

ESSAY

ciary a year, from excluding the press from *voir dire* [the preliminary examination of witnesses or jurors] to forbidding reporters to talk to jurors after the verdict is rendered." He notes moves to seal off all arrest and indictment records, observing: "We believe you cannot keep secret the public contacts between police and citizens. That type of secrecy is exactly what the framers of the Constitution sought to prevent, to protect individuals against the power of the state."

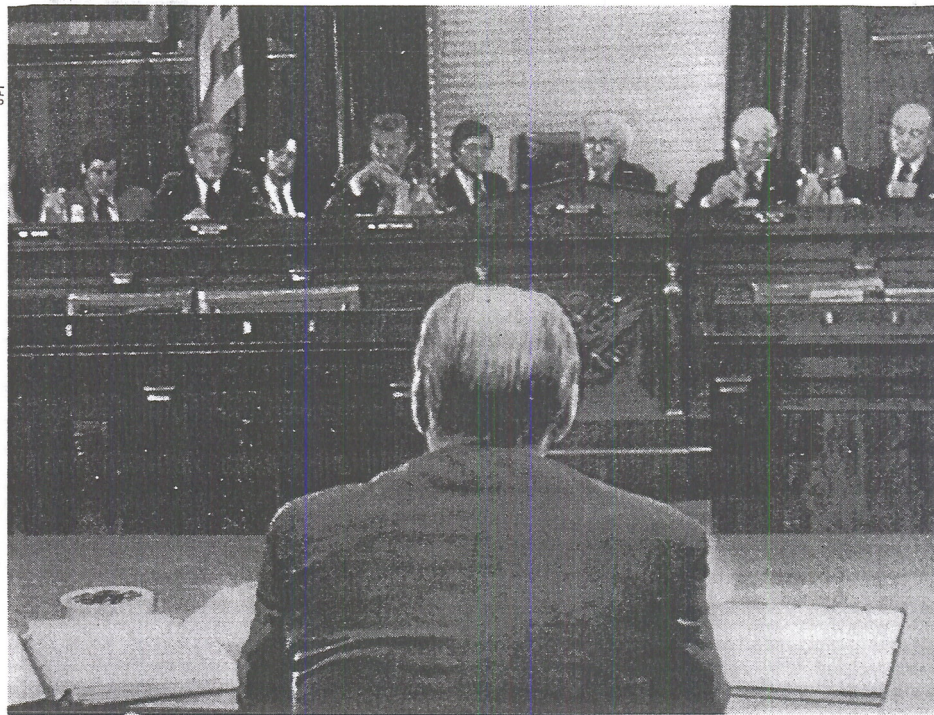
Those on the judicial side argue with equal reason that the individual also needs to be protected from the power of the press. Some sensible equilibrium seems possible between the conflicting sides. The law possesses numerous mechanisms for protecting jurors from undue outside influence: continuances of trials, sequestration of juries, changes of venue—although moving the trial to another site is not always helpful in an age of television.

Beyond all these, however, it seems fair to place somewhat more trust in the skepticism and objectivity of the jurors themselves. Despite the miasma of Watergate, Maurice Stans and John Mitchell were acquitted in their New York trial last spring, leading both defendants to praise the robust open-mindedness of those who judged them. "You want jurors," says Sofaer, "who are sensitive to reasonable doubt. You are more likely to find this quality in people of some education, who in turn are more likely to read anything published before the trial. What is important is whether a juror can set aside whatever predilections he has in order to consider the evidence presented in court."

It may be, as Judge Elliott ruled last month, that the overheated publicity and other factors surrounding the Calley case made it impossible for the six officers at his court-martial to reach a fair verdict. Whatever the special circumstances in that instance, as a general principle it seems likely that officers, who after all are not citizens randomly chosen, but seasoned military professionals, are capable of judging one of their own. The ethics committee of a bar association would doubtless be outraged if it were suggested that pretrial publicity would prevent it from fairly judging a fellow attorney's conduct. In the Calley case, furthermore, most of the brutal details reported in the press were also ruled admissible at the court-martial.

