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THE RECENT BURST of alarms and excursions by congressional leaders has created a grand constitutional question out of a crass political wish: namely, that the President of the United States would just go away, resign, quit.

In public, the politicians discuss the pros and cons in lofty terms: Would presidential resignation be good for the Republic or harmful? Would it be a dangerous precedent or a healing balm? But, in private, they talk about the hard, practical question which may be more to the point: Would resignation be good for Richard M. Nixon?

The short answer is absolutely not. The long answer is that resignation might seem an attractive alternative to Mr. Nixon only if it becomes brutally clear to him later this summer that conviction by the Senate is inevitable.

"The biggest obstacle to Mr. Nixon's resignation may be his fear of going to jail," I. F. Stone wrote six months ago with his usual foresight and skepticism. "So long as he stays in the White House, he is safe. As President, he has the power to hamper investigation, drag out litigation, and block his own prosecution."

Recognizing this now, some in Washington have been floating a quick solution to that obstacle—amnesty for the President. In ordinary times, it would be preposterous even to discuss presidential amnesty, but Washington suspicions are conditioned by recent history—and specifically by the Agnew affair. All the time Agnew was insisting on his innocence, promising a fight to the finish, the former Vice President's lawyers were secretly negotiating to "cop a plea," to accept conviction in exchange for an agreed-upon sentence. Might a similar deal be arranged in which Richard M. Nixon resigns from office in exchange for immunity from criminal prosecution? Is that how it will all end?

The apparent similarities are misleading. Agnew faced a formidable collection of evidence that he had played bribery and extortion with government contractors. His indictment was imminent. His attempt to throw the question to the Congress rather than the courts had failed. His hole card in the plea bargaining was his place in high office, a heartbeat away from the presidency, and the spectre of his remaining there through a long and sordid court trial.

Mr. Nixon's case is different. He already occupies the Oval Office. He is to be judged now by the Congress,

The Risks of Being

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an Ex-President

where the outcome of the impeachment proceeding is less than certain, where tomorrow's votes do not necessarily match today's political noises. And, above and beyond the humiliation of being the first President to quit the White House, Mr. Nixon has so much more to lose if he resigns, so much more potential for further disgrace from the tangled cases of the Watergate web.

"He can't resign, he's in a box," notes one former White House aide still sympathetic to his ex-boss. "He'd be prosecuted, and/or made an unin-

dicted co-conspirator, and/or be subpoenaed as a witness. If a guy gives up the presidency, he doesn't want to spend the next two years of his life bouncing around every grubby courthouse."

No Ambiguity

THE CONSTITUTION is ambiguous on some aspects of impeachment, but it clearly states that any government leader removed from office "shall nevertheless be liable and subject to indictment, trial judgment and punishment, according to law."

"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."

Time Magazine, 20 May 74

Criminal immunity for the President could be arranged, however, in several ways—by congressional action, though that seems unlikely at this point; by the special prosecutor or attorney general, who could grant it, or by the succeeding President, Gerald Ford, who could simply declare an amnesty, the way Lincoln and Andrew Johnson pardoned rebels in the Civil War.

For the record, the special prosecutor's office states emphatically that there have "absolutely not" been any conversations between Special Prosecutor Leon Jaworski and the White

House on this subject. If such conversations do occur in coming months, moreover, there isn't likely to be any public announcement of them.

"We said this was the last time we would answer those questions," remarks James Doyle, spokesman for Jaworski. "We do not intend to have our conversations with opposing counsel become part of the public record."

Skeptics like Ogden Reid, a New York Democrat who is running for governor, are already wary of some sort of deal ahead. Reid has introduced a bill which would prohibit the federal

prosecutors from granting immunity to any President or former President. As impeachment pressure builds, Reid said, "New revelations may tempt the President to follow the example of Vice President Agnew and make a deal in turn for resignation."

Constitutional Questions

BUT SEVERAL ON Capitol Hill, including Democratic Rep. Wilbur Mills of Arkansas, have suggested that Congress should hasten that climax by enacting legislation to protect Mr. Nixon from prosecution in exchange for his resignation. Mills' proposal hasn't exactly won an army of supporters among his colleagues; many of them don't want to vote on impeachment if they can avoid it, but they also would be uneager to cast a vote for a quick amnesty.

Both Democratic and Republican floor leaders in the House are opposed to any congressional action on presidential immunity.

