

THE LEGAL AFTERMATH

CITIZEN NIXON AND THE LAW

For Richard Nixon, the sacrifice of his office very likely will not bring even a week of surcease. Within minutes of the resignation speech, Leon Jaworski pointedly announced that so far as Nixon's immunity from criminal prosecution was concerned, "the special prosecutor's office was not asked for any agreement . . . and offered none." The next day, when reporters asked about the possibility of a future pardon should Nixon need one, new Press Secretary J.F. terHorst reiterated Gerald Ford's response at his vice-presidential confirmation hearing: "I do not think the public would stand for it." That judgment was made in other circumstances, and is surely subject to change as public attitudes toward Nixon become clearer in the days ahead. But there is no gainsaying that Nixon's new status as a private citizen puts him in grave peril.

Strong Case

On the facts, the possibility of his indictment and prosecution is serious. Technically speaking, "the decision is Mr. Jaworski's," said Attorney General William Saxbe. For so momentous a matter, Jaworski is sure to seek guidance from Congress and President Ford, though a Jaworski spokesman indicated that the need for a decision was "not immediate." The case for prosecution is clear, however.

Says Stanford Criminal Law Professor John Kaplan, a former prosecutor: "I have a strong feeling that it isn't right to behave like a banana republic and hound the ex-leader. But I regret to say I would go ahead and prosecute. It's a very strong case of obstruction of justice." In fact, even before the latest tape disclosure, the Watergate grand jury had vigorously wanted to indict Nixon while he was President, but was persuaded by Jaworski only to name him an unindicted co-conspirator on the argument that he could only be prosecuted after leaving office. Now the grand jury, which is still sitting, might insist on returning that indictment.

There are other possible criminal charges, including subornation of perjury, tax fraud, misprision of a felony, misuse of Government funds for his private home, violating the civil rights of Daniel Ellsberg and his former psychiatrist, Lewis Fielding. It is not impossible that still further charges will emerge; 12,500 cu. ft. of tapes, records and other Nixon documents remain in the White House. They would normally belong to a former President, but be-

cause they may contain evidence of crimes, there will probably be some effort to comb through them before they are handed over to Nixon.

Federal prosecution is far from his only worry. State or local prosecutors could bring charges in either California or Florida. Civil suits could also be filed. There is the added certainty that Private Citizen Nixon will face the annoyance of frequent appearances as a witness—in the cover-up trial and the Connally milk bribe case among others.

Before last Monday, it had seemed that if he wished, Nixon would be able to avoid at least his federal criminal liabilities by trading his office for immunity from prosecution. But with the revelation of hard evidence of his early knowledge of and involvement in the cover-up, he no longer had "a hole card" to bargain with, as one New York City lawyer put it. Indeed he seems specifically to have rejected immunity, telling congressional leaders as he readied his decision, "I don't want to talk" about personal considerations.

TIME did learn, however, that all last week negotiations went on between lawyers of some cover-up defendants and the White House in hopes of arranging a pardon. Then at the last minute, said a source close to one defendant, "Nixon screwed us," and, properly and wisely, nothing was done for his former aides and agents. There was also speculation that Nixon could have pardoned himself, but Press Secretary terHorst reported that Nixon had taken no such inglorious, secret action before leaving office. Doubtless he had probably not even considered it. * 4 TO 10 AUG

New Lawyer

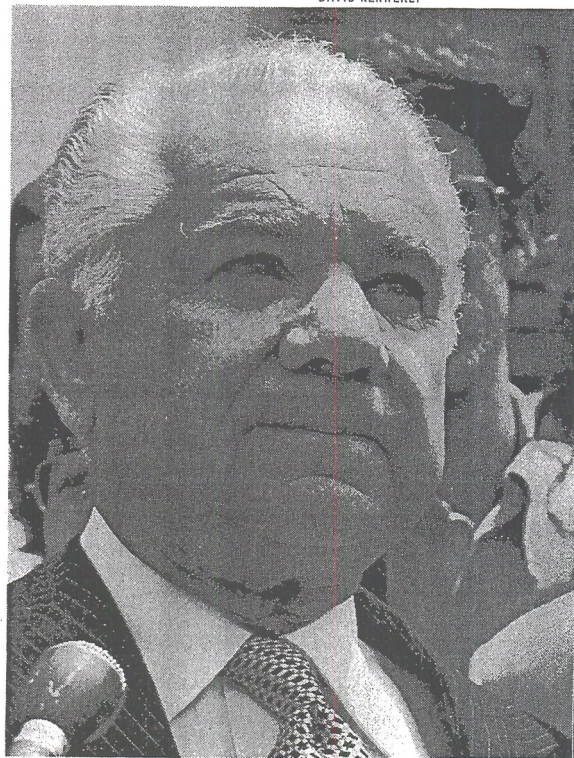
Without immunity or a pardon—and now without access to Government-paid attorneys—Nixon's legal fees could easily hit six figures. By resigning, the former President saved his annual retirement pay of \$60,000, plus \$96,000 a year for staff and expenses. Even without his retirement pay, though, the ex-President would by no means face penury. Literary Agent Scott Meredith (among his clients: Spiro Agnew, Norman Mailer) announced that he had already told an inquiring Nixon aide last month that the Nixon memoirs would probably be worth \$2 million, which would more than comfortably cover any legal costs. There are also the papers from the presidential years and earlier that could be sold. Finally, more than one major financial backer of the ex-President said last week privately that he would willingly contribute to a Nixon legal defense fund.

The former President will have to

get a new lawyer. Even before the resignation was formally filed, James St. Clair announced that he no longer represented Nixon, though at Ford's behest he will stay on at the White House temporarily to supervise the indexing of papers and tapes still under subpoena. The new Nixon attorney will be needed immediately. The cover-up trial of John Mitchell, H.R. Haldeman, John Ehrlichman *et al.* is due to start in three weeks, and should the former President be a witness, he ought to have the advice of a fully informed lawyer before giving any testimony.

Whether or not the ex-President also becomes a defendant in that case remains a haunting problem for the nation as well as Nixon. Democratic Senator Lloyd Bentsen put the Hobson's choice well. "The possibility of a President—a former President—behind bars

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SPECIAL PROSECUTOR LEON JAWORSKI
No agreement asked or offered.

is personally repugnant to me," he said. "But I'm also caught with the proposition that no man should be above the law." Furthermore, letting the former President go free while his top aides went to jail would seem unjust.

Nonetheless, the University of Chicago's constitutional expert, Philip Kurland, comes down against trying Nixon. "Under our system of criminal justice there is never absolute equality of treatment, and the trial of Nixon would be extremely divisive for the country." His Chicago colleague, Law Professor Gerhard Casper, thinks a Ford pardon would be an "act of grace." It remains to be seen whether that view will accurately distill into the mood of the nation in the months ahead.