In the Calley trial as in the Watergate trials, publicity alone does not seem compelling reason to abort the jury system. By *reductio ad absurdum*, that would establish a principle that fame, not the truth, shall make you free. All a defendant's constitutional guarantees remain, but the basis of the jury system is still a faith that in the end, jurors are rationally capable of rendering judgment, as if they were kicking Dr. Johnson's rock.

■ Lance Morrow



PRESIDENT FORD APPEARING BEFORE THE HUNGATE SUBCOMMITTEE

THE WHITE HOUSE

The Pardon: Questions Persist

The actors and props were assembled for an occasion of high drama. For the first time in the nation's history, a President was appearing on Capitol Hill to submit himself formally to the questions of a congressional committee. What was more, President Ford was there to discuss an intensely controversial and emotional subject—his pardoning of Richard Nixon for any offenses he had committed while in the White House. But despite the setting and expectations, last week's event was something of a disappointment—nearly as inconclusive as the soap operas it displaced in two hours of network time. The session left troubling questions unanswered, doubts unresolved, and Ford still struggling to find a way of exorcising the wraith of Nixon that haunts his presidency.

Good Reasons. The questions about the pardon were posed by a subcommittee of the House Judiciary Committee, the body that had so diligently weighed the evidence against Nixon before recommending his impeachment. The subcommittee had originally submitted its queries to the White House; what it got in reply was a handful of presidential statements and transcripts of news conferences. When committee members bristled at that response, Ford resolved to appear before the group himself, stubbornly prevailing over the fears of some of his lieutenants.

The President, in fact, had good political reasons for going up to the Hill. His decision to grant the pardon had shaken public confidence in his candor and judgment and damaged the chances of G.O.P. candidates in the Novem-

ber elections. Indeed, the initial reaction from Democrats in Congress to Ford's self-invitation was anger at Subcommittee Chairman William L. Hungate for inadvertently giving Ford the chance to get off the hook.

Appearing in the imposing room where the impeachment hearings were held, Ford was completely at ease. For the most part, he was treated with reverence by subcommittee members, who looked down from the top row of the long tiers of desks. Speaking earnestly and confidently, Ford hammered home his answers to the two basic questions. Was there a deal between Nixon and himself? "I assure you that there never was at any time any agreement whatsoever concerning a pardon to Mr. Nixon if he were to resign and I were to become President," said Ford in his opening statement. Later he added: "There was no deal, period, under no circumstances."

Why, then, had Ford pardoned Nixon? He was afraid that possible criminal proceedings against the former President, which could have dragged out for years, would have riven the country. Said Ford: "I wanted to do all I could to change our attentions from the pursuit of a fallen President to the pursuit of the urgent needs of a rising nation."

Ford did admit that the question of pardoning Nixon had come up while he was still Vice President. On Aug. 1 Alexander Haig, then White House chief of staff, mentioned it to Ford as one of a number of options being considered in the White House. But Ford insisted to the subcommittee that he had not replied yea or nay to Haig's comments.

Nor had he committed himself to consider them. The very next day, he said, he told Haig that he was making no recommendation whatsoever about anything having to do with a possible Nixon resignation or a pardon.

Ford also admitted that he had misled the public during that period—although he managed to paint the prevarication white. The President recounted how he had learned from Haig on Aug. 1 about the presidential tape of June 23, 1972 that, under the Supreme Court's decision, was soon to go to Federal Judge John Sirica for use in the conspiracy trial of Nixon's former aides. The tape was to force Nixon's resignation because it clearly demonstrated how he had tried to obstruct the investigation of Watergate. When he heard about the tape, said Ford, he was "stunned." For months he had been saying that the President was not guilty of any impeachable offense.

Despite his knowledge of the tape's

contents, Ford continued to say that he believed in the President's innocence while making a three-day tour of Mississippi and Louisiana. Ford's rationalization: any change in his position might lead the press to conclude "that I wanted to see the President resign to avoid an impeachment vote in the House and probable conviction vote in the Senate."