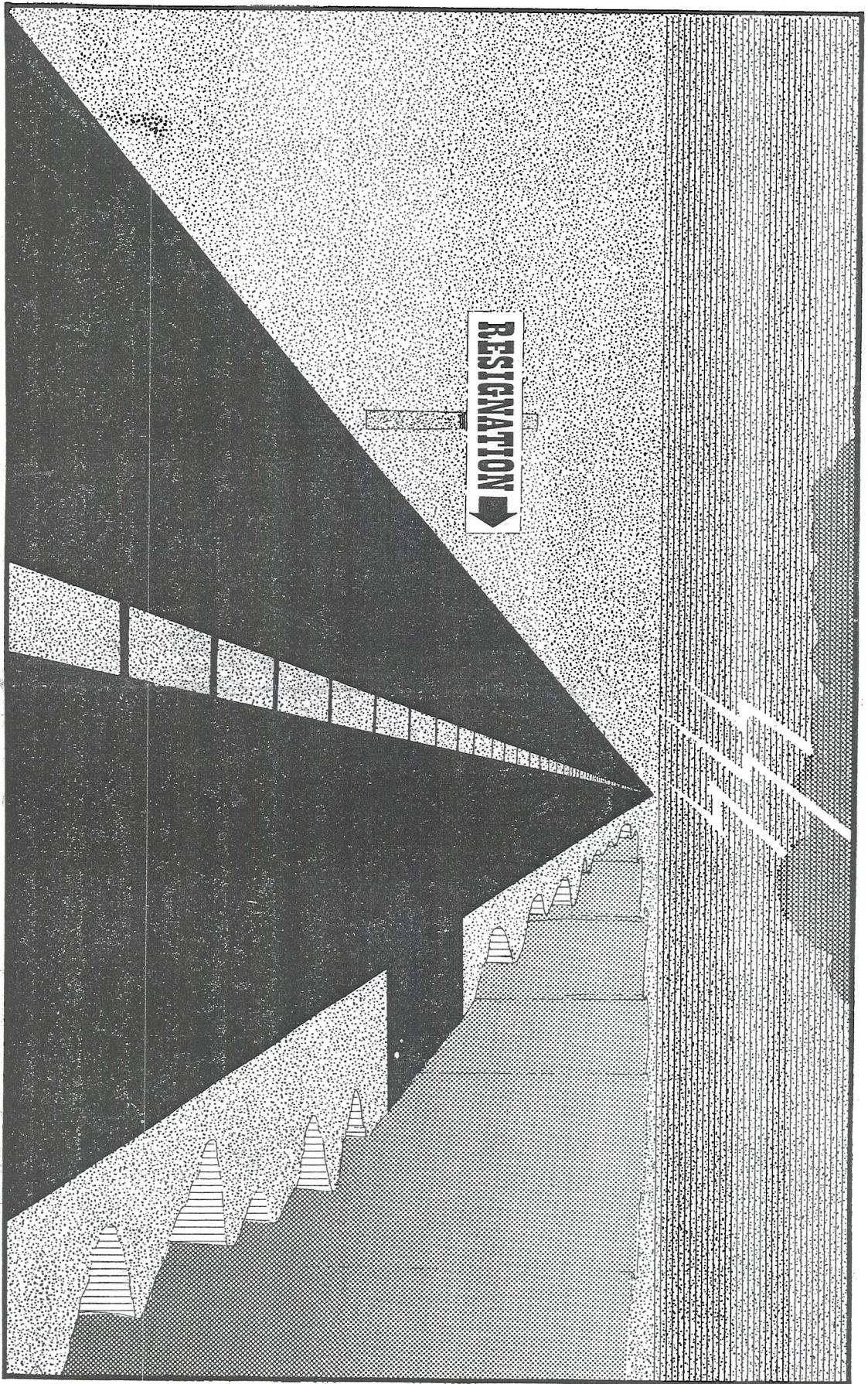
"I don't think the people would buy it," says Rep. Thomas P. O'Neill Jr., Democratic majority leader, "nor would the Congress." The Republican leader, Rep. John J. Rhodes of Arizona, says, "I never felt Congress could do that. To me, that's highly unconstitutional." If the President resigned, Rhodes adds, "I see no way that criminal prosecution could be avoided through congressional action."

Some constitutional lawyers, however, believe that a generally drafted bill — one which grants criminal immunity to all former Presidents — would meet the constitutional standard against legislation which singles out a particular defendant. Former Justice Abe Fortas, who himself was forced to resign from the Supreme Court, suggested such legislation several months ago but says he has not done anything with the idea beyond casual conversation.

Rep. Paul McCloskey (R-Calif.) was an early advocate of congressional action, but he has concluded that the idea has no future, partly because of the Agnew experience. "The politics is just impossible," he says. "The timing involved would be too long. We could not justify an act of Congress to exempt a man from the law. But I think we could indicate—after the fact—by consensus that the sense of Congress is to forgive."

Among other complications, such action would have to clear the House Judiciary Committee which would not likely set aside its impeachment inquiry in order to legislate amnesty.

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By John Twobey—The Washington Post

The Realities of Resignation

PRESIDENT, From Page C1

If anything is arranged, according to several knowledgeable government attorneys, it would most likely be a lawyer's agreement involving the special prosecutor and the attorney general, perhaps with the consent of congressional leaders and the Vice President.

