

SHOULD NIXON BE

Should Richard Nixon, private citizen, be given immunity from criminal prosecution? In the shattered aftermath of his fall from power, with the tawdriness of Watergate finally receding, most Americans would surely prefer to conclude that enough is enough. "The nation has its pound of flesh," said Senate Minority Leader Hugh Scott. "It doesn't need the blood that goes with it." But the question is deeply troubling, calling up the principle of equal justice that was at the heart of the scandal—"This whole thing has been about the rule of law," argued California's Democratic Sen. Alan Cranston—and the debate had already begun last week whether Nixon should be tried for the misdeeds that drove him from office.

In blunt fact, the House Judiciary Committee's three articles of impeachment had charged the ex-President with a series of crimes, including conspiracy and obstruction of justice, that could get an ordinary citizen as much as 30 years in jail and \$57,500 in fines. Nixon had already suffered an extraordinary punishment; the question was whether the nation somehow needed yet more catharsis to heal the wound of corrupted leadership.

The first judgments of the people were provocative: several major surveys of public opinion have shown clear majorities opposed to granting special immunity. But immediately after the resignation, NEWSWEEK's Gallup poll found a majority of 55 per cent opposing further investigation of Nixon, with 37 per cent favoring it. As President Ford told his first Cabinet meeting, the American people "don't want to kick a man when he is down"—and he predicted that any vindictive moves by "the vultures" would trigger a great outcry of sympathy. Significantly, after the resignation the House Judiciary Committee split over whether to pursue its efforts to obtain the disputed White House tapes—but chairman Peter Rodino, speaking for a majority, said flatly: "Our inquiry is at an end."

In theory, immunity could be granted in any of four ways. Since Presidents themselves have power to pardon,



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'Have I got a deal for you!'

Newsweek

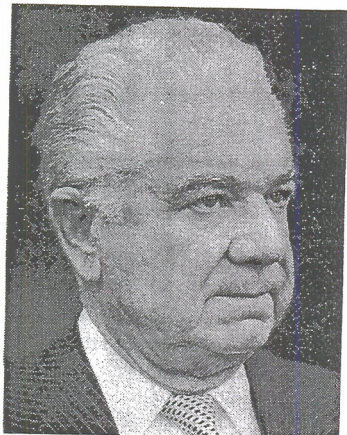
GRANTED IMMUNITY?

Nixon might have granted his own absolution before leaving office, or asked his successor to clear him. Prosecutors have wide discretion whether to press charges, and special Watergate prosecutor Leon Jaworski might simply drop the case against Nixon. Finally, Congress could pass a resolution—non-binding on the prosecutors, but probably enough to deter action. GOP Sen. Edward Brooke introduced such a resolution last week, but withdrew his support for it when Nixon's resignation expressed no contrition.

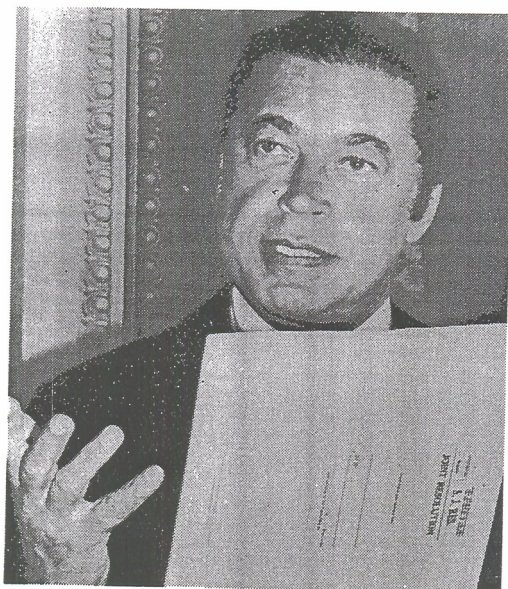
DIFFICULTIES AND DRAWBACKS

As a practical matter, however, an airtight guarantee against prosecution would be very nearly impossible. If Nixon had pardoned himself, he would surely have touched off national outrage; a pardon by Ford would seem nearly as bad. And a Congressional resolution could not legally prevent criminal suits at the Federal, state or local level, or a series of civil actions against Nixon.