Sudden Change. As Ford himself reminded the subcommittee, he declared at his first presidential press conference, held on Aug. 28, that he would make no decision on pardoning Nixon prior to some kind of legal conclusion. Why then did he issue the pardon on Sept. 8? Ford did not really explain his sudden change of heart, except to say that he had become increasingly worried that the prosecution of the former President would generate passions that "would seriously disrupt the healing of our country from the wounds of the past."

Why had Ford not insisted that Nixon

confess his guilt before giving him his pardon? The President replied that he did not think it was proper for him to have made such a demand. But he also made it clear that he felt that Nixon had admitted guilt by the simple fact of accepting the pardon.

Some of the members of Congress were worried about what Ford's pardoning of Nixon did to the nation's standards of equality under the law. California's Don Edwards, a liberal Democrat, wondered how Ford would explain American justice to his students if he were a high school teacher in Watts or Harlem. Ford's reply was that Nixon was the only President to resign in shame and disgrace; that, he implied, was punishment enough. South Carolina's James R. Mann, a conservative Democrat, asked if Ford agreed with "the maxim that the law is no respecter of persons." Ford's reply: "Certainly it should be." The gentle, courtly Mann seemed about to follow up the question

THE PRESIDENCY/HUGH SIDNEY

Gerald Ford's Old Clothes

Jerry Ford moved in genial confusion through the Midwest last week wearing his WIN button and the same blue suit two days in a row. He stayed in Harry Truman's old suite at the Muehlebach in Kansas City and was made a member of the Future Farmers of America. He did not dodge any protesters or reporters. In Sioux Falls the supporters of George McGovern were swept into his hammy grip just as readily as others.

The presidential barnstorming's impact on the congressional elections next month may be entirely uncertain; but Ford's road show is more evidence that the new President is fighting a good campaign against self-isolation. No matter what they say now about the economy, oil and the Nixon pardon being Ford's main problems, his biggest battle is with himself. The kind of frontal criticism Ford is getting usually encourages a President to seek protection. Behind him the Oval Office enlarges the impulse, offering opulent seclusion as the angry world goes by.

Shortly after Ford moved into the White House he went back to his Alexandria home to pick up his shoe trees. A graduate of the Nixon School of Imperial Protocol was aghast because American Presidents are not supposed to indulge in such menial tasks. Fortunately Ford has not as yet found out that he is completely above the humdrum routines of daily existence.

The army of White House advance men hit Ohio State University like a flying wedge when Ford decided to speak there recently. An argument arose over whether to have a small table with a water pitcher beside the lectern. The university president wanted it, but the White House disagreed. Old-fashioned image. To the everlasting glory of the Buckeyes, they carried the field and there was a water pitcher on a table beside the lectern.

The monstrous machine that has grown up around the White House is frequently idiotic and it will cut a President off from the real world if he does not fight it tooth and claw. It is little things like shoe trees and water pitchers that keep a President anchored to the ground on which the rest of the people walk. They are the tiny nerve ends of judgment. If enough of them are dulled from nonuse, a President can slip into narcosis.

Ford seems to understand this and he is clinging to his old lifestyle. He uses Sir Walter Raleigh pipe tobacco, sometimes out of a can. After Daughter Susan and Photographer David Kennerly gave Ford his new pup, Liberty, the President stuffed some dog biscuits into his pockets. As plain folks know, the new master of a golden retriever should pass out the rewards and feed the dog for a few weeks. The President is going to have crummy pockets for a while, and when the White House cook gives Ford his English muffins in the morning, Ford is going to give Liberty his bowl of chow.

Ford's suits have been comfortably baggy and wrinkled. The men's clothiers are planning a massive counterattack to put him into some of those fastidious, elder-statesman outfits that Nixon and Johnson wore. No wrinkles, no bulges, no flaws. Nobody who really works can keep clothes like that, which may have been part of our trouble. Ford has been seen with buckle shoes, no-cuff pants and colored shirts. The other day he had on a gray shirt. Not a dirty shirt. Just a gray-colored shirt, like one of those which children and wives get for fathers and husbands.

