



Department of Justice

INTERVIEW
OF
THE HONORABLE WILLIAM B. SAXBE
ATTORNEY GENERAL OF THE UNITED STATES

WITH
FRED GRAHAM
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The Attorney General answered questions on the following topics:

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MR. GRAHAM: Mr. Attorney General, at the risk of plowing back a bit over some things that you talked about in the last day or two, I do want to talk a bit about the question of amnesty for Vietnam war resisters. Now, I know you can't tip your hand in advance, but what will the proposals that are being considered do for the young man who avoided the draft feeling that it was an act of conscience on his part and that he has nothing now to apologize for or to atone for in coming back?

ATTORNEY GENERAL SAXBE: Of course, the whole thing is subject to what the President decides. We're going to offer him a package that we think is in keeping with his statement, that they must work for, that they must earn their right to come back in the mainstream of American life. Now, for those who think that they should be welcomed as heroes, I'm afraid it's going to be disappointing. And I know that the families that came in here yesterday certainly don't want to even talk about that. They even want to give unconditional amnesty and complete clearance to people who had dishonorable discharges for criminal activities. There's a lot of deserters, you know, that went over the hill for reasons other than the war in Vietnam, and this is a difficult problem and one that's going to have to be separated from those who in good conscience, as you say, went to Canada or went over the hill.

MR. GRAHAM: How is that going to be done, separating out the ones who acted on conscience and the

ones who might've acted from bad motives?

ATTORNEY GENERAL SAXBE: Well, this is a military problem. You see the people who are deserters come under military law, not under civil law. And those people will be notified that they have the right to come back if this goes through. But they also will be notified that there are other charges pending against them. Maybe they shot the lieutenant, maybe they stole a truck, and went over the hill for that. Well, certainly I don't think that you can say that this is an act of good conscience to shoot the lieutenant or steal a truck. So that's an outside thing. The Justice Department's concern is the draft evader -- that's our area. This is a man who never took an oath, never wore the uniform, and, therefore, it means that this is a criminal thing because he defied the laws of the United States.

MR. GRAHAM: Now, how can you control it if the local draft board insists on prosecuting and punishing those young men when they come back?

ATTORNEY GENERAL SAXBE: The draft board has no more control over them.

MR. GRAHAM: The local U.S. Attorneys then?

ATTORNEY GENERAL SAXBE: The local U.S. Attorneys. Once they refuse to show up or do show up and then later leave, why they're referred to the U.S. Attorney as a matter of prosecution. Now, there has been a steady trickle of these people coming back every month, every year, from either their underground in this country or from outside the

country and they have been routinely handled before a Federal judge.

MR GRAHAM: I understand from what you've said in the last few days that one possibility is that they might be let off with some sort of probation. Does that flow from the fact that many of these judges are doing that anyway?

ATTORNEY GENERAL SAXBE: Well, I don't know whether that's going to be the choice the President makes or not. But we have reviewed what's happened to the ones that have returned routinely and our investigation discloses that it's a case-by-case basis. If the judge thinks that the man is going to best serve the country by being on probation, they're put on probation. If he feels that punishment is required, why they're sent to jail. And it's a case-by-case -- I don't think you can generalize -- but when you sum up the total of these cases, most of them are not severe punishment. They are more or less a very short term in prison if at all, and then probation. Give them a chance.

MR. GRAHAM: Mr. Saxbe, it's interesting to some people that the question of amnesty for Vietnam war resisters was raised by the President at a time when the question of amnesty for President Nixon was very much in the public mind. Haven't there been any discussions in the government as far as you know about a possible tradeoff whereby Mr. Nixon and

The other defendants in the Watergate matters would all be given some sort of amnesty at the same time war resisters would be given amnesty?

ATTORNEY GENERAL SAXBE: No. I know of no such discussion even.

MR. GRAHAM: The President appeared to be saying at his last press conference that he would deal with the question of pardon for Richard Nixon at the time that it reached his desk, which appeared to mean after a conviction and appeals prior to any punishment. Is that the way you understood that?