Jaworski, *NEWSWEEK* has learned, is already considering Nixon's case. A Congressional resolution could encourage him to drop it, but many staffers in the special prosecutor's office want to "reopen the investigation regarding Mr. Nixon's involvement," according to one top source. The



Jaworski, Brooke:
'It won't go away'



Watergate grand jury—which earlier had named President Nixon an unindicted co-conspirator in the Watergate cover-up—reportedly wants Jaworski at least to present the incriminating evidence contained in the White House tapes Nixon finally turned over as a result of last month's Supreme Court order.

But the special prosecutor was avoiding hasty decisions. Before Nixon's resignation, *NEWSWEEK* also learned, White House chief of staff Alexander Haig both called and met with Jaworski to delicately probe his intentions regarding the President. But Jaworski, at that point, made no firm deal. "There has been no agreement or understanding of any sort," he announced later.

A broadly supported sense-of-Congress resolution could also give President Ford a basis for pardoning his predecessor. But that course also had problems. It would still smack too much of a deal between the two men and Ford would have to go back on an implicit pledge he made earlier in his Senate confirmation hearings. That pledge was underscored last week by Ford's new press secretary, J.F. (Jerry) terHorst. Appearing before the Senate

Committee on Rules and Administration, terHorst recalled, Ford said: "I do not think the public would stand for it . . ."

The major drawback of any grant-in-advance of immunity or Presidential pardon is that it would become a "blind bounty," in the words of one constitutional expert, letting Nixon off the hook not only for the Watergate scandal, but for any other charges that might arise in the future. These might include common criminal charges such as tax fraud (the Vice Presidential papers gift), illegal use of campaign funds (the Hughes-Rebozo money), destruction of evidence (the eighteen-minute gap) and illegal use of government property (at San Clemente and Key Biscayne), all of which are still under investigation.

Another drawback, from Nixon's own point of view, is that court-approved immunity would make it impossible for the former President to plead the Fifth Amendment as a witness at any of the upcoming Watergate trials. And while lawyers for John Ehrlichman, H.R. Haldeman and John Mitchell may not really want Nixon's testimony (groaned a source close to one of them: "He's killing them"), smaller fry and Jaworski's men very well might.

But the basic issue involved in the immunity dilemma was fairness—to all the other men involved in Watergate, to Congress and to the American system of justice itself. Disturbing as the thought of an ex-President behind bars may be to many Americans, it is also upsetting to see Nixon's men standing trial and serving time for their part of a conspiracy while he remains unprosecuted—free to enjoy his government pension at San Clemente. And there was something equally absurd about the House Judiciary Committee and the Supreme Court painfully concluding that President Nixon was not above the law, only to have citizen Nixon placed somehow beyond it.

'A MARTYR WILL BE DIVISIVE'

For the moment, Congress was content to wait and see, giving public sentiment time to settle and new evidence against Nixon a chance to emerge. In the meantime, too, a number of options were being considered. Republican Sen. Charles Percy of Illinois suggested there might be some justice in shaving the President's pension and "perks." Michigan's Democratic Sen. Phil Hart wondered if something might be gained by linking immunity for Nixon with amnesty for Vietnam draft evaders. There was also the notion that a Presidential pardon for Nixon might come after he was tried—thus resolving the charges without necessarily putting the former President of the United States behind bars. And something similar could be accomplished by permitting Nixon to plead *nolo contendere*—as Spiro Agnew had done—to charges drawn up by Jaworski or, in effect, to the articles of impeachment.

The most important thing, as many of the debaters saw it, was to settle the issue of Nixon's guilt once and for all to the country's satisfaction. Senate Majority Leader Mike Mansfield, for one, urged continuation of the impeachment process, but that seemed unlikely. Senator Brooke and others would be satisfied with a voluntary confession by the former President himself, and a final forswearing of martyrdom. "I want to see him make a full disclosure," Brooke said last week. "National reconciliation is paramount, and as a martyr he will be divisive. This is an issue that just won't go away."