Ford carefully puts his feet up at the end of the day and likes a martini—in fact two. He is on an 1,800-calorie diet to get off six stubborn pounds, but he has insisted on devoting some calories to Beefeaters gin and a touch of vermouth in the evenings. To stretch the gin the White House valets put in extra ice.

When his tennis companion goofs one, Ford says, "Come on, partner." He does not like to lose. When he has his experts in, Ford listens. But sometimes, if he is not certain he understands, he doesn't fake it. "Let's see if I've got it straight," he says, then plays back what he heard. His major economic speech before a joint session of Congress was at 4 p.m. E.D.T. because that was a working hour for everybody in Washington. After dinner is show biz.



LIBERTY & FRIEND

but hesitated and then said softly, "Thank you, Mr. President."

The only member to talk tough to the President was Brooklyn's Elizabeth Holtzman, a first-term liberal Democrat, who delivered a speechlet about the need to dig further into the whole affair, which had raised "very dark suspicions . . . in the public's mind." Among a series of questions, she wondered if Ford would be willing to turn over to the subcommittee all the taped recordings of conversations between himself and Nixon. Ford did not answer directly, although exactly what bearing such tapes would have on the issue of the pardon was unclear. Nixon pulled the plug on his recording system in mid-July 1973 while he was still determined to tough it out in office. Spiro Agnew was then Vice President, and Ford was the House minority leader.

At the time of the pardon, Ford gave the former President control over the tapes and related documents. Tradition, said Ford, made them Nixon's property, a view that is now being sharply challenged (TIME, Sept. 30). When Special Prosecutor Leon Jaworski protested that he needed access to the materials, the White House temporarily suspended the agreement. In recent weeks, Ford's and Nixon's lawyers have tried to reach a new agreement on how the tapes should be handled, but to no avail. On the day of last week's hearing, Nixon went to court to get an order enforcing the original deal. Ford's position remained that he would not give up the tapes until the special prosecutor was satisfied with the arrangement.

Cleared Air. When he was through testifying Ford said, "I hope at least that I have cleared the air." The Republicans on the committee agreed that he had ("I, for one, think he was telling the truth," said Indiana's David W. Dennis). But Democrats both on and off the subcommittee wanted to know more. "I just don't believe the whole story holds together," said Manhattan Congresswoman Bella S. Abzug, who was a co-sponsor of the resolutions that prompted the inquiry, although she is not on the Judiciary Committee.

Had there been any further reasons for deciding so abruptly to give Nixon his pardon? What precisely was the role of Haig in the whole affair? One former top White House aide has said that he believes Ford gave the pardon so early because he did not want the case dragging through the courts when he ran for election in 1976.

Faced with such questions and theories, Subcommittee Chairman Hungate declared: "I'm not sure just what we'll decide to do, but we've still got a lot to do. We'll decide after the recess." When Congress reconvenes following the elections, Hungate's subcommittee could vote to hold more hearings. A probable star witness: Alexander Haig. For Jerry Ford and the G.O.P., the problems of the pardon are far from over.

THE VICE PRESIDENCY

A Confirmation Fight Shapes Up

Nelson Rockefeller found himself in a cruel predicament last week. Despite his long record of public service and philanthropy, insinuating leaks had ended any hope that his confirmation as Vice President would be a routine anointment. Instead, a long and partisan squabble was shaping up in Congress, and there seemed to be little that Rockefeller or the Ford Administration could do to head it off.