ATTORNEY GENERAL SAXBE: I wouldn't guess at what the President meant by that. I'm sure he understands what he intends to consider at any time, but I would think you could say the same about anybody involved with prosecution.

MR. GRAHAM: Well, I know that that's the normal way, but have there been any studies here at the Justice Department on any consideration here as to the possibility of stepping that up in the case of Richard Nixon?

ATTORNEY GENERAL SAXBE: No.

MR. GRAHAM: Well, just from your own point of view, do you think there's anything to be said in this case in acting on that prior to putting the country through all the anguish of this trial?

ATTORNEY GENERAL SAXBE: No, I couldn't comment on that. This is a matter for the Special Prosecutor, and I wouldn't.

MR. GRAHAM: Let me ask you about the Special Prosecutor then, Mr. Saxbe. It apparently now has been left to him to decide whether or not to prosecute in this case.

ATTORNEY GENERAL SAXBE: As it has been in all the other cases. I mean it just isn't this case, but he has handled the election of 1972 and all associated facts from the very beginning. And this was as it was intended by the special charter establishing the special prosecutor.

MR. GRAHAM: Now, as a former prosecutor yourself, and the country's chief prosecutor now, do you think that it's within the proper discretion of a prosecutor to decide not to prosecute on your determination that a person has been punished enough in other ways?

ATTORNEY GENERAL SAXBE: Well, this is done everyday in every court in this country. And it's a matter that there's no established precedent on; it's just a matter of prosecution. We decide in the Department of Justice, constantly, whether the evidence is sufficient, and this is our concern. We don't indict people we don't think that we can convict . . .

MR. GRAHAM: I mean assuming that the evidence is sufficient?

ATTORNEY GENERAL SAXBE: Well, that's an assumption I'm not willing to make.

MR. GRAHAM: Well, I'm not asking for an assumption in this case, but in a case in general, assuming that the

evidence was sufficient, would it be within the proper discretion of a prosecutor to decide not to prosecute?

ATTORNEY GENERAL SAXBE: That's generally the concern of the judge. The prosecutor bases his intended line of activities on what he believes the violation is, the degree of the violation, and whether or not he can get an indictment, and after he gets the indictment, whether or not he can get a conviction. Now at the present time there is in this country, as you know, quite a bit of plea-bargaining. There's quite a bit of diversion. All of these things in the name of justice, and it has been built into our system over the last few years. Diversion is the new word in criminal justice at a prosecutorial level because there are a great many people who feel that if you can divert, especially a first offender, that you may save him from a continued life of crime. After you get past the first offender, I don't have much confidence in this.

MR. GRAHAM: Well, as I understood what you said a minute ago that is if there is a strong case on the evidence that the prosecutor should go ahead and prosecute and let the judge exercise leniency if in fact the person has been punished enough already. Rather than the prosecutor making that determination.

ATTORNEY GENERAL SAXBE: Well, I think that this is a -- you're a lawyer -- and you understand this body of law. And it's something you just don't second-guess people

on and you don't set out guidelines that try to lock them in. This is a discretion that only the prosecutor can exercise -- and particularly in the case of Mr. Jaworski. And I know that you're tending toward this idea that I set up certain guidelines that Mr. Jaworski reaching these decisions has no alternative, and I'm not going to make that decision.

MR. GRAHAM: Well, the President said the other day that he agreed that Mr. Nixon has already been punished enough, but isn't that a political decision, and couldn't Mr. Jaworski properly decline to prosecute Mr. Nixon on those grounds?

ATTORNEY GENERAL SAXBE: Well, again you're trying to get me to say something that I'm not about to say. We wasted 15 minutes on a show the other night where a man interviewed me at length trying to get me to say that we should not prosecute Mr. Nixon or we should prosecute Mr. Nixon or that he's entitled to clemency or he's entitled to part. I'm not going to do it.

MR. GRAHAM: Well, then another question and perhaps you haven't been asked this. If a decision . . .

ATTORNEY GENERAL SAXBE: I can't imagine what I haven't.

MR. GRAHAM: Well, let me try it on you. If a decision is made to give clemency to Mr. Nixon, do you think that it follows that clemency should be given to those other defendants in the Watergate case?

