

# Has Nixon's legal ordeal ended?

An Analysis  
By Jim Wood

A friend summed it up for Berkeley law professor Michael E. Smith late last week.

"How is John Dean going to feel," the friend asked, "sitting in jail while Richard Nixon is free, lying on the beach?"

The University of California professor says he replied with a question of his own:

Which would you rather be, Dean doing one year in

jail or Nixon suffering anguish and degradation as the first president in history to be forced from office?

The friend, according to Smith, said he'd rather be Dean.

Yet the question remains a troubling one. If Nixon isn't prosecuted, how can the jailing of his associates be justified?

"He was like bubonic plague," said San Francisco

—Turn to page 6, col. 1

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—From Page 1

attorney Vincent Hallinan. "The closer you were to him the more sure you were of being destroyed."

UC Professor Jesse Choper, an expert on constitutional law, said, however, a long tradition in the law would permit Nixon to be exempted from criminal proceedings.

That tradition, he said, is one of "prosecutor's discretion," allowing a prosecutor to decide whether to move against a particular defendant and basing that decision on factors other than the offense.

He said that in such a case as Nixon's, it would be a very unusual application, but that the doctrine is used all the time. One familiar application is in plea bargaining, when a prosecutor decides to press only one of five charges against a defendant in exchange for a guilty plea on one charge.

A prosecutor could decide that Nixon has been punished enough by losing the presidency and determine not to bring him before the criminal bar.

Smith pointed out two reasons for imposing punishment — to deter people in the future or to exact vengeance. For either reason, Smith said, Nixon already has been punished effectively.

Nixon himself has remained silent on the issue of criminal prosecution, and special prosecutor Leon Jaworski has announced that there have been absolutely no deals made.

Jaworski said that he was notified Thursday afternoon of the President's decision to resign, but the prosecutor emphasized that there were no conferences with the White House directly or through intermediaries on Nixon's behalf.

Three months ago, Nixon was named as an unindicted co-conspirator in the Watergate coverup. Since then additional tapes have been received by Jaworski, tying Nixon more strongly to the Watergate aftermath.

And Jaworski, when Nixon was named as a co-conspirator by the grand jury, made clear that the only reason Nixon hadn't been indicted was because he was shielded by the presidency.

Thus the ultimate decision on whether to try Nixon on criminal charges probably will be up to Jaworski.

A move by Sen. Edward Brooke, R-Mass., to sway that decision by expressing the sentiment of Congress that Nixon should be spared criminal prosecution, now appears to be faltering.

Several Democrats have said they would be opposed to such a measure, which would need bi-partisan support. In addition, the proposal by Brooke was conditioned on Nixon making a full and public admission of responsibility in the Watergate incident, something Nixon did not do in his 16 minute resignation speech Thursday night.

Nixon also faces inquiries by grand juries into the gaps in presidential tapes subpoenaed as evidence and the possibility that favors were granted in exchange for campaign contributions.

Either of these investigations could spring into major problems for Nixon.

When Vice President Agnew stepped down, he was able to bargain immunity for himself as a part of his price of resignation. As far as is known, Nixon made no such deal for himself.

And so in the eyes of the courts, Nixon may be just another citizen.