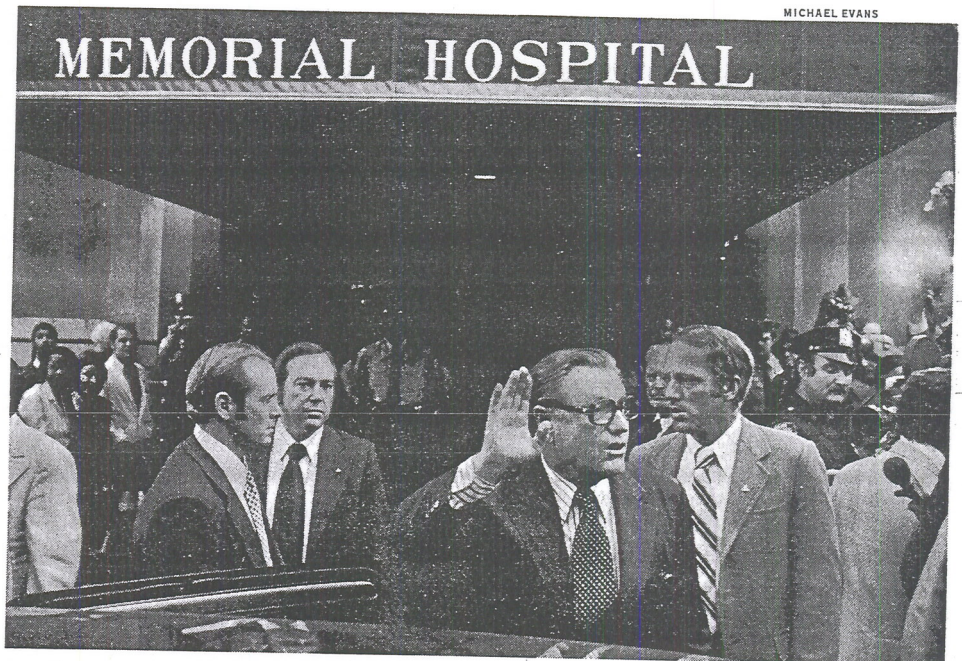
In the midst of his political troubles, Rockefeller announced that his wife was undergoing surgery for removal of a cancerous breast. It was a startling and melancholy coincidence: Happy Rockefeller's modified radical mastectomy took place just 19 days after Betty Ford went through similar surgery. Mrs. Rockefeller had examined herself—just as countless other women did—after Mrs. Ford's illness received wide publicity. The suspicious lump that Mrs. Rockefeller discovered turned out to be malignant, but at week's end doctors at the Memorial Sloan-Kettering Cancer Center in Man-

Among other things, the auditors disallowed \$1,245,247 of his deductions for business expenses and charitable contributions, added \$146,229 to his taxable income for foreign-exchange gains and charged him additional gift taxes of approximately \$83,000 for 1972, 1973 and the first half of 1974. The effect of the settlement was to raise Rockefeller's federal taxes for the five years by 21%, from \$4,212,974 to \$5,109,147. During those years, his total income was about \$20 million.

Routine Review. A routine review of Rocky's taxes was in progress before the nomination. It was then expanded and became only one of several investigations in the confirmation process. The FBI deployed 350 agents across the country and compiled a generally favorable, 2,300-page report on Rockefeller's past for members of a House Judiciary subcommittee.

In addition, Judiciary staff members and those of the Senate Rules Committee have been conducting their own

MICHAEL EVANS



ROCKEFELLER LEAVING THE CANCER CENTER AFTER VISITING HIS WIFE
Conveying an impression of public men in his personal debt.

hattan announced that she was in excellent condition.

Her husband divided his time between visiting the hospital and trying to offset the effects of leaks. Then, last Friday night, Rockefeller himself disclosed that as a result of an Internal Revenue Service audit, he will have to pay an additional \$896,173 in federal income and gift taxes for 1969-73, plus interest of nearly \$125,000 and additional gift taxes of \$7,545 for the first half of 1974. There was no hint of fraud of any kind.

probes. With so many investigations and so many investigators, leaks were all but inevitable.

By itself, the tax matter—despite the large sums involved—should have little impact on confirmation. But as one more item on a growing list, it complicated Rockefeller's position. Another new problem last week: publicity about the fact that the Rockefeller family contributed \$200,000 to President Nixon's 1972 re-election campaign. Less than a year later, Nixon overruled the Civil Aeronautics Board and allowed Eastern Air