ATTORNEY GENERAL SAXBE: I wouldn't express an opinion on that because this is an area that I'm not in control of. And for me to express opinions obviously has some influence, I believe, on what happens. And I'm determined not to influence it.

MR. GRAHAM: Now, there's a related question that may well fall in your bailiwick. Now, there was a statement earlier this week by one of Mr. Nixon's lawyers saying that the former President could be very severely drained financially by what he called crank lawsuits brought by people that had grievances dating back to the time when Mr. Nixon was in the White House. And he said he hoped that the Justice Department would defend those lawsuits and save him the cost of doing so. Do you all intend to do that?

ATTORNEY GENERAL SAXBE: Who said this?

MR. GRAHAM: One of Mr. Nixon's private lawyers.

ATTORNEY GENERAL SAXBE: I hadn't even heard that. I hadn't even contemplated that. I don't see that that's a problem I've got to decide now.

MR. GRAHAM: Well, let me ask you: there's now a suit that has already been filed by a man who was aggrieved by a decision made by officials in the Canal Zone. He sued President Nixon in connection with that and the suit was served on Mr. Nixon's lawyers last week as I understand. Now that kind of matter arises out of actions allegedly committed

by the government under Mr. Nixon. Do you feel that the Justice Department will defend those civil suits?

ATTORNEY GENERAL SAXBE: This is a matter that always comes up, and the only decision would be whether it was part of the official function of the office. Obviously, a President, a state governor, an auditor of a state gets sued dozens of times a day. And this has become the way that we bring these issues up. If it's a matter of official function, why the Justice Department in the case of the United States or the Attorney General in the name of the state appears on behalf of it because it is a state function. And I think that's the only decision you'd have to make.

MR. GRAHAM: Well, as I understand it you're saying that if former President Nixon is sued in civil cases for matters relating back to when he was President, the Justice Department still will defend those cases?

ATTORNEY GENERAL SAXBE: Yes, if somebody sues because the Federal highway went through their farm, and they weren't compensated or they didn't think they were compensated enough, obviously, this is an area that we would defend.

MR. GRAHAM: On a related matter. As we all know, Mr. Nixon was served a subpoena recently -- two subpoenas -- by U.S. Marshals. Have you personally heard what happened on that occasion? How that was done?

ATTORNEY GENERAL SAXBE: I believe it was just a matter of working it out with the Secret Service, who are

in charge of security there. One of the elements that changed it dramatically was the fact that the trial was postponed for three weeks so the urgency departed.

MR. GRAHAM: Well, now we were told that the Marshall out there would give us details of that; it was a historic incident. He reneged on that after the fact. Can you personally tell me now what happened when the Marshal walked in there with those subpoenas to serve on Mr. Nixon?

ATTORNEY GENERAL SAXBE: No. All I know is that it was returned to serve. It was a matter of working it out with the Secret Service, and it was served, as I understand it, and that's the only report I have.

MR. GRAHAM: Has there been any consideration here about special measures to be taken if Mr. Nixon comes here next month to testify in the Watergate cover-up trial?

ATTORNEY GENERAL SAXBE: No.

MR. GRAHAM: Do you know if anything like that will be necessary?

ATTORNEY GENERAL SAXBE: I have heard nothing about it.

MR. GRAHAM: That would be done by the Secret Service, wouldn't it?

ATTORNEY GENERAL SAXBE: Yes.

MR. GRAHAM: You made a speech in recent days talking about crime, Mr. Saxbe, and there seemed to be a

note of almost desperation in that because you said that crime, after all of the measures of this Administration, rose, I believe, 15 per cent last year. You didn't seem to have an answer. What do you think we're going to do about this?

ATTORNEY GENERAL SAXBE: Well, the reason that I stated it so emphatically is to call people's attention to it. It's not on the front burner in this country and it hasn't been. We've had a lot of gimmicks, and we thought we could solve the problem with money, and we've bought a lot of hardware, we've done a lot of education and so on -- but the basic morality of the country is beyond the scope of the Justice Department or the policeman or the judge or any place else. And I think there's been too much reliance on the policeman and the courts and the jails to try to reform the morality of this country.