"The prosecutor always has the discretion not to prosecute," remarks a former federal attorney familiar with Watergate. "Either the attorney general or Jaworski could do that, but if I were looking for assurances of that kind, I wouldn't be willing to accept it from either one alone."

Several knowledgeable sources say Jaworski could readily make such a policy declaration without jeopardizing the Watergate prosecutions. The prosecutor has the power to grant immunity to defendants in exchange for testimony, but more likely he would simply decide that it is in the public interest to exclude a "co-conspirator" from indictment. That has already been done for several lesser figures implicated in the Watergate cover-up.

Would this be good for the country? Democratic congressional leaders have warned that premature resignation would set a dangerous precedent. Some critics of the presidency like Ralph Nader, on the other hand, think it might start a healthy tradition—providing new flexibility to national government.

Would it be just? The question provokes the same sort of arguments which surrounded the Agnew deal. "If the head man is not prosecuted, what about the others?" one constitutional scholar asks.

Yet nothing would be more ugly and potentially divisive for the nation than insisting that a former chief executive be placed in the dock as a criminal defendant. In short, neither route is especially attractive.

"It Would Be Grim"

FROM THE PRESIDENT'S standpoint, however, immunity from prosecution does not really solve his troubles. As one official puts it, "Getting a walk from the government is the least of his problems. He's got all kinds of other liabilities, taxpayers' suits or state prosecutors' appearances as a witness. He could make a living on witness fees."

One Watergate defendant, asked privately if he would subpoena citizen

Nixon as a witness in his case, replies: "You can be damn sure I would."

Mr. Nixon, as a private citizen, might be called for the Watergate prosecutions or for a variety of other cases from ITT to the milk lobby lawsuits once he was no longer protected by his executive privilege. "The country," says a friend of the President's, "would be treated to the spectacle of the ex-President traveling from courtroom to courtroom at \$20 a day. It would be grim."

The only sure way to relieve Mr. Nixon of that potential burden would be to dismiss all other criminal charges against his former aides, a move which would probably provoke fresh controversy over unequal justice for those at the top.

The suggestion of general forgiveness on Watergate is particularly galling to those who have lobbied fruitlessly to get the same treatment for exiled draft dodgers and deserters from the Vietnam war. The President's own words on amnesty will doubtless be applied to Watergate. "Amnesty means forgiveness. We cannot provide forgiveness for them. Those who served paid their price. Those who deserted must pay their price. The price is a criminal penalty for disobeying the laws of the United States."

Furthermore, if Mr. Nixon resigns he might surrender considerable control over evidence related to all these cases. Armed with executive privilege, he now has a vast library of White House tape recordings and documents which might affect not only his own fate but that of former top aides.

If he becomes an ex-President, what would happen to all of that potential evidence? The question drives lawyers up the wall because there is no settled answer.

His defense attorney, James St. Clair, said recently that he thought the tapes would probably belong to the government. But he was corrected later by White House lawyer Fred Buzhardt, who said the tapes belong to Mr. Nixon.

Precedent suggests that a retiring President can take with him whatever records and papers he wants, but then no President has ever been forced to resign from office under threat of impeachment. If Mr. Nixon took the tapes with him, would they remain covered by the executive privilege which he invoked as President, or could a federal court subpoena his private archives just like any other

evidence? The President would risk these questions if he chooses resignation.

Another plan, which has been endorsed by Republican Sen. Milton R. Young of North Dakota, among others, wouldn't force the President to make these hard choices. The suggestion is that he could invoke his rights under the 25th Amendment to step aside temporarily as disabled or no longer able to function as President. This would put Ford in charge of the government, but Mr. Nixon technically would still be President, still protected by executive privilege, still immune to indictment and trial.

That move might also dampen the drive for his impeachment, though legally it wouldn't necessarily stop it. The problem, of course, is that it would leave the President in a constitutional limbo guaranteed to keep all of his Watergate critics on the case until he left office completely.

A Premature Question

ELLIOTT RICHARDSON, who as attorney general conducted the plea-bargaining in the Agnew case, suggests that the current talk is premature, to say the least.

"I don't think the President ought to resign," Richardson says, "until or unless he's prepared to admit there is a valid basis for the impeachment charges. As a practical matter, the first point at which that could happen is after the House votes charges of impeachment. If the House isn't even prepared to vote impeachment, I don't think the President should consider resignation. It's a question that certainly ought to be explored at whatever point he is ready to acknowledge there are valid grounds of impeachment if that ever happens."

This murky situation does have one certainty to it. All of the potential liabilities which Mr. Nixon would face as a private citizen if he resigns would also confront him ultimately if he is impeached and convicted by Congress. If he resigned before a Senate trial, he might at least leave some ambiguities for future historians to interpret.

Thus, the question of resignation becomes a calculation of time and votes. So long as it seems possible that 34 senators will support him, he has little personal incentive to quit. But if the House votes to impeach this summer and conviction by the Senate then seems inevitable, he does not gain much by sticking it out for a few more weeks or months of public disgrace.