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Crossing the Bar

By Herbert Mitgang

What the United States Congress failed to pursue after the resignation and what no Presidential pardon can prevent is now under close consideration in California and New York. It is to put a punctuation mark—a full stop instead of a dangling semi-colon—on the public and professional career of Richard M. Nixon, Esq.

This would be achieved by disbarring, or at the very least suspending, him from the practice of law. The proceeding by his peers and the courts in the two states where he has been licensed would center on the devastating legal and human judgment known as "moral turpitude." This damning phrase is more than a statutory definition; it is a comment on a man's character.

For the past year the State Bar in California and the Association of the Bar of the City of New York have been assembling the facts and preparing the cases for disciplinary action against Mr. Nixon even while he was President) and other attorneys in and out of government accused of involvement in Watergate crimes. The American Bar Association's Center for Professional Discipline, with no disciplinary power of its own, has been coordinating material for the state bars with what could be called detached enthusiasm.

Many lawyers believe not only that they must strongly oppose obstruction of justice but that their profession is now on trial. "Only a fish can do the autobiography of a fish," Carl Sandburg once wrote; and now even the establishment bar associations are talking tough about telling the full story and disciplining their own miscreants.

A real test is the case of the former President, who resigned when he was about to be impeached, and then was pardoned by another lawyer in the White House before he could be tried and given the opportunity to refute evidence in a Constitutional and legal forum. Against this background, Mr. Nixon decided to resign his membership in the California bar, presumably on grounds that he would no longer practice but actually because he faced disbarment proceedings. Two hours afterward, the California bar's house of delegates overwhelmingly voted to condemn Mr. Ford for pardoning Mr. Nixon. Since then the State Bar has rejected the Nixon letter because it lacked facts.

Resigning from the Presidency is one thing; resigning from the legal profession another. The State Bar of California is a public corporation. It is an "integrated bar," meaning that no one can practice law in the state without being a member. The California State Supreme Court has final say on disbarment but the State Bar—which has now expended some 1,500 man-hours on Mr. Nixon and the other Watergate lawyers from California—is not expected to forget the whole thing.

California has a strong State Bar Act, including Section 6106. It reads: "The commission of any act involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not, constitutes a cause for disbarment or suspension. If the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disbarment or suspension from practice therefor."

There are two significant points here: first, the lawyer need not be in practice—for example, he might be in the Oval Office or in San Clemente—when involved in an act of "moral turpitude"; second, the wrongful act does not require prior conviction for suspension or disbarment.

Mr. Nixon has also made his move to resign from the New York bar. Lawyers do not have to belong to the Association of the Bar of the City of New York to practice here. Yet the Bar Association has disciplinary authority under the Appellate Division of the State Supreme Court, and it acts as a sort of grand jury to handle preliminary investigations. Then the court can hold hearings and dismiss, censure or disbar.

The fact that the Bar Association's executive committee unanimously condemned President Ford for premature pardon of ex-President Nixon is another indication that the organized bar here is offended by the idea of an attorney at law deciding for himself that a simple letter of resignation should kill the proceedings by an authorized arm of the Appellate Division. For this would be special treatment for one lawyer acting as his own judge and jury—the equivalent of a self-pardon.

Disbarment is the end of the road, professionally. In fairness, there should be an adjudication of facts in a forum of law. Such an ultimate judgment should always be used with caution; it can also be turned against lawyers involved in advocating or defending unpopular clients and causes. And yet—given the due process that is his right—this could provide the missing admission of wrongdoing and the final trial of Mr. Nixon's character.

Herbert Mitgang is a member of the Editorial Board of The Times.