MR. GRAHAM: Well, you're almost saying nothing can be done then, aren't you?

ATTORNEY GENERAL SAXBE: Well, I'm saying that something can be done. And the something that can be done is to get the people interested. I think that the fact that we have an increasing incidence of crime only indicates that there are more people who are attracted to crime. And the way we glamorize crime in this country makes it inevitable that people will be attracted to it. You know, crime isn't all that bad. It pays rather well, there's a lot of adventure,

and there's a lot of excitement in it, and with the TV and the buildup we get even in our comic strips, why it isn't all that bad. Now, we've worked on a theory that everybody says crime is distasteful, and that therefore we don't want to punish people, we want to rehabilitate them. Well, if a guy is dedicated to crime, and he likes it and it's his way of life, then we've certainly wasted a lot of time and money on the hard cases that we give a slap on the wrist and send back on the streets. Now, the whole emphasis has been to close the penitentiaries because they say we don't rehabilitate. Well, there's a lot of these cases that aren't interested in rehabilitation, and there's no way you can bore a hole in the man's head and pour in a bunch of good thoughts. He has to cooperate. So what I'm saying is that we do our best to separate the hard cases from the first offenders and the young, that we spend our money on them, and that we put the hard cases into penitentiaries because this is the only punishment that is acceptable to our society and we keep them there until such time as they can't run as fast or the fact that they're willing to live at peace with society. Otherwise, we're going to have these repeaters, and most of our crime is repeaters. Practically every one that's picked up for a murder or an armed assault, all of these people are repeaters because of our naivete in saying well, go and sin no more, and they go back down on the same corner and waylay somebody else.

MR. GRAHAM: Well, as I understand it, what

you're suggesting is the cornerstone of the attack on crime at this point is just to lock up certain people for long periods of time.

ATTORNEY GENERAL SAXBE: I don't think it has to be as long as people think, but I think we should lock up the professional criminal.

MR. GRAHAM: How do you tell who is a professional criminal and who's just committed a . . .

ATTORNEY GENERAL SAXBE: I think the best way to tell is to see how many times he's been in there. If a guy has been in 50 times, and he's only been in jail once, he's had 50 arrests and he's only been sent up once. I think you'd have to guess that he's a bad risk, Now, if on the other hand a man comes in and it's his first offence, he's got a pretty good record, school attendance -- I'm talking about young people -- his family is interested in what happens to him, he has pressures to be good, I think it's a mistake to put that guy in the penitentiary. I think we should do everything we can to divert him. Get him through the half-way houses and train him and spend money on him because it costs a tremendous amount to keep a guy in the penitentiary -- \$20,000 in some of these states. Now, it seems to me this is where we have to put our emphasis; but on the hard case -- the criminal who is determined to be a criminal and likes to be a criminal -- we need to protect society from him.

MR. GRAHAM: Speaking about some people who have criminal problems, but are not professional criminals, I

understand you've invited the governors of the 13 states that have legal state lotteries here for a meeting, and the problem is that they perhaps are in violation of certain Federal laws because of the legal state-run lotteries.

ATTORNEY GENERAL SAXBE: That's correct and we're worried about this. We're examining these laws at the present time and what we find troubles us and we think that if they're going to be in the lottery business they should go to Congress and ask for a change in some of these laws. Now, some of these laws came about because there were state lotteries years ago. And they were crooked state lotteries. I'm talking about the reconstruction days in the South and the early days in many of our midwestern states. In fact, the Ohio capitol and some other capitols were built with lottery money because it was popular in those days.

MR. GRAHAM: As I understand it, the problem here is Federal statutes which make it a crime to send lottery tickets through the mail even within a state, which make it illegal to advertise in ways across state lines and the use of national banks and such. Now, can these state lotteries really operate without violating those laws?

ATTORNEY GENERAL SAXBE: We think that that is a serious question. And that's why we're having the governors in to talk about them. And we're also notifying some of the appropriate people in Congress to say to them,

now if you want to correct this, now's the time to do it. Because some of the states are really leaning on this money to support some of their institutions.

