



ARIZONA SENATOR BARRY GOLDWATER

THE NATION

ics who called for resignation as being willing to "destroy the system."

But the ranks of even last-ditch Southern supporters were far from solid. Republican Senator John Tower of Texas, a Nixon loyalist, was described by an aide as being in a "state of anguish." While still maintaining that there was insufficient evidence to impeach, the aide admitted: "This thing is closing in on the President pretty hard right now." Said a Southern Senator: "You have to realize that these Southern members of Congress are not going to let their conservative leanings sway them if there is a clear moral issue involved. They are talking about the gutter language indicated in the transcript. They are deeply anguished that such a locker room climate prevailed in the White House, led by the President himself."

Even from a political standpoint, it might not make good sense for Southerners to continue to support Nixon. "Assume, for example," said a Repub-

lican Senate aide, "that the Senate is about to vote on guilt or innocence, and it appears that more than half but less than the required two-thirds are prepared to vote guilty. That would mean he would go back to the White House for another two years, with more than half the Senate convinced he is guilty. He would be a captive of Congress. The Southern conservatives wouldn't like that at all. If they saw it was about to happen, many of them would vote him guilty just to prevent it."

Head Count. In contrast to the G.O.P. indignation, the Democrats were taking the latest revelations almost in stride. The wisest of them have recognized all along that in the end, it would have to be Republicans who brought Nixon down. Observed Pennsylvania Congressman William Green: "They said at the White House that the transcripts would prove the President is innocent. They don't. Instead, they incriminate him." Said Georgia Represent-

"Citizen" Nixon's Legal Problems

As he contemplated the ruination of his presidency last week, the Richard Nixon displayed on the transcripts was surely musing on the legal liabilities he might face whenever he again becomes a private citizen. The range of possible difficulties is formidable. While Special Prosecutor Leon Jaworski was able to persuade a grand jury that it could not indict a sitting President, his arguments do not apply to a former President. And if the President is impeached and convicted, the Constitution explicitly notes that criminal charges can still be brought.

Based on the evidence in the transcripts, many legal experts, including former prosecutors, already see potential charges against Citizen Nixon of obstruction of justice, subornation of perjury, conspiracy, and perhaps misprision of a felony and bribery. Beyond crimes relating to the Watergate cover-up, the President must also consider that criminal allegations could result from some or all of the ongoing investigations into his tax declarations, the ITT affair, the milk fund, the purported sale of ambassadorships, and the Ellsberg psychiatrist break-in. Moreover, there are the lesser specters of disbarment proceedings, endless appearances as a witness in the trials of others, and civil suits by various individuals who were bugged on presidential orders, or even by taxpayers challenging expenditures at San Clemente and Key Biscayne.

By 1977 at the latest, Nixon will have to face those problems, since little will have changed by then, at least in technical legal terms. The statute of limitations will not have expired in any of the major situations confronting him. There are, of course, shifting and un-

knowable factors, including public pressures for or against prosecution. But allowing for the play of those uncertainties, the President must weigh the timing and tactics of resigning now against the alternative of waiting until his term is ended either naturally or by conviction on impeachment charges.

"If I were his lawyer," says Law Professor John Flynn of the University of Utah, "I don't think I would tell him to resign until he had a clear-cut deal to avoid criminal prosecution." Massachusetts Trial Lawyer Richard K. Donahue, a former aide in the Kennedy White House, counsels that "at this point the President would be in a stronger position to bargain than in a month or two from now. You don't make a deal when the jury is out." But making such a deal may present insuperable problems.

One route, Wilbur Mills' proposed congressional act granting Nixon immunity from prosecution in exchange for resignation, seems impossible. Such a law could probably stop both federal and state criminal prosecution, much as federal immunity statutes in general can. But it is scarcely likely that the public would put up with the spectacle of legislators voting to pass a special law that would then have to be signed by its intended beneficiary.

An Agnew-style effort at plea bargaining is also problematic. For one thing, as University of Chicago Law Professor Gerhard Casper wonders, "who would negotiate it? In a sense Nixon would be negotiating with himself. Jaworski is an appointee to the Attorney General, who is in the chain of command to the President." Stanford Criminal Law Professor John Kaplan adds: "As a practical matter, it might very well be that the attempt would ensure an im-

peachment conviction." Some Washington observers believe that the only possibility is an informal assurance by various officials that Nixon would not be pursued. Jaworski is reportedly of a mind not to prosecute in the event of resignation, apparently reflecting what he believes would be the general public relief at having been spared the impeachment trauma. Attorney General William Saxbe would probably not move on his own. And Gerald Ford could, of course, agree to grant a pardon or block prosecution once he is President.

But such an understanding among officials could not be guaranteed to withstand pressure from post-Watergate public opinion, especially with trials of former presidential aides still pending. Beyond that, there is the simple maxim of never confronting today what can be put off until tomorrow. In law, delay is generally thought to favor a defendant. From a pocketbook point of view, that is particularly true for Nixon, since as President he has access to the kind of legal advice that would cost in six figures if he had to seek it privately.

Thus, in the narrowest view, the President has little legal incentive to resign now. But Nixon's perspective must necessarily be broader as he thinks about his problem, since his situation is unique. Going the full route of impeachment and trial in the Senate could well generate further evidence against him, even if he were not convicted. It could also sharpen the public perception of criminal culpability, and thus increase the pressure to pursue him in the courts after he left office. The impeachment ordeal is not one that the public or Congress welcomes, and an early resignation could well produce a kind of amnesty for Nixon, a grateful willingness to put Watergate at last behind the nation and leave history to judge the 37th President.