Sirica and the prosecutors were not about to wait. Faced with that situation, I think the steps to be taken were very clear. And that was to seek a pardon for Richard Nixon. If he couldn't get a fair trial, then he shouldn't be put on trial.

The first thing I did in order to ascertain the possibilities was to discuss that possibility with Philip Buchen, White House Counsel to President Ford. The other thing that I did was go and talk to Leon Jaworski, the Special Prosecutor. It was my best estimate that if Leon Jaworski signaled to the White House that he would strongly oppose and object to any pardon, then such a pardon would not be forthcoming. I went and talked to Leon Jaworski. For all of you students, if you are ever required to make a presentation on what is involved in guaranteeing a fair trial, I have three or four copies of the letter of September 4, 1974, that I wrote to Leon Jaworski with the enclosed memorandum.¹ And since not I, but some of the talented young lawyers in my office wrote it, I can tell you that it is a very powerful and convincing document.

The other situation was the Mitchell trial, which was pending before Judge Sirica. In that case, there was an issue as to when the trial should start. Those defendants subpoenaed Richard Nixon to be a witness in the Watergate trial. I felt it was necessary to sound out

1. See Exhibit B: *Memorandum to the Special Prosecutor on Behalf of Richard M. Nixon, infra.*

the White House, as I had with Leon Jaworski, who was in favor of the pardon or at least would not object, and then see if I could convince Richard Nixon to accept the pardon. If all of these things came to pass, after much difficulty and much discussion, the pardon would be granted by President Ford. To me it was the only possible solution to the situation as it then existed.

As it turned out, Richard Nixon wrote that he felt that I was perceptive in one regard, because I had informed him that I didn't think he was physically well enough to go to trial. Within two or three months, his phlebitis flared up, and in fact he went in for an operation and his blood pressure dropped to zero. He almost died. I went out to visit him after that and he was obviously in terrible physical shape. He looked awful. Judge Sirica, to make certain that his physical situation rendered him incapable of being a witness in the case, appointed three outstanding physicians from the District of Columbia, and they flew out and examined Nixon. They went back and reported to Judge Sirica that the former President was unable to stand trial and would not be able to stand trial for some period of time. If the pardon had not been granted by President Ford, Richard Nixon would not have gone to trial as scheduled or been a witness as scheduled in the Watergate case.

The upshot of the pardon was that it ended the problem of the White House difficulties, at least for Richard Nixon. Ford himself recognized that he would spend most of his time trying to defend the Ford White House and the Republican Party from what had gone on in Watergate. He wanted to be the President of the United States and spend his time and effort dealing with the current problems of running the government, and not spend his time and energy to determine what to do about what happened in the past. In other words, it was his decision that the best thing for the country was to pardon Richard Nixon so that the concept of Nixon going to trial and the continuation of the Watergate issue would be matters of history rather than something that would occur in the future. That was his decision. It was a very courageous decision because he knew that the American public would exact a tribute because of the grant of that pardon. In fact as we all know, Ford lost the election when he ran for the Presidency. But I think it was a very courageous thing for Ford to do.

At that time, I think as far as the future of the country was concerned that was the only course that could be taken. I know it is very hard to listen to the catalogue of alleged misdeeds and what went on and what occurred in the White House, but remember that catalogue is only attributable to President Nixon where there is evidence thereof. There is some evidence, no question about it, but where you have a voice-activated taping system running twenty-four

hours a day, I would hate to think of the status of some of us in the audience in terms of criminal prosecutions if it went on for two or three years. We might all have problems with what was said. And furthermore, with a tape recorder rolling at all times you've got to remember that there are all kinds of questions asked and other words to seek the solution to the problem. All of it sounds on some of the tapes as though the people involved were very guilty, and indeed some were. They were convicted.

But here you have a situation where Richard Nixon was not convicted. All you can do now, if you want to denigrate the individual, is to go back, and for 9,000 dollars, you can get the tapes from the archives and you can sit and go through and prove or disprove his guilt. But remember, at all times many of those things occurred without his knowledge. And the individuals surrounding him and dealing with him wanted to make sure that if anything happened, they would be able to avoid prosecution. And that is in essence what Watergate ended up as, and that's why in my estimation President Ford was very courageous in pardoning Richard Nixon. Thank you.