MR. GRAHAM: Well, as I understand it, what you're saying is that these 13 states with lotteries, state lotteries, are probably violating federal laws and you're going to call in the governors to warn them that they may be in legal trouble with the Justice Department.

ATTORNEY GENERAL SAXBE: Yes, we don't have a case ready yet because we're still researching it. But rather than wait until we have a case ready and can come in, ask for a relief, injunctive relief, and shut them down, we're notifying them that we're working on such a case.

MR. GRAHAM: In other words, rather than arrest anyone you're going to bring in a suit to shut down these state lotteries if that becomes necessary.

ATTORNEY GENERAL SAXBE: And this is reasonable.

MR. GRAHAM: Now as I understand it you are going to give them a certain amount of time to prevail on Congress to change the federal laws to make this legal. Is that it, sir?

ATTORNEY GENERAL SAXBE: Well, it isn't that we are giving them this time, it is simply that we wouldn't be ready for a reasonable length of time. We estimate that we can't even get a case ready for six weeks, and if we haven't heard, it will probably be next spring before we get any

determination, so we're trying to give them first notice that we are starting to work on this.

MR. GRAHAM: As I understand it, you are thinking about six months, if Congress hasn't changed those laws, you are going to shut down those state lotteries.

ATTORNEY GENERAL SAXBE: That is a possibility. A judge could rule that way on our petition.

MR. GRAHAM: About how much time do you think they have, Mr. Saxbe?

ATTORNEY GENERAL SAXBE: Well, we estimate it is going to take us at least five or six weeks to finish our research on this and put a case together and then it is up to the court how long it takes. We wouldn't ask for any temporary relief.

MR. GRAHAM: Are you going to file that suit right away? Could it be filed within five or six weeks?

ATTORNEY GENERAL SAXBE: That is a possibility.

MR. GRAHAM: Any possibility of attempting to send any of these people to jail? State officials?

ATTORNEY GENERAL SAXBE: I don't think so. First, if we get a ruling and they violate it, that will be a real possibility.

MR. GRAHAM: So what you will do first, as I understand it, is to bring civil suits . . .

ATTORNEY GENERAL SAXBE: To determine if there is illegality . . .

MR. GRAHAM: And to shut them down if there is.

ATTORNEY GENERAL SAXBE: That's right.

MR. GRAHAM: Now would that be filed against all 13 states sumultaneously or would you pick out a test state?

ATTORNEY GENERAL SAXBE: I would think that it would be done across the board, but different states have different laws. There might be some that would be more susceptible than others, but I think all advertise in the papers and these papers go in interstate commerce or in the mails.

MR. GRAHAM: Do you know how much revenue, overall, will be lost to these states if you shut them down?

ATTORNEY GENERAL SAXBE: It would be a tremendous amount; I have no idea.

MR. GRAHAM: It is \$50 million in New York and New Jersey per year.

ATTORNEY GENERAL SAXBE: I know.

MR. GRAHAM: And they use it for schools primarily?

ATTORNEY GENERAL SAXBE: Well, I have no idea. I think most of it goes to general revenue funds of these states but it is used for state purposes.

MR. GRAHAM: What do you think would be the best way to resolve this problem, General?

ATTORNEY GENERAL SAXBE: I think the best way to resolve it, if Congress is interested in it, and there is

plenty of time for them to move on it -- many of these sections of law that are in there, that are pertinent, were put in because of underworld activities, of bunco activities, without any contemplation of properly run state lotteries.

MR. GRAHAM: Your Justice Department has already testified in Congress in favor of changing these laws and making them clearly legal to operate state lotteries. And I believe what you are doing here is forcing Congress's hand, aren't you? You are going to shut them down . . .

ATTORNEY GENERAL SAXBE: But the alternative is to sit here and wink at what could very well be serious illegality.

MR. GRAHAM: And you are going to close them down if Congress doesn't act.

ATTORNEY GENERAL SAXBE: I am not about to do that if we are going to put some guy in jail for stealing stamps from the Post Office because it is illegal. I wonder if we could permit a state to use the Post Office illegally.

MR. GRAHAM: Thank you, sir.