

Memorandum

TO : Leon Jaworski
Special Prosecutor

DATE: August 9, 1974

FROM : Carl B. Feldbaum
Peter M. Kreindler

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.