



INDICTED NIXON AIDES: FROM LEFT, HALDEMAN, EHRLICHMAN & MITCHELL

## The New Legal Tangles

President Ford's pardon of Richard Nixon may betray questionable judgment. There is no question of its constitutionality. Article II, Section 2 of the Constitution provides that the President "shall have power to grant reprieves and pardons for offenses against the United States except in cases of impeachment." In an 1867 case that has obvious bearing on Ford's action, the Supreme Court ruled that the pardoning power is "unlimited" (except for impeachment) and "may be exercised at any time"—even before an indictment is issued.

Presidents in the past have made frequent use of the pardoning power—though never before on behalf of a former President. But while most uses of Executive clemency have resolved criminal cases for good, Ford's pardon of Nixon creates new legal tangles in the already snarled Watergate affair. Most immediately affected will be the six men facing trial on Sept. 30 for their roles in the Watergate cover-up—John Ehrlichman, H.R. Haldeman, John Mitchell, Kenneth Parkinson, Gordon Strachan and Robert Mardian. Many lawyers felt, in the aftermath of Ford's announcement, that the President had given a big boost to the defense.

Attorneys for Nixon's accused former aides are now in a position to argue

that their clients should not be convicted when the ex-President himself cannot even be brought to trial. "The President gave Nixon a complete 'walk,'" said one defense attorney. "The other defendants should get the same thing. How can they be tried when all they really did was try to protect Nixon?" In ordinary legal proceedings, the leading member of a criminal group is most actively prosecuted and gets the stiffest sentence if convicted. Now that the highest-ranking person in the Watergate affair would go free, it seemed doubtful to many lawyers that any jury would send his subordinates to jail. The pardon also raised a question about the fate of the nine who have already been sent to prison; John Dean began his one-to-four-year term only last week.

**No Violation.** Other lawyers, however, questioned that pardoning Nixon would affect others still facing trial. Said Stanford Law Professor John Kaplan: "The fact that one person has been pardoned does not constitute a violation of the equal-protection clause of the Constitution." In addition, the Nixon pardon has provided both the Watergate prosecutors as well as the defense lawyers with a whole new element: the assured testimony of the ex-President. In granting Nixon a pardon, Ford made it

difficult for the former President to refuse to testify in future Watergate trials by claiming his Fifth Amendment rights against self-incrimination. And when he does testify, Nixon will run the risk of a charge of perjury if he is less than completely truthful.

Nixon's own testimony, in combination with the records and tapes he has already agreed to make available for court use, may well ensure the fullest explanation to date of the entire Watergate affair. What that will mean for the defendants is still unclear. Certainly Nixon's evidence will be a crucial part of the entire case, and he may well furnish information about the Watergate cover-up that could clinch the arguments of the prosecution. At the same time, however, at least one of the Watergate defendants has already indicated that he wants Nixon to testify as a defense witness. Before Ford's pardon, Ehrlichman subpoenaed Nixon to testify, hoping apparently that Nixon would support his claim that he was led into thinking that national-security considerations justified the cover-up.

**Cloudy Future.** Though Nixon has been freed of the overwhelming anxiety that he would be indicted and have to face trial, he has not been freed from all the legal troubles growing out of the Watergate affair. Technically, he still faces the possibility of state criminal action for tax fraud in California, though this is considered extremely unlikely. More conceivably, citizens resentful about what they regard as illegal expenditures on the President's homes in California and Florida could bring civil suits. Further, action in the federal courts could be initiated by someone like former National Security Council Staffer Morton Halperin, whose telephone was bugged on Nixon's orders. Another potential danger to the former President is that he will be disbarred. Still, these problems are less pressing than the one President Ford disposed of with his order of Executive clemency. The future remains cloudy for Richard Nixon, but in all likelihood he no longer faces the prospect of being the first President of the United States